



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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**MINI RECORD**

**VOLUME 1**



SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which



was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

Vol. 1  
000001

000004

000032

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

Vol. 2

000040

000058

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # 1 Original Complaint # 2 Civil Cover Sheet # 3 Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # 1 Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>			<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3      5/25/22 (10/5/21)      9      (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4      5/25/22 (10/5/21)      10      (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>			<p>5      5/25/22 (10/5/21)      11      (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6      5/25/22 (10/5/21)      12      (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7      5/25/22 (10/5/21)      13      ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

Vol. 8			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001349	8 5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001352	9 5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001359	10 5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
001361	11 5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
001369	12 5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
001381	13 5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				

001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

_____	§	Chapter 11
In re:	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
_____	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
_____	§	

**NOTICE OF APPEAL AND STATEMENT OF ELECTION**

**Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s):

The Charitable DAF Fund, L.P.

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding:

- Plaintiff
  - Defendant
  - Other (describe)
- 

For appeals in a bankruptcy case and not in an adversary proceeding:

- Debtor
- Creditor
- Trustee
- Other (describe)

**Part 2: Identify the subject of this appeal**

1. Describe the judgment, order, or decree appealed from:

Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc. 43]

2. State the date on which the judgment, order, or decree was entered: September 30, 2022

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys:

1. *Party/Appellee:* Debtor: Highland Capital Management, L.P.

Attorney:

PACHULSKI STANG ZIEHL & JONES LLP  
 Jeffery N. Pomerantz  
 John A. Morris  
 Gregory V. Demo  
 Hayley R. Winograd  
 10100 Santa Monica Blvd., 13<sup>th</sup> Floor  
 Los Angeles, CA 90067  
 T: (310) 277-6910  
 F: (212) 561-7777

And



Hayward & Associates PLLC  
Melissa S. Hayward  
Zachery Z. Annable  
10501 N. Central Expy. Ste. 106  
Dallas, TX 75231  
T: (972) 755-7100  
F: (972) 755-7110

2. *Party/Appellants*: Plaintiffs: The Charitable DAF Fund, L.P.

Attorney:

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

**Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts):** Not applicable.

Dated: October 5, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: [mas@sbaitilaw.com](mailto:mas@sbaitilaw.com)

[jeb@sbaitilaw.com](mailto:jeb@sbaitilaw.com)

**Counsel for Plaintiffs**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 30, 2022

*Henry G. C. Gannge*  
United States Bankruptcy Judge

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

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT	§	CASE NO. 19-34054-SGJ-11
L.P.,	§	(CHAPTER 11)
REORGANIZED DEBTOR.	§	
	§	
CHARITABLE DAF FUND, L.P.,	§	
	§	
PLAINTIFF	§	
	§	
VS.	§	ADVERSARY NO. 22-03052
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
DEFENDANT	§	

**MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT'S AMENDED  
MOTION TO DISMISS ADVERSARY PROCEEDING**

**[DE ## 19, 20, 21, & 32]<sup>1</sup>**

<sup>1</sup> "DE # \_\_\_" as used herein refers to the Docket Number at which a pleading appears in the docket maintained by the Bankruptcy Clerk in Adv. Proc. No. 22-03052. Here, DE ## 19, 20 & 21 refer to the Amended Motion to Dismiss, the Brief in Support, and the Appendix in Support filed by the Defendant (the "Original Appendix").

## I. INTRODUCTION

The above-referenced action (“Action”) was originally commenced in the United States District Court for the Northern District of Texas (“District Court”) and was thereafter referred to the bankruptcy court (“Bankruptcy Court”).<sup>2</sup>

In the Action, a Plaintiff seeks damages and other relief from a former Chapter 11 debtor, *pertaining to business conduct undertaken by the debtor, during the course of its Chapter 11 bankruptcy case (“Bankruptcy Case”)—conduct that allegedly harmed the Plaintiff*. The Action was filed after confirmation of the Debtor’s plan, but before the effective date of the plan occurred.

The former debtor-in-possession (now a reorganized debtor) moves for dismissal of the Action, arguing primarily that the filing of the Action in District Court *was an improper means for pursuing a post-petition administrative claim against a chapter 11 debtor*. There was a well-defined process for pursuing administrative expense claims in the Bankruptcy Case—of which the Plaintiff received ample notice—and the Plaintiff ignored that process, choosing instead to embark on post-confirmation litigation in the District Court. The former debtor-in-possession also argues

---

Additionally, DE # 32 refers to the Defendant’s Amended Appendix in Support of Amended Motion to Dismiss, that merely added two more exhibits to Defendant’s Original Appendix—new Exhs. 21 & 22. *See also* DE # 30 (the Response of the Plaintiff) and DE # 31 (the Reply of the Defendant). Notably, at the oral argument on the Amended Motion to Dismiss, the court ruled that only Exhs. 1-13, 17, 21, and 22 would be considered by the court. All of these exhibits, *except Exh. 17*, were items on the Bankruptcy Court’s docket of which this court may take judicial notice in the context of a Rule 12(b) motion to dismiss. Although a court generally limits its inquiry on a Rule 12(b) motion to dismiss to a plaintiff’s complaint or any documents attached to the complaint, a court may also take judicial notice of matters that are part of the public record when considering a motion to dismiss. *See, e.g., T.L. Dallas (Special Risks), Ltd. v. Elton Porter Marine Ins.*, No. 4:07-cv-0419, 2008 WL 7627807, at \*2 (S.D. Tex. 2008); *Cade v. Henderson*, No. CIV A 01-943, 2001 WL 1012251, at \*2 (E.D. La. Aug. 31, 2001). *As to Exh. 17*, it was a short Declaration of Defendant’s Chief Executive Officer (“CEO”), James Seery, dealing solely with the Rule 12(b)(1) standing (i.e., lack of subject matter jurisdiction) issue, and there was no objection to Exh. 17 being considered by the court. *See* DE # 41, Transcript of oral argument on the Amended Motion to Dismiss (“8/3/22 Transcript”), at 3:22–5:17.

<sup>2</sup> The referral occurred by virtue of an order entered by Judge David C. Godbey on May 19, 2022, in Civil Action # 3:21-cv-01710-N. *See* DE # 32, Ex. 13, Appx. 477-79.

that—in addition to Plaintiff’s procedural problems—that Plaintiff lacks standing to pursue its claims.

*A. The Parties*

The movant is the Defendant, Highland Capital Management, L.P., now a reorganized debtor (“Highland” or “Reorganized Debtor”). Highland is the sole defendant. The allegedly actionable conduct of Highland occurred in August 2020 (mid-way through its Chapter 11 case). The Bankruptcy Court entered an order confirming Highland’s Chapter 11 plan, on February 22, 2021. Highland’s plan went effective on August 11, 2021. The Action was filed on July 22, 2021, some seven months after entry of the Bankruptcy Court’s confirmation order but just before the effective date.

The respondent, the Plaintiff, is an entity known as Charitable DAF Fund, L.P. (“Plaintiff” or “Plaintiff/DAF”).<sup>3</sup> Plaintiff is a limited partnership hedge fund, organized in the Cayman Islands, that purports to have charitable purposes (i.e., it is designated as a “donor advised fund”), and was originally seeded with funds from Highland.<sup>4</sup> Plaintiff purports to now act through an

---

<sup>3</sup> Notably, this is Plaintiff/DAF’s *second* time to sue Highland, post-confirmation, regarding Highland’s alleged post-petition mismanagement or misconduct during its Chapter 11 case. See Adv. Proc. # 21-3067 styled *Charitable DAF Fund, L.P. et al. v. Highland Capital Management, L.P., et al.*, (Bankr. N.D. Tex.) (hereinafter, the “First DAF Post-Confirmation Lawsuit Against Highland”). The First DAF Post-Confirmation Lawsuit against Highland was also filed in the United States District Court (Judge Jane Boyle) and then was referred by Judge Boyle to the Bankruptcy Court. That lawsuit challenged the legality of Highland’s conduct in entering into a compromise and settlement agreement during the Bankruptcy Case (with Bankruptcy Court approval) with an entity known as HarbourVest. The Bankruptcy Court dismissed the First DAF Post-Confirmation Lawsuit Against Highland on March 11, 2022 (based on estoppel grounds and declining to reach other grounds possibly warranting dismissal). Finally, this court notes that an entity known as Dugaboy Investment Trust—a family trust of which Highland’s former CEO, James Dondero, and/or his family members are beneficiaries—earlier, on June 23, 2021, filed a District Court action based on the very same allegations that are asserted in this present Action but later voluntarily dismissed such action. DE # 32, Exh. 22, Appx. 781. See also 8/3/22 Transcript at 10:13.

<sup>4</sup> See DE # 99 entered in the First DAF Post-Confirmation Lawsuit Against Highland, Adv. Proc. # 21-3067, at p.2. As referenced earlier, although a court generally limits its inquiry on a motion to dismiss to the plaintiff’s complaint or any documents attached to the complaint, a court may also take judicial notice of matters that are part of the public record when considering a motion to dismiss. See authorities mentioned in footnote 1, *supra*.

individual named Mark Patrick<sup>5</sup>—a former Highland employee who now works for entities controlled by or associated with James Dondero, Highland’s founder and former CEO.

*B. The Allegedly Actionable Conduct.*

Plaintiff represents in its Complaint that it was an investor in a non-debtor entity known as “Multi Strat.” Multi Strat was controlled by Highland—in that Highland was Multi Strat’s investment manager and ultimate majority equity owner.<sup>6</sup> In its Complaint, Plaintiff alleges that Highland, during its Bankruptcy Case, breached contractual and extra-contractual duties to Plaintiff, as an alleged investor in “Multi Strat”—supposedly causing Plaintiff harm. The pith of the Complaint deals with Multi Strat’s previous ownership of a pool of “viaticals.” Viaticals are life insurance policies, insuring the lives of various random individuals, that have been purchased, with the purchaser taking over the payment of premiums on such policies, such that when the individual dies, the life insurance proceeds are paid to the purchaser/owner of the policies (in this case, Multistrat). Distilled to its essence, Plaintiff’s argument is that Highland—acting as Multi Strat’s investment manager—caused the sale of Multi Strat’s pool of viaticals, during the Chapter 11 case (in August 2020), pursuant to a flawed process, at a price that Plaintiff believes was too low, and subject to other improprieties. To be clear, the sale was not subject to a Section 363 sale motion or court order, since Multi Strat’s assets (i.e., the viaticals) were not property of the estate.

The Complaint must be dismissed, pursuant to Rules 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure (the “FRCP”), made applicable to this Action by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure (the “FRBP”), for at least two reasons. First, the causes

---

<sup>5</sup> Until at least mid-January 2021, Grant Scott, James Dondero’s life-long friend and college roommate, was the sole director of Plaintiff/DAF. *See* DE # 99, entered in the First DAF Post-Confirmation Lawsuit Against Highland, Adv. Proc. # 21-3067, at p. 3. Mark Patrick was installed as the new control person at some point thereafter in 2021. DE # 32, Exh. 22, Appx. 790.

<sup>6</sup> It is undisputed that Highland was both the investment manager of and majority investor in Multi Strat.

of action asserted in the Complaint—that Highland breached its contractual and extra-contractual duties to Plaintiff *during* the Chapter 11 case—would, if meritorious, have been “administrative expense claims” and, under the terms of the Plan, were required to be filed *with the Bankruptcy Court* and served on Highland no later than September 25, 2021. Despite these Plan requirements—of which Plaintiff received notice—Plaintiff asserted its claims through this Action in the District Court. That decision must be deemed fatal, and Plaintiff’s claims are now time-barred. Second, Plaintiff has now acknowledged in its response to Highland’s Amended Motion to Dismiss that it is not an investor in Multi Strat. Rather, its subsidiary, an entity known as “CLO Holdco” is (“CLO Holdco” is apparently a 4.06% equity owner of Multi Strat). Regardless of Plaintiff’s reasons for filing the Complaint in its own name, rather than in the name of its subsidiary CLO Holdco (and this court can only speculate),<sup>7</sup> the result is the same. Plaintiff itself lacks standing to assert the claims in the Complaint, for the reasons further described herein, and this Court accordingly lacks jurisdiction to adjudicate the claims asserted in the Complaint. Moreover, allowing substitution of CLO Holdco as a plaintiff at this point in time (if a motion pursuant to Rules 15 and 17 of the FRCP were to be made) would be futile, since the real problem here is the failure to follow the Plan and Bankruptcy Code’s required procedures for pursuing an administrative expense claim. Accordingly, the Complaint must be dismissed.

---

<sup>7</sup> The court notes that CLO Holdco was *very active* in the Highland Bankruptcy Case, including objecting to the Plan. See DE ## 1675 and 1797 in the main Highland Bankruptcy Case. Its 100% parent, Plaintiff/DAF, on the contrary, was not nominally—although Plaintiff/DAF, as 100% parent to CLO Holdco, would have necessarily been giving directions to CLO Holdco during the Bankruptcy Case. The court cannot help but speculate that Plaintiff was trying to avert estoppel arguments that might have been made if CLO Holdco had filed this Action—given its active litigation of the Plan. In any event, as described herein, this Action fails for other reasons more fundamental than estoppel.

## II. UNDISPUTED FACTS

### A. *Relevant Dates and Deadlines in the Highland Bankruptcy Case*

On October 16, 2019 (the “Petition Date”), Highland commenced a voluntary petition under chapter 11 of the Bankruptcy Code.

On February 22, 2021, after months of contentiousness and various sessions of mediation with professional mediators—which successfully led to resolution of certain large creditor claims—the Bankruptcy Court entered an Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief (the “Confirmation Order”),<sup>8</sup> which confirmed the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P (as Modified) (the “Plan”).<sup>9</sup>

Notably, the Plan contained customary language incorporating section 1141(d)(1)(A) of the Bankruptcy Code and releasing the Debtor from pre-confirmation liabilities of any kind:

Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities *that arose before the Confirmation Date*, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.<sup>10</sup>

Section 1141(d)(1)(A), in turn, provides that the confirmation of a plan “discharges the debtor from any debt that arose before the date of such confirmation.” 11 U.S.C. § 1141(d)(1)(A). To be clear, this did not leave parties without a remedy to assert possible post-petition, pre-confirmation claims. In that regard, the Plan contained customary definitions and other provisions

---

<sup>8</sup> DE # 32, Exh. 3, Appx. 19-180.

<sup>9</sup> *Id.*, Exh. 4, Appx. 181-247.

<sup>10</sup> *Id.*, Exh. 4, Appx. 235 (emphasis added).

regarding the filing and adjudication of “administrative expense claims.” These provisions, summarized below, are key to the disputes in this Action.

First, as is typical for a Chapter 11 plan, there was a “Defined Term” for “Administrative Expense Claim” as follows:

“Administrative Expense Claim” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor . . . and that have not already been paid by the Debtor during the Chapter 11 Case . . . .<sup>11</sup>

Second, the Plan further provided that:

If an Administrative Expense Claim . . . is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must **File**, on or before the applicable Administrative Expense Claims Bar Date, **and serve on the Debtor or Reorganized Debtor**, as applicable . . . an application for allowance and payment of such Administrative Expense Claim.<sup>12</sup>

There was a defined term for “File” in the Plan as follows:

“File” or “Filed” or “Filing” means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.<sup>13</sup>

Finally, there was a defined term for Administrative Expense Bar Date as follows:

“Administrative Expense Claims Bar Date” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is **forty-five days after the Effective Date**.<sup>14</sup>

---

<sup>11</sup> *Id.*, Appx. 189.

<sup>12</sup> *Id.*, Appx. 204 (emphasis added).

<sup>13</sup> *Id.*, Appx. 196 (note that the reference to the “authorized designee” for the Bankruptcy Court in the Chapter 11 Case would have been a reference to Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent in the above-captioned case, which, among other things, maintained the proof of claim register in the case for **prepetition** claims).

<sup>14</sup> *Id.*, Appx. 189 (emphasis added).



On August 11, 2021, the Plan became effective. On August 11, 2021, Highland filed the Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (the “Notice of Effective Date”),<sup>15</sup> clearly disclosing that the “Effective Date” (as defined in the Plan) had occurred on August 11, 2021.

Consistent with the Plan, the Notice of Effective Date disclosed in bold, capitalized letters, that all “administrative expense claims” were required to be filed no later than 45 days after the Effective Date (i.e., September 25, 2021):

**PLEASE TAKE FURTHER NOTICE** that, except with respect to Administrative Expense Claims that are Professional Fee Claims or as otherwise set forth in the Plan, requests for payment of an Administrative Expense Claim must be Filed with the Bankruptcy Court no later than forty-five (45) days after the Effective Date (the “Administrative Expense Claims Bar Date”). **HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE EXPENSE CLAIMS BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE THAT DO NOT FILE AND SERVE SUCH A REQUEST BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE EXPENSE CLAIMS AGAINST THE DEBTOR OR THE REORGANIZED DEBTOR.**<sup>16</sup>

Highland served the Notice of Effective Date via at least First-Class Mail on Plaintiff/DAF.<sup>17</sup> It is undisputed that Plaintiff/DAF did not *file* an administrative expense claim with the *Bankruptcy Court*, nor did it *serve* one on the Reorganized Debtor by the bar date.

However, on July 22, 2021, seven months after entry of the Confirmation Order (and prior to the Administrative Expense Claim Bar Date), Plaintiff commenced this Action against Highland

---

<sup>15</sup> *Id.*, Exh. 7, Appx. 269-73.

<sup>16</sup> *Id.*, Appx. 271 (emphasis in original).

<sup>17</sup> *Id.*, Exh. 8, Appx. 310. The court also notes that CLO Holdco’s counsel received electronic Notice of the Effective Date, *id.* at Appx. 278, as well as notice by First-Class Mail, *id.*, at Appx. 282, and CLO Holdco itself received Notice of the Effective Date by First-Class Mail, *id.* at Appx. 312-313 at numerous addresses. The court takes judicial notice that the Plan itself was also served on CLO Holdco and its counsel. *See* DE #1630, in the main Highland Bankruptcy Case, at Exh. S, p.25 of 139, and at Exh. V, p. 1 of 3.

by filing an Original Complaint (the “Complaint”) in the District Court.<sup>18</sup> It is undisputed that Plaintiff/DAF also never served the Complaint on Highland.<sup>19</sup>

The Complaint alleged that Highland, under the direction of its new, independent CEO, James P. Seery, Jr.—appointed pursuant to a corporate governance agreement between Highland and the Official Committee of Unsecured Creditors (and approved by the Bankruptcy Court)—violated the contractual and extra-contractual duties that Highland owed to Plaintiff/DAF as an alleged investor in the entity known as Multi Strat and that Plaintiff/DAF was harmed thereby.<sup>20</sup> As noted in the Introduction herein, Multi Strat was a vehicle that purchased and owned a pool of viaticals—that is, life insurance policies keyed to the lives of various individuals. Multi Strat paid the premiums on the policies, and when an insured person died, the life insurance money would be paid to the owner of the policy—in this case, Multi Strat.

Highland’s alleged misconduct occurred during the spring and summer of 2020, i.e., after the Petition Date while Highland was a debtor-in-possession.<sup>21</sup> The contracts allegedly breached were assumed by Highland pursuant to the Plan.<sup>22</sup>

*B. The Substance of the Complaint; More About “Multi Strat”*

The Complaint sets forth three causes of action premised on conduct in which Highland allegedly engaged post-petition: (a) First Cause of Action—Highland’s alleged violation of the Investment Advisers Act of 1940;<sup>23</sup> (b) Second Cause of Action—Highland’s alleged breach of

---

<sup>18</sup>*Id.*, Exh. 5, Appx. 248-59.

<sup>19</sup> See 8/3/22 Transcript, at 28:2-11.

<sup>20</sup>DE # 32, Exh. 5, Appx. 252-58.

<sup>21</sup>*Id.*, Appx. 251.

<sup>22</sup>*Id.*, Exh. 4, Appx. 224-25; Exh. 6, Appx. 262, 264.

<sup>23</sup> Although no statutory cite is given, the Plaintiff apparently refers to the Investment Advisers Act of 1940, codified at 15 U.S.C. § 80b-1 through 80b-21, which is the primary source of regulation of investment advisers and is administered by the U.S. Securities and Exchange Commission. The court notes that the United States Supreme Court has held in *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 19 (1979) that there is not a private right of action for damages under the Investment Advisers Act. Specifically, an investor may seek to **void an investment adviser contract** (i.e., essentially allowing a suit for rescission or for an injunction against continued

fiduciary duty;<sup>24</sup> and (c) Third Cause of Action—Highland’s alleged breach of contract.<sup>25</sup> The various conduct of Highland is described as: (1) selling the viatical pool of Multi Strat at a distressed price (i.e., \$35 million) when it was not in distress and there was allegedly no need for Multi Strat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) allegedly concealing the purpose behind the sale of the viatical pool and conflicts of interest; (5) allegedly causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multi Strat (e.g., by failing to conduct an auction, obtaining competitive bids and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

The entity at the heart of the Complaint—Multi Strat—is what is known in the investment community as a pooled investment fund structured as a “mini master.” It actually consists of Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “Master Fund”), and Highland Multi Strategy Credit Fund, Ltd., a Cayman Island exempted company (the “Feeder Fund”). The Master Fund and the Feeder Fund are collectively referred to as “Multi Strat.” Highland Multi Strategy Credit Fund GP, L.P., itself a Delaware limited partnership, is the general

---

operation of the contract, and for restitution), but not seek actual monetary damages. That being said, it appears that the relief sought by Plaintiff for this cause of action is as follows: “Plaintiff seeks to declare the sale of the viaticals void because they were accomplished in violation of the Advisers Act” and “Plaintiff further seeks to declare the agreement(s) between Highland and Multistrat void because they were continued in violation of the Advisers Act.” Complaint, *id.* at Exh. 5, Appx. 254.

<sup>24</sup> Here, the Plaintiff appears to invoke both the Investment Advisers Act as well as Texas law—clearly seeking monetary damages including punitive damages.

<sup>25</sup> *Id.*, Exh. 5, Appx. 252-58. Here, the Plaintiff invokes the Third Amended and Restated Investment Management Agreement, effective November 1, 2013 (the “IMA”) between Highland and Multi Strat.

partner of Multi Strat, which is wholly owned by Highland Multi Strategy Credit GP, LLC, which is, in turn, wholly owned by Highland.<sup>26</sup>

The equity ownership interests of the limited partners in Multi Strat are somewhat complex but, put simply, on a consolidated basis, Highland owns 58.7% of the limited partnership interests in Multi Strat and the entity known as CLO Holdco, Ltd. (“CLO Holdco”) owns 4.06% of the limited partnership interests. *Notably, CLO Holdco is a subsidiary of Plaintiff/DAF, but, as noted earlier, it is undisputed that Plaintiff/DAF itself is not an investor or equity owner of any sort of Multi Strat.*<sup>27</sup>

Also, notably, the only other owners of Multi Strat are: The Dugaboy Investment Trust (1.71%);<sup>28</sup> Highland Capital Management Services, Inc. (35.10%), and Mark Okada (.43%).<sup>29</sup> The Dugaboy interest is notable for the following reason: Dugaboy filed a proof of claim during the Highland Bankruptcy Case that, while vague, appears to have been based on the very same theories espoused by the Plaintiff/DAF in this Action. Specifically, it stated:

The Dugaboy Investment Trust (“Claimant”), an investor in certain funds managed by the Debtor, including Highland Multi-Strategy Credit Fund, L.P. and Highland Multi-Strategy Credit Fund, Ltd., may have claims against the Debtor relating to the post-petition actions or inactions of the fund investment manager in managing these funds pursuant to Debtor’s Fourth Amended and Restated Limited Partnership Agreement and that certain Third Amended and Restated Investment Management Agreement by and between Highland Multi-Strategy Credit Fund, L.P., Highland Multi-Strategy Credit Fund, Ltd., and the Debtor, as amended from time to time. While the potential claims relate to the post-petition actions or inactions of the fund investment manager, Claimant is filing this claim to preserve

---

<sup>26</sup> *Id.* at Exh. 17, Appx. 592-93. The Master Fund’s governing document is known as the Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P., dated November 1, 2014 (the “LPA”). The Feeder Fund’s governing document is known as the Amended and Restated Memorandum and Articles of Association of Highland Multi Strategy Credit Fund, Ltd., as adopted on November 1, 2014 (the “Articles”). Highland’s obligations as investment manager are set forth in a document known as the Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013 (the “IMA”).

<sup>27</sup> *Id.* at Exh. 17, Appx. 592-93.

<sup>28</sup> It is undisputed that Dugaboy is a family trust of former Highland CEO, James Dondero.

<sup>29</sup> *Id.* at Exh. 17, Appx. 592-93.

all potential rights, claims, and causes of action it may have against the Debtor under these prepetition agreements relating to the investment manager’s actions or inactions in managing these funds.<sup>30</sup>

The Dugaboy proof of claim was signed and submitted by an individual named Grant Scott, the then-Trustee of Dugaboy. Grant Scott was also the then-Trustee of CLO Holdco, the 100% subsidiary of Plaintiff/DAF. This proof of claim was later withdrawn.

Dugaboy also filed a District Court lawsuit against Highland (post-confirmation and pre-Effective Date, on June 23, 2021)<sup>31</sup> raising these very same issues, which it later dismissed.

### III. LEGAL ANALYSIS

#### A. *Jurisdiction and Legal Standards*

Bankruptcy subject matter jurisdiction exists with regard to this Action, pursuant to 28 U.S.C. § 1334(b). The Action presents “arising in” or “arising under” core matters, pursuant to 28 U.S.C. § 157(b)(2)(A) and (B)—as it involves claims that were asserted against a Chapter 11 Debtor (before the effective date of its plan) and the application of sections 503 and 507 of the Bankruptcy Code. Moreover, the Action requires interpretation of the now-effective Plan of the Reorganized Debtor and application of section 1141(d)(1) of the Bankruptcy Code. Therefore, the Bankruptcy Court may enter final orders in this matter. Moreover, the District Court has referred this Action to the Bankruptcy Court.

The Reorganized Debtor’s Amended Motion to Dismiss argues grounds for dismissal, pursuant to FRCP 12(b)(1) (i.e., lack of subject matter jurisdiction—due to lack of standing of the Plaintiff) and FRCP 12(b)(6) (i.e., failure to state a claim upon which relief may be granted).

---

<sup>30</sup> *Id.* at Exh. 1, Appx. 6.

<sup>31</sup> *Id.* at Exh. 2, Appx, 8-18.

With regard to the Rule 12(b)(1) argument, the applicable legal standards are set forth in detail in part III.E. of this Opinion. With regard to Rule 12(b)(6), to survive a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). *See also Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). Dismissal is proper under Rule 12(b)(6) when, taking the facts alleged in the complaint as true, it appears that the plaintiff “cannot prove any set of facts that would entitle it to the relief it seeks.” *C.C. Port, Ltd. v. Davis-Penn Mortg. Co.*, 61 F.3d 288, 289 (5th Cir. 1995). As set forth below, here, more than anything else, Plaintiff/DAF’s problem is that its claims are barred for failure to proceed according to the Plan requirements and because of section 1141(d)(1)(A) of the Bankruptcy Code. As earlier noted, the court may take judicial notice of matters of public record when considering a motion to dismiss for failure to state a claim. *See, e.g., T.L. Dallas (Special Risks), Ltd. v. Elton Porter Marine Ins.*, No. 4:07–cv–0419, 2008 WL 7627807, at \*2 (S.D. Tex. 2008); *Cade v. Henderson*, No. CIV A 01-943, 2001 WL 1012251, at \*2 (E.D. La. Aug. 31, 2001).

*B. Plaintiff’s Claims Asserted in the Action, if Valid, Would Constitute “Administrative Expense Claims”*

Starting with the basics, an “Administrative Expense Claim” is not merely a concept defined in the Debtor’s Plan. It is a significant concept in the Bankruptcy Code. Section 507(a)(2) of the Bankruptcy Code establishes that administrative expenses incurred in bankruptcy are to be given priority in distribution such that they are generally paid in full before other unsecured non-priority claims. *See* 11 U.S.C. § 507(a)(2). These administrative expenses include “the actual, necessary costs and expenses of preserving the estate ....” 11 U.S.C. § 503(b)(1)(A). To qualify as an “actual and necessary cost’ under section 503(b)(1)(A), a claim against the estate must have

arisen post-petition and as a result of actions taken by the trustee [or debtor-in-possession] that benefited the estate.” See *Nabors Offshore Corp. v. Whistler Energy II, L.L.C. (In re Whistler Energy II, L.L.C.)*, 931 F.3d 432, 441 (5th Cir. 2019) (citing *Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001)). Notwithstanding the “benefited the estate” concept that has been articulated in case law, an exception was created by the United States Supreme Court many years ago (in the context of a “Chapter XI arrangement” case under the former Bankruptcy Act of 1898), in a situation in which damages were inflicted on innocent third parties through a receiver's (equivalent of a Chapter 11 trustee or debtor-in-possession today) operation of the debtor's estate. See *Reading Co. v. Brown*, 391 U.S. 471, 478-79 (1968).

In *Reading*, a building that was being operated by the bankruptcy receiver in a reorganization case was destroyed by a fire, and the fire spread to adjoining premises, destroying real and personal property of claimant, Reading. Reading argued that the fire was caused by the negligence of the receiver and one of his workmen, in the course of operating the debtor's estate during a bankruptcy reorganization. See *id.* at 473–74. The Supreme Court—in grappling with what type of a claim Reading might have—held that it would be unfair to force the fire victim to share equally with the existing creditors and, thus, granted administrative priority to that claimant. See *id.* at 478 (framing the question as “whether the fire claimants should be subordinated to, should share equally with, or should collect ahead of those creditors for whose benefit the continued operation of the business ... was allowed”).

The “*Reading* exception,” as it has become known, has withstood the test of time and has been routinely applied after the enactment of the modern Bankruptcy Code. See, e.g., *Jack/Wade Drilling*, 258 F.3d at 388 (“The Reading exception has survived Congressional amendments to the



bankruptcy code and been recognized and applied by nearly every Court of Appeals in the nation.”); *Texas v. Lowe (In re H.L.S. Energy Co.)*, 151 F.3d 434, 437 (5th Cir. 1998) (same); *In re Al Copeland Enters., Inc.*, 991 F.2d 233, 238-39 (5th Cir. 1993) (same). The *Reading* case has been interpreted broadly to include not just torts, but other negligent or intentional acts committed by a debtor-in-possession as giving rise to administrative expense claims. *See Al Copeland*, 991 F.2d at 239 (“[T]hose injured during ... administration of an estate are entitled to an administrative priority [claim] regardless of whether their injury was caused by a tort or other wrongdoing.”); *In re Charlesbank Laundry, Inc.*, 755 F.2d 200, 202 (1st Cir. 1985) (“If fairness dictates that a tort claim based on negligence should be paid ahead of pre-reorganization claims, then, a fortiori, an intentional action which violates the law and damages others should be so treated”), accord 4 COLLIERS ON BANKRUPTCY ¶ 503.06[3][c][i] (“Courts have found *Reading* directly applicable to victims of postpetition torts committed by a debtor in possession or trustee. Courts have also applied the doctrine to a variety of other postpetition claims”) (citing cases).

Accordingly, based on the above authority, the claims of Plaintiff, if meritorious, would fall into the category of administrative expense claims. Plaintiff specifically alleges that it was injured by Highland causing the sale of Multi Strat’s assets during the middle of 2020—after the Petition Date, before the Effective Date, and while Highland was a debtor-in-possession—in violation of Highland’s alleged contractual and extra-contractual duties owed to Plaintiff. Plaintiff’s claims, therefore, would constitute “administrative expense claims” against Highland. *Whistler Energy*, 931 F.3d at 443 (discussing circumstances when a party might be entitled to an administrative expense claim, regardless of whether there is an assumed or rejected prepetition contract, and even when “benefit to the estate” may be less than “readily calculable”; noting



sometimes such a claim might simply result as a cost incidental to a debtor's business operations) (citing *Reading*, 391 U.S. 471).

C. *Requests for Allowance of "Administrative Expense Claims" Were Required to be Filed in the Bankruptcy Court by September 25, 2021*

As set forth earlier herein, Article II of the Plan dictated the procedures for the filing and allowance of "administrative expense claims." Pursuant to Article II of the Plan, parties seeking "administrative expense claims" were required to (i) file those claims with the bankruptcy court specifically (not the District Court); and (ii) serve those claims on Highland no later than the Administrative Expense Claim Bar Date (i.e., September 25, 2021).<sup>32</sup> The Plan and Notice of Effective Date make clear that any administrative expense claim not filed with the Bankruptcy Court by the Administrative Expense Claim Bar Date would be time-barred. Section 1141(a) provides that the provisions of a confirmed plan bind the debtor and any creditor. *Eubanks v. Fed. Deposit Ins. Corp.*, 977 F.2d 166, 170–71 (5th Cir. 1992).<sup>33</sup>

This court noted in the case of *In re Taco Bueno Rests., Inc.*, 606 B.R. 289, 302-303 (Bankr. N.D. Tex. 2019), in addressing the importance of the concept of "timeliness" with regard to administrative expense claims, that debtors and reorganized debtors have a keen interest in obtaining finality sooner rather than later with regard to administrative expense claims. The reason debtors have an interest in such finality derives from the special treatment afforded to administrative expense claims. An administrative expense claimant is generally entitled to cash in full on the effective date of a plan (or as soon as the claim is allowed thereafter by the bankruptcy

---

<sup>32</sup> See Exh. 4, Appx. 189, 196, 203-04.

<sup>33</sup> See also *Hall Fin. Group, Inc., v. DP Partners, L.P.*, 106 F.3d 667, 672, n.19 (5th Cir. 1997) (bankruptcy judges have, for some time, been accorded discretion in setting administrative-claim bar-dates) (citing 3 Collier on Bankruptcy ¶ 503.1, at 503–4 n. 2c (Lawrence P. King ed., 15th ed. 1994) (noting that the Bankruptcy Reform Act of 1994 sets no time limit for filing administrative claims, and further noting that because nothing in the Bankruptcy Rules or Code sets deadlines for filing administrative claims, bankruptcy judges "may set such deadlines on a case by case basis").

court). It is a very important event in the bankruptcy case for a reorganized debtor to have a deadline for administrative expense claims because administrative claims can pose significant feasibility issues for plans. The reorganized debtor needs to be able to ascertain an amount such entities must have in cash due to pay administrative expenses.

There is ample case law that stresses the importance of requiring potential administrative expense claimants to follow the mandates of Bankruptcy Code section 503(b) and file a request for allowance with the bankruptcy court. *See Taco Bueno*, 606 B.R. 289 (concluding that utilizing a “Proof of Claim” form—i.e., Official Form 410—to make a request for payment of an administrative expense, is insufficient to satisfy the requirement under Bankruptcy Code section 503(a) to timely file and serve a request for payment of an administrative claim by an administrative claims bar date; requests for administrative claims have different procedures—requiring the filing of an application requesting allowance and payment of an administrative-expense claim on the bankruptcy court's docket).<sup>34</sup> *See also In re Maxus Energy Corp.*, 639 B.R. 51, 64 (Bankr. D. Del. 2022) (claim barred because it was not filed by administrative claim bar date and “a claims bar date ‘operates as a federally created statute of limitations, after which the claimant loses all of [its] rights to bring an action against the debtor’) (citations omitted); *Houbigant, Inc. v. ACB Mercantile (In re Houbigant, Inc.)*, 190 B.R. 185, 188 (Bankr. S.D.N.Y.

---

<sup>34</sup> This court noted in *Taco Bueno* that Congress made the rules and burdens for an administrative expense claim very different from those for a proof of claim. Section 503 governs an administrative expense claim. Under § 503, the burden at the beginning is on the claimant to show reasonableness, necessity, and benefit to the estate. The Bankruptcy Code and the Bankruptcy Rules put a claimant in a completely different posture for an administrative expense claim compared to a proof of claim. Requiring that a § 503 administrative expense claim be asserted in an application, among other things, ensures that the bankruptcy court will have an opportunity to pass judgment on the administrative expense and prevent any unreasonable, unnecessary, and non-beneficial claims from being charged to the estate. Creditors ultimately bear the burden of persuasion and production to establish that their claims are, in fact, an administrative expense. Allowing creditors to satisfy their burden of production by burying an administrative expense in a proof of claim circumvents their statutory burdens and forces the trustee or some other interested party to affirmatively raise this administrative expense as objectionable—directly contradicting § 503(b)'s express requirement that a claimant, in order to have an administrative expense claim allowed, must make a request and give notice to parties in the case and obtain a bankruptcy court hearing. *Taco Bueno*, 606 B.R. at 302.

1995) (stressing the importance of filing claims timely in the bankruptcy court before the bar date, as opposed to in district court litigation).<sup>35</sup>

Here, Plaintiff’s alleged causes of action are administrative expense claims and were required to be filed with this Bankruptcy Court by the Administrative Expense Claim Bar Date. Plaintiff knowingly chose not to file an administrative claim. The filing of the Complaint constituted an *improper means to pursue a post-petition claim against a chapter 11 debtor*. To the extent it may have been a defensible strategy at the time the Action was filed (*see discussion* in Part III.E below for more on this thought), it certainly became wholly indefensible after the Plan went effective. The Plaintiff/DAF received notice and had every reason to know, on or after August 11, 2021, that it had one avenue to pursue the claims asserted in the Action—through the mechanism of filing an Administrative Expense Claim in the Bankruptcy Court on or before September 25, 2021. However, it chose not to go that route. As a result, the Complaint must be dismissed.

Plaintiff/DAF makes a confusing argument that “administrative priority claims” are not subject to the Plan because the Plan uses the term “Administrative Expense Claim.”<sup>36</sup> Plaintiff attempts to create confusion where none exists. As noted earlier, the Plan defines “Administrative Expense Claim,” in relevant part, as a:

Claim for costs and expenses of administration of the Chapter 11 Case ... pursuant to sections 503(b), 507(a)(2), 507(b) ... including, without limitation, (a) the actual and necessary costs and expense incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor  
....<sup>37</sup>

---

<sup>35</sup> See also *NL Indus., Inc. v. GHR Energy Corp.*, 940 F.2d 957, 966 (5<sup>th</sup> Cir. 1991) (case involved a post-petition contract between a chapter 11 debtor and an oil field service vendor that went awry and vendor filed a federal district court lawsuit during the case for breach of contract and torts; while the lawsuit went forward in the Federal District Court, the Fifth Circuit opinion contains discussion stressing the need for the vendor to have filed a request for administrative expense claim in the bankruptcy court and giving that as a reason for not allowing the vendor to amend its pleading to assert damages not provided for in the debtor’s confirmed plan).

<sup>36</sup> See DE # 30 (Plaintiff’s Response), at 3-4.

<sup>37</sup> DE # 21, Exh. 4, Appx. 189.

There is no “distinction” in the Plan between an “administrative priority claim” and an “Administrative Expense Claim.” Both would encompass claims arising from the “actual and necessary costs and expense” of the debtor-in-possession’s post-petition management. Highland’s naming convention did not somehow change the substantive application of the Bankruptcy Code or the nature of an administrative expense/priority claim.

*D. The Unsupportability of Plaintiff/DAF’s Eleventh-Hour Request (Through Their Response to the Motion to Dismiss Their Action) for the Bankruptcy Court to Excuse Their “Technical Non-Compliance” and Deem Complaint to Have Been a Timely Request for Allowance of an Administrative Expense Claim*

Plaintiff/DAF argues that the Bankruptcy Court should excuse its “technical” non-compliance and treat its Complaint as a “request for an order permitting a late claim or treating the filing of this action as a timely Administrative Expense Claim.”<sup>38</sup> While Plaintiff minimizes the significance of its failure to comply with the Plan, Confirmation Order, and standard bankruptcy protocols—by referring to its failure to file a request for allowance of an administrative expense claim in the Bankruptcy Court as “technical” non-compliance—its proposal that the Complaint should be deemed such a “request” is procedurally and legally improper. The relief must be sought by a separate motion and include evidence of “cause” under section 503(a) of the Bankruptcy Code and possibly also “excusable neglect.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 394 (1993).<sup>39</sup> Here, there is no evidence supporting “cause” (or excusable neglect, for that matter), just the following undisputed facts:

---

<sup>38</sup> DE # 30 (Plaintiff’s Response), at p.5.

<sup>39</sup> The *Pioneer* case dealt with late-filed proofs of claim, for prepetition claims, not requests for allowance of post-petition administrative expense claims. Thus, it is not entirely clear that it governs here. Perhaps, only section 503(a) “cause” is the standard.

- The Plan was confirmed on February 22, 2021 and included clear disclosures about the Administrative Expense Claim Bar Date.
- At a hearing on June 25, 2021, shortly before the Complaint was filed—in a hearing on a different matter, in which a different post-petition lawsuit filed in the District Court was being discussed (and the Bankruptcy Court expressed concern about it)—Plaintiff’s counsel indicated to the Bankruptcy Court that he was receiving advice from bankruptcy counsel on whether post-petition administrative expense claims, like those asserted in the Complaint, could be filed in courts other than the Bankruptcy Court.<sup>40</sup>
- On July 22, 2021, Plaintiff’s counsel filed (but did not serve) the Complaint—i.e., seven months after the Confirmation Order and two months before the Administrative Expense Claim Bar Date.
- On or about August 11, 2021, Plaintiff/DAF was served with notice of the Administrative Expense Claim Bar Date.
- Plaintiff/DAF did not file an administrative expense claim with this Court by the Administrative Expense Claim Bar Date (i.e., September 25, 2021).
- On November 23, 2021, the Bankruptcy Court told Plaintiff its arguments regarding the Plan injunction—similar to some of the same arguments it is making now—were mistaken. At the same hearing, Highland told Plaintiff/DAF, on the record, it should have filed an administrative expense claim in this court.<sup>41</sup>

---

<sup>40</sup> DE # 32, Exh. 21, Appx. 751-53.

<sup>41</sup> DE # 32, Exh. 22, Appx. 777 (lines 17) – Appx. 778 (line 18); Appx. 781 (line 10) – 782 (line 17); Appx. 783 (line 5-14); Appx. 786 (line 17-23).

- Between the November 2021 hearing and the filing of the Motion (more than eight months), Plaintiff/DAF never moved this Court to allow its claim as late filed or took any other action to protect its rights.
- Only after the Complaint was referred to this Court and Highland filed its Amended Motion to Dismiss did Plaintiff ask this Court to consider the Complaint as “a late claim” in the Response.
- Plaintiff has not submitted any evidence of “cause” as required by Section 503(a), nor “excusable neglect” under *Pioneer* (to the extent it is applicable).

To be clear, Plaintiff argues that it should be held to have asserted a timely request for administrative expense claim because (a) its Complaint was filed (but not served) before the Administrative Expense Claim Bar Date; (b) Highland (while not formally served) received “prompt” notice and was not prejudiced; (c) enforcing the Administrative Expense Claims Bar Date would raise concerns regarding Constitutional “due process and taking;” and (d) the “best interests of creditors test” in Section 1129 favors Plaintiff.<sup>42</sup> Plaintiff also blames its failure to comply on the Plan itself, arguing that a Plan injunction therein prevented Plaintiff from fulfilling its obligations. Each argument misses the point.

First, it is irrelevant that the Complaint was filed before the Administrative Expense Claim Bar Date. The Bankruptcy Code,<sup>43</sup> the Plan,<sup>44</sup> and applicable case law require the filing of administrative expense claims—like those asserted in the Complaint—on the bankruptcy court’s docket, not on another court’s, for a claim to be deemed timely filed. *See, e.g., Taco Bueno*, 606 B.R. at 302-03; *Houbigant*, 190 B.R. at 188.14.

---

<sup>42</sup> DE # 30 (Plaintiff’s Response), at p. 5.

<sup>43</sup> 11 U.S.C. § 503(a).

<sup>44</sup> DE # 21, Exh. 4, Appx. 125, 203-04.

Moreover, any suggestion that the Complaint is an “informal proof of claim” is rejected. Even assuming this concept might be applicable in the context of requests for allowance of administrative expense claims, an “informal proof of claim” must be filed in the bankruptcy court and the equities must favor the claimant. *In re Opus Mgmt. Grp. Jackson LLC*, 2017 Bankr. LEXIS 555, at \* 29-30 (Bankr. S.D. Miss. Feb. 27, 2017) (“The Court is unaware of any precedent that would allow it to treat the pre-bar date filing in one case as an informal proof of claim in another case.”); *In re Murchison*, 85 B.R. 27, 41 (Bankr. N.D. Tex. 1987) (“Debtor’s knowledge of the claim has never been held sufficient to constitute an informal proof of claim ... These communications cannot constitute a proof of claim because they were not filed with the Court.”).

Additionally, Plaintiff’s argument regarding prejudice is disingenuous. Plaintiff filed the Complaint but decided not to serve it. Plaintiff cannot rely on Highland’s purported diligence in learning of the Complaint to justify its misconduct. The bar date exists to avoid prejudice to Highland, not Plaintiff. Moreover, other creditors in a bankruptcy case are entitled to notice that a party is asserting an administrative expense claim. Allowance of such a claim could greatly impact their ultimate recovery. Creditors (not just the debtor) may want to object and be heard. That’s why section 503(b) of the Bankruptcy Code contemplates “notice and a hearing” in the bankruptcy court when a request is filed.

Additionally, no due process or taking concerns arise if Plaintiff is required to abide by court- and statutorily created deadlines, and Plaintiff cites to nothing to support this position.

Additionally, the “best interests of creditors” test applies to plan confirmation and is irrelevant in this context. Regardless, the test would weigh in Highland’s favor. Creditors want Highland’s assets monetized and proceeds distributed sooner rather than later. Plaintiff’s efforts to

“backdoor” an administrative expense claim by asserting it in another forum delays that process, increases expenses, and directly contradicts the policy behind bar dates.

Finally, Plaintiff’s argument that it was confused by the Plan discharge or injunction language is not credible. The provisions are typical and unambiguous; they prohibited Plaintiff from pursuing claims in the District Court. Numerous other claimants—including some of Mr. Dondero’s other affiliates—complied with the bar date. Plaintiff is not entitled to special treatment because it, and it alone, found the Plan confusing.

*E. The Plaintiff’s Unspoken, But Not-So-Subtle Strategy Play*

Ultimately, the Plaintiff’s filing of the Complaint in the District Court was a strategic move that did not work and now it binds the Plaintiff.

The Plaintiff’s strategy—rather obvious to this Court—was clever, to be sure, but it all hinged on the prospect of the Debtor’s Plan being reversed on appeal, which did not ultimately happen.<sup>45</sup> Specifically, thinking through the Plaintiff’s legal strategy, the court believes the Plaintiff’s legal team likely thought through this as follows. First, there was an automatic stay conundrum. Specifically, filing the Action might have at first seemed risky, because the automatic stay was still in place at the time the Plaintiff filed its Complaint (because it was filed during the post-confirmation but pre-Effective Date time frame).<sup>46</sup> But, the Plaintiff was pursuing *post*-petition claims, so the filing of the Action arguably was not precluded by the automatic stay. 11 U.S.C. § 362(a)(1).<sup>47</sup> However, even with that automatic stay conundrum potentially resolved, the Plan and Confirmation Order became an obvious obstacle. As discussed here *ad nauseum*, the

---

<sup>45</sup> The Fifth Circuit affirmed in substantial part the Plan on September 2, 2022, in Action No. 21-10449.

<sup>46</sup> See also DE # 21, Exh. 4, Appx. 167 (Art. IX.G.).

<sup>47</sup> The inapplicability of the automatic stay was not a “given.” The relief sought in the Plaintiff/DAF’s Complaint asked for, among other things, disgorgement of all of Highland’s allegedly ill-gotten gains, and also voiding of certain agreements of Highland. This sounds potentially like exercising or an attempt to exercise control over property of the estate. 11 U.S.C. § 362(a)(3).



Plan required a post-petition claim like this to be filed as a Request for Allowance of Administrative Expense Claim with the Bankruptcy Court and, moreover, the Plan discharge and injunction language precluded an action such as the Plaintiff's from being filed in another court. Plaintiff was no doubt thinking that it had found the perfect "workaround"—file the Action in the District Court *before* the Plan went effective, seek a stay of the Action for a bit,<sup>48</sup> and hope that, during the stay of the Action, the Plan got reversed on appeal (which would moot the Administrative Claim Bar Date and Plan Injunction). In the event of a reversal, the Plaintiff would seek to un-stay the Action and go forward in the District Court hopefully—unless the District Court decided to refer the Action at that point to the Bankruptcy Court (on the basis that it was at least related to the Bankruptcy Case; maybe Plaintiff could successfully fight this).

Here, as the Plaintiff's legal strategy started to unravel, on July 5, 2022, in its Response to the Motion to Dismiss, the Plaintiff asked the Bankruptcy Court for the first time to treat its Complaint as a timely request for allowance of an administrative expense claim (a year after it was filed, and 10 months after the deadline for filing it in the Bankruptcy Court). This is not "cause" as contemplated by Section 503(a). This is nothing more than a belated and unjustified "Plan B" after the Plaintiff's clever workaround did not pan out as hoped. *Houbigant*, 190 B.R. at 187 ("[Claimant] concedes that it failed to [file its claim] to avoid the claims allowance process ... [Claimant] cannot have it both ways. Equity mandates that it be bound by its tactical decisions.").

*F. The Standing Problem.*

Highland has also argued that the Action must be dismissed because Plaintiff lacks both prudential and constitutional standing to assert the claims that it has asserted in the Action.

---

<sup>48</sup> DE # 32, Exh. 9, Appx. 451.

As has been extensively set forth herein, the Complaint alleges that Plaintiff/DAF was injured because Highland mismanaged the sale of certain of Multi Strat’s assets and, in doing so, breached its contractual and extra-contractual duties to Plaintiff/DAF as an investor in Multi Strat. But Plaintiff/DAF is not a limited partner or investor in Multi Strat (Plaintiff/DAF agrees it is not). Rather, Plaintiff/DAF’s 100% subsidiary CLO Holdco is. Therefore, Highland argues Plaintiff/DAF lacks standing to assert the claims in the Complaint. While Plaintiff/DAF arguably could have constitutional standing as the parent of CLO Holdco (a Multi Strat investor), Plaintiff/DAF would have had to plead its relationship to CLO Holdco, that CLO Holdco was injured, and that the injury to CLO Holdco caused injury to Plaintiff/DAF. *See BCC Merch. Solutions, Inc. v. Jet Pay, LLC*, 129 F.Supp.3d 440, 449-50 (N.D. Tex. 2015) (finding plaintiff parent company had constitutional standing when it pled injury it suffered arising from breach of contract to which its subsidiary was a counterparty). Plaintiff/DAF, however, has not done this.

Highland also argues that Plaintiff/DAF lacks prudential standing because it is not the “real party in interest” as required by Rule 17(a) of the FRCP, made applicable by Rule 7017 of the FRBP. Prudential standing is a “fundamental restriction on [federal judicial] authority” and requires ‘a litigant [to] assert his or her own legal rights... and [ ]not rest a claim to relief on the legal rights or interests of third parties.’” *Id.* at 450 (citations omitted). Prudential standing is a separate requirement from constitutional standing, and, if a plaintiff lacks prudential standing, the action must be dismissed regardless of whether the plaintiff has constitutional standing. *Id.* This prudential standing requirement is embodied in Rule 17(a) of the FRCP, which mandates that a claim be brought by the “real party in interest,” i.e., the party “with the right to sue under ... the controlling state or federal substantive laws.” *Id.* at 450, 453. Here, Plaintiff/DAF is not an investor

in Multi Strat and has no right to assert the actual investors' contractual or other rights under applicable substantive law.<sup>49</sup>

That Plaintiff/DAF is the parent of CLO Holdco, a Multi Strat investor, changes nothing. A parent cannot assert the contractual rights of its subsidiaries or pierce its own corporate veil to do so. *BCC Merch.*, 129 F. Supp. 3d at 460 (“[W]hile BCC may have Article III standing, the Court finds that it lacks prudential standing and is not the real party in interest entitled to enforce the ISO Agreement, which BCC’s subsidiary, BankCard, undisputedly entered into alone.”). For the foregoing reasons, Plaintiff/DAF is not a “real party in interest” as required by Rule 17(a) and lacks prudential standing to assert the claims in the Complaint.

Plaintiff/DAF argues that it should be given leave to amend its Complaint to clarify that it is suing derivatively on behalf of CLO Holdco and/or to substitute in CLO Holdco as party in interest. The Plaintiff/DAF submits that Rule 7017 of the FRBP requires an opportunity to join a

---

<sup>49</sup> See *Carroll v. JPMorgan Chase Bank*, 575 Fed. Appx. 260, 260-61 (5th Cir. 2014) (finding plaintiff lacked standing and was not the “real party in interest” when it had no right to sue under contract); *Farrell Constr. Co. v. Jefferson Parish*, 896 F.2d 136, 140 (5th Cir. 1990) (finding plaintiff was not a “real party in interest” when it was neither a party to the contract nor a third party beneficiary); *BCC Merch.*, 129 F.Supp.3d at 460 (holding plaintiff was not a “real party in interest” and lacked prudential standing when it sought to assert the contract rights of its wholly-owned subsidiary); see also *Hillside Metro Assocs., LLC v. JPMorgan Chase Bank*, 747 F.3d 44, 48-49 (2d Cir. 2014), *cert denied* 2015 U.S. LEXIS 1370 (U.S. Feb. 23, 2015) (applying federal common law and holding: (“We conclude that Hillside does not have prudential standing in this case because it cannot enforce the terms of the [contract], as to which it is neither a party nor a third-party beneficiary, but the enforcement of which is a necessary component of its claim”); *Williams v. Bd. of Educ. of Chicago*, 506 Fed. Appx. 517, 520 (7th Cir. 2013) (“Neither situation describes the federal lawsuit filed by Williams, whose indefinite, inchoate claims arise entirely from a dispute between two business entities whose contracts granted him no direct or incidental benefit and thus leave him without standing to bring these claims); *Pelletier v. Rodriguez*, 2021 U.S. Dist. LEXIS 131898, at \*13 (D. Nev. July 15, 2021) (“[B]ecause there is no given reason that Clover Valley Ranch LLC could not pursue a breach of contract claim in its own name, the Court declines to confer prudential standing on Plaintiff to bring this claim on behalf of a third-party.”); *Cumming v. Felder*, 2018 U.S. Dist. LEXIS 82081, at \*5 (D. Conn. May 16, 2018) (“[A]n individual who is neither a party to an agreement nor an intended beneficiary of the agreement lacks prudential standing to sue under the agreement”); (citing cases); *Alexander v. DLJ Mortg. Cap., Inc.*, 2016 U.S. Dist. LEXIS 198193, at \* 8-14 (S.D. Miss. Jul. 5, 2016) (finding non-party to a contract lacked standing under FRCP 17(a) to bring breach of contract claims); *Henderson v. Benchmark Strategy, LLC*, 2011 U.S. Dist. LEXIS 90988, at \*10-11 (D. Colo. Aug. 15, 2011) (“Mr. Henderson is not a party to the Consulting Agreement and is not the real party in interest to assert the rights (if any) of Henderson LLP.”); *Browne v. Robb*, 583 A.2d 949, 954-55 (Del. 1990) (applying Delaware law and finding plaintiff lacked standing to assert breach of a contract to which it was neither a party nor an intended third-party beneficiary).

real party in interest in such circumstances as these. Specifically, Rule 7017 incorporates FRCP 17(a)(3), which provides:

The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

However, because the administrative expense claims asserted in the Compliant are time-barred, granting Plaintiff/DAF leave to amend its Complaint and substitute in CLO Holdco would be futile. *See, e.g., Stripling v. Jordan Prod. Co.*, 234 F.3d 863, (5th Cir. 2000) (finding amendment “futile” when the “amendment complaint would fail to state a claim upon which relief could be granted.”). CLO Holdco would have the same problems that Plaintiff/DAF has—it didn’t comply with the Plan and Confirmation Order and timely file an administrative expense claim in the Bankruptcy Court and serve it on the Debtor by September 25, 2021.

#### IV. CONCLUSION

As this court explained in its *Taco Bueno*<sup>50</sup> decision, the requirement of filing a request for allowance of an administrative expense claim in the bankruptcy court, and the act of seeking/setting a bar date in connection therewith, are, collectively, a big deal. The concept of setting an administrative expense claim bar date is not just about protecting a debtor. It is about protecting general unsecured creditors, too—because a large administrative expense claim can greatly impact the general unsecured creditors’ share of the bankruptcy pie. That’s why a request for allowance of an administrative expense claim must be filed on the bankruptcy court’s docket and determined by the bankruptcy court after notice and a hearing. And that’s why any party-in-interest can object to the claim. But, to be clear, the Bankruptcy Code and Rules do not specifically

---

<sup>50</sup> *Taco Bueno*, 606 B.R. 289.

set the deadline. *See* 11 U.S.C. § 503. Rather, a debtor typically asks for one to be set or provides for one in its plan. That’s what Highland did here. The deadline can be extended for cause under section 503(a). The Plaintiff/DAF never filed any motion seeking an extension here arguing “cause.” It only asks for an extension now—almost a year after the noticed deadline—and now that it’s clear that its District Court Action was improper. The Plaintiff/DAF’s “work-around” legal strategy here cannot be condoned.

Accordingly, it is

**ORDERED** that the Motion to Dismiss is **GRANTED** as to all causes of action asserted and the Complaint is dismissed in its entirety with prejudice.

**###END OF MEMORANDUM OPINION AND ORDER###**

**DISMISSED, EXHIBITS, APPEAL**

**U.S. Bankruptcy Court  
Northern District of Texas (Dallas)  
Adversary Proceeding #: 22-03052-sgj**

*Assigned to:* Chief Bankruptcy Jud Stacey G Jernigan

*Lead BK Case:* 19-34054

*Lead BK Title:* Highland Capital Management, L.P.

*Lead BK Chapter:* 11

*Demand:*

*Nature[s] of Suit:* 02 Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

*Date Filed:* 07/22/21

*Date Dismissed:* 09/30/22

*Date Transferred:* 05/19/22

***Plaintiff***  
-----

**Charitable DAF Fund, LP**

represented by **Jonathan E. Bridges**  
Sbaiti & Company PLLC  
JP Morgan Chase Tower  
2200 Ross Avenue, Suite 4900 W  
Dallas, TX 75201  
(214) 432-2899  
Fax : (214) 853-4367  
Email: [jeb@sbaitilaw.com](mailto:jeb@sbaitilaw.com)

**Mazin Ahmad Sbaiti**  
Sbaiti & Company PLLC  
JP Morgan Chase Tower  
2200 Ross Avenue, Suite 4900 W  
Dallas, TX 75201  
(214) 432-2899  
Fax : (214) 853-4367  
Email: [mas@sbaitilaw.com](mailto:mas@sbaitilaw.com)  
**LEAD ATTORNEY**

V.

***Defendant***  
-----

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

represented by **Zachery Z. Annable**  
Hayward PLLC  
10501 N. Central Expressway  
Suite 106  
Dallas, TX 75231  
(972) 755-7108  
Fax : (972) 755-7108  
Email: [zannable@haywardfirm.com](mailto:zannable@haywardfirm.com)  
**LEAD ATTORNEY**

**Gregory V. Demo**  
Pachulski Stang Ziehl & Jones L.L.P.  
780 Third Avenue  
New York, NY 10017-2024

**000032**

(212) 561-7700  
 Fax : (212) 561-7777  
 Email: [gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)

**Melissa S. Hayward**  
 Hayward PLLC  
 10501 N. Central Expy, Ste. 106  
 Dallas, TX 75231  
 972-755-7104  
 Fax : 972-755-7104  
 Email: [MHayward@HaywardFirm.com](mailto:MHayward@HaywardFirm.com)

**John A. Morris**  
 Pachulski Stang Ziehl & Jones, LLP  
 780 Third Avenue, 34th Floor  
 New York, NY 10017-2024  
 (212) 561-7700  
 Fax : (212) 561-7777  
 Email: [jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)

**Jeffrey N. Pomerantz**  
 Pachulski Stang Ziehl & Jones LLP  
 10100 Santa Monica Blvd., 13th Floor  
 Los Angeles, CA 90067  
 310-277-6910  
 Fax : 210-201-0760  
 Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)

**Hayley R. Winograd**  
 Pachulski Stang Ziehl & Jones LLP  
 780 3rd Avenue #36  
 New York, NY 10017  
 (212) 561-7700  
 Fax : (212) 561-7777  
 Email: [hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

Filing Date	Docket Text
05/25/2022	<p><u>1</u> Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. . Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)</p>
05/25/2022	<p><u>2</u> Request for Clerk to issue Summons to Highland Capital Management, L.P. filed by Charitable DAF Fund LP. (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #2 ON 07/22/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p>
05/25/2022	<p><u>3</u> New Case Notes: A filing fee has been paid. Pursuant to Misc. Order 6, Plaintiff is provided the Notice of Right to Consent to Proceed Before A U.S. Magistrate Judge (Judge Rutherford). Clerk to provide copy to plaintiff if not received electronically. (ndt) [ORIGINALLY FILED IN 21-CV-1710 AS #3 ON 07/23/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p>
05/25/2022	<p><u>4</u> Summons Issued as to Highland Capital Management LP. (ndt) [ORIGINALLY FILED IN 21-CV-1710 AS #4 ON 07/23/2021 IN U.S. DISTRICT COURT FOR THE</p>



	NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION (Okafor, Marcey)
05/25/2022	<u>5</u> CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Charitable DAF Fund LP. (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #5 ON 07/23/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
05/25/2022	<u>6</u> MOTION to Stay filed by Charitable DAF Fund LP (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #6 ON 08/26/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
05/25/2022	<u>7</u> ELECTRONIC ORDER granting <u>6</u> Motion to Stay. (Ordered by Judge David C Godbey on 9/7/2021) (chmb) [ORIGINALLY FILED IN 21-CV-1710 AS #7 ON 09/7/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
05/25/2022	<u>8</u> MOTION for Reconsideration re <u>7</u> Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty:dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
05/25/2022	<u>9</u> Brief/Memorandum in Support filed by Highland Capital Management LP re <u>8</u> MOTION for Reconsideration re <u>7</u> Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
05/25/2022	<u>10</u> Appendix in Support filed by Highland Capital Management LP re <u>8</u> MOTION for Reconsideration re <u>7</u> Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)
05/25/2022	<u>11</u> MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
05/25/2022	<u>12</u> Brief/Memorandum in Support filed by Highland Capital Management LP re <u>11</u> MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
05/25/2022	<u>13</u> Appendix in Support filed by Highland Capital Management LP re <u>11</u> MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)



05/25/2022	<u>14</u> CERTIFICATE OF SERVICE by Highland Capital Management LP re: 8 MOTION for Reconsideration, 9 Brief/Memorandum in Support of Motion, 10 Appendix in Support, 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss), 12 Brief/Memorandum in Support of Motion, 13 Appendix in Support. (Annable, Zachery) Modified text on 10/12/2021 (mjr). [ORIGINALLY FILED IN 21-CV-1710 AS #14 ON 10/11/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
05/25/2022	<u>15</u> RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
05/25/2022	<u>16</u> REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
05/25/2022	<u>17</u> CERTIFICATE OF SERVICE by Highland Capital Management LP re 16 Reply (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #17 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
05/25/2022	<u>18</u> ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
05/27/2022	<u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
05/27/2022	<u>20</u> Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
05/27/2022	<u>21</u> Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
06/01/2022	<u>22</u> Certificate of service re: 1) Highland Capital Management, L.P.s Amended Motion to Dismiss ; 2) Highland Capital Management, L.P.s Memorandum of Law in Support of its Amended Motion to Dismiss; and 3) Appendix in Support of Highland Capital Management, L.P.s Amended Motion to Dismiss Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Defendant Highland Capital Management, L.P., <u>20</u> Brief in support filed by Defendant Highland Capital Management,

000035

	L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). filed by Defendant Highland Capital Management, L.P., <u>21</u> Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). filed by Defendant Highland Capital Management, L.P.). (Kass, Albert)
06/01/2022	<u>23</u> Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
06/03/2022	<u>24</u> Certificate of service re: Notice of Hearing re: Highland Capital Management, L.P.s Amended Motion to Dismiss Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>23</u> Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A) filed by Defendant Highland Capital Management, L.P.). (Kass, Albert)
06/08/2022	<u>25</u> Stipulation by Highland Capital Management, L.P. and The Charitable DAF Fund, L.P.. filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Hayward, Melissa)
06/21/2022	<u>26</u> Order approving stipulation regarding proposed scheduling order (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>19</u> , Entered on 6/21/2022 (Okafor, Marcey)
06/23/2022	<u>27</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>26</u> Order approving stipulation regarding proposed scheduling order (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>19</u> , Entered on 6/21/2022) No. of Notices: 1. Notice Date 06/23/2022. (Admin.)
06/24/2022	<u>28</u> Certificate of service re: Order Approving Stipulation Regarding Proposed Scheduling Order Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>26</u> Order approving stipulation regarding proposed scheduling order (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>19</u> , Entered on 6/21/2022). (Kass, Albert)
07/05/2022	<u>29</u> INCORRECT EVENT: See # <u>30</u> for correction Brief in opposition filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Sbaiti, Mazin) Modified on 7/6/2022 (Ecker, C.).
07/05/2022	<u>30</u> Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
07/26/2022	<u>31</u> Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
07/26/2022	<u>32</u> Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document).

	(Annable, Zachery)
07/27/2022	<u>33</u> Certificate of service re: 1) Highland Capital Management, L.P.'s Reply in Support of its Amended Motion to Dismiss; and 2) Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>31</u> Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. filed by Defendant Highland Capital Management, L.P., <u>32</u> Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). filed by Defendant Highland Capital Management, L.P.). (Kass, Albert)
08/01/2022	<u>34</u> Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
08/02/2022	<u>35</u> Certificate of service re: Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>34</u> Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22) filed by Defendant Highland Capital Management, L.P.). (Kass, Albert)
08/03/2022	<u>36</u> INCORRECT ENTRY – SEE DE 40. Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT #17 (MR. SEERY DECLARATION); COURT TOOK JUDICIAL NOTICE OF EXHIBITS #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #18, #19, #20, #21 & #22) (Edmond, Michael) Modified on 8/4/2022 (Ellison, T.).
08/03/2022	<u>37</u> Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.) (Edmond, Michael)
08/03/2022	<u>38</u> Request for transcript (Melanie Holmes), regarding a hearing held on 8/3/2022. The requested turn-around time is hourly. (Edmond, Michael)
08/03/2022	<u>39</u> PDF with attached Audio File. Court Date & Time [08/03/2022 02:37:28 PM]. File Size [ 15686 KB ]. Run Time [ 01:06:57 ]. (admin).
08/03/2022	<u>40</u> Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1–13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)

000037

08/04/2022	<u>41</u> Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s) <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)
09/30/2022	<u>42</u> Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
09/30/2022	<u>43</u> Order granting amended motion to dismiss adversary proceeding with prejudice (related document # <u>19</u> ) Entered on 9/30/2022. (Okafor, Marcey)
10/02/2022	<u>44</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>42</u> Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022) No. of Notices: 1. Notice Date 10/02/2022. (Admin.)
10/02/2022	<u>45</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>43</u> Order granting amended motion to dismiss adversary proceeding with prejudice (related document <u>19</u> ) Entered on 9/30/2022.) No. of Notices: 1. Notice Date 10/02/2022. (Admin.)
10/05/2022	<u>46</u> Notice of appeal . Fee Amount \$298 filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>43</u> Order on motion to dismiss adversary proceeding). Appellant Designation due by 10/19/2022. (Sbaiti, Mazin)
10/05/2022	Receipt of filing fee for Notice of appeal( <u>22-03052-sgi</u> ) [appeal,ntcap] ( 298.00). Receipt number A29869493, amount \$ 298.00 (re: Doc# <u>46</u> ). (U.S. Treasury)
10/12/2022	<u>48</u> INCORRECT ENTRY. Incorrect case. Certificate of mailing regarding appeal (RE: related document(s) <u>46</u> Notice of appeal . filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>43</u> Order on motion to dismiss adversary proceeding). Appellant Designation due by 10/19/2022.) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua) Modified on 10/12/2022 (Whitaker, Sheniqua).
10/12/2022	<u>49</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>46</u> Notice of appeal . filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>43</u> Order on motion to dismiss adversary proceeding). filed by Plaintiff Charitable DAF Fund, LP) (Whitaker, Sheniqua)
10/12/2022	<u>50</u> Notice of docketing notice of appeal. Civil Action Number: 3:22-cv-02280-S. (RE: related document(s) <u>46</u> Notice of appeal . filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>43</u> Order on motion to dismiss adversary proceeding). filed by Plaintiff Charitable DAF Fund, LP) (Whitaker, Sheniqua)
10/12/2022	<u>51</u> Certificate of mailing regarding appeal (RE: related document(s) <u>46</u> Notice of appeal . filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>43</u> Order on motion to dismiss adversary proceeding). Appellant Designation due by 10/19/2022.) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)

10/14/2022	<u>52</u> BNC certificate of mailing. (RE: related document(s) <u>49</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>46</u> Notice of appeal . filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>43</u> Order on motion to dismiss adversary proceeding). filed by Plaintiff Charitable DAF Fund, LP)) No. of Notices: 1. Notice Date 10/14/2022. (Admin.)
10/18/2022	<u>53</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>46</u> Notice of appeal). Appellee designation due by 11/1/2022. (Sbaiti, Mazin)
10/20/2022	<u>54</u> Clerk's correspondence requesting file an amended appellant designation from attorney for appellant. (RE: related document(s) <u>53</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>46</u> Notice of appeal). Appellee designation due by 11/1/2022.) Responses due by 10/27/2022. (Blanco, J.)
10/20/2022	<u>55</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>53</u> Appellant designation). (Sbaiti, Mazin)
11/28/2022	<u>56</u> Clerk's correspondence requesting file an amended designation to omit doc 37 from attorney for plaintiff. (RE: related document(s) <u>55</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>53</u> Appellant designation).) Responses due by 11/30/2022. (Blanco, J.)
11/28/2022	<u>57</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Plaintiff Charitable DAF Fund, LP (RE: related document(s) <u>55</u> Appellant designation). (Sbaiti, Mazin)

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 2**



SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

Vol. 1  
000001

000004

000032

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

Vol. 2

000040

000058

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # 1 Original Complaint # 2 Civil Cover Sheet # 3 Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # 1 Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON



<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>				<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>				<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Vol. 8

001349

001352

001359

001361

001369

001381

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				

001. 22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CHARITABLE DAF FUND, L.P.,

Plaintiff,

v.

HIGHLAND CAPITAL  
MANAGEMENT, L.P.,

Defendant.

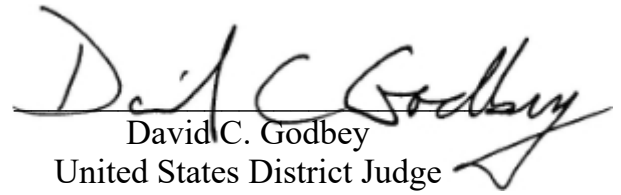
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 3:21-CV-1710-N

**ORDER**

This Order addresses Defendant Highland Capital Management, L.P.’s (“HCM”) motion for reconsideration of this Court’s earlier order staying this case [8]. This case challenges a transaction consummated in the course of a consolidated bankruptcy proceeding and names as the sole defendant the debtor in that bankruptcy. The Court therefore concludes that this case constitutes a matter “related to” a case in the bankruptcy court under the meaning of this District’s Miscellaneous Order No. 33. Accordingly, the Court grants Defendant’s motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 19-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case.

Signed May 19, 2022.

  
David C. Godbey  
United States District Judge



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

THE CHARITABLE DAF FUND, LP.,

*Plaintiff,*

v.

HIGHLAND CAPITAL MANAGEMENT,  
L.P.,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Cause No. \_\_\_\_\_

**ORIGINAL COMPLAINT**

This matter concerns self-dealing and seeks redress for violation of state and federal law, including, but not limited to, violations of the Advisers Act of 1940, and other state causes of action.

**I.**

**PARTIES**

1. Plaintiff The Charitable DAF Fund, L.P. (“Plaintiff” or “DAF”) is a limited partnership formed under the laws of the Cayman Islands.

2. Defendant Highland Capital Management L.P. (“Highland” or “HCMLP”) is a Delaware limited partnership, whose principal place of business is in Dallas, Texas, at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

**II.**

**JURISDICTION AND VENUE**

3. Subject matter jurisdiction is proper in this Court under 28 U.S.C. § 1331 and under 28 U.S.C. § 1334 because the suit arises out of post-petition acts or omissions of the debtor and certain of its principals.



4. This Court has personal jurisdiction over Defendant Highland Capital Management, L.P. because it has continuously done business in this state, and the causes of action arise from the acts or omissions committed in this state.

5. Venue is proper in this Court because a substantial number of the acts or omissions giving rise to this lawsuit and the causes of action asserted herein occurred in Dallas County.

### III.

#### **FACTUAL BACKGROUND**

6. HCMLP is a registered investment advisor (“RIA”) subject to the regulations of the Securities Exchange Commission.

7. HCMLP is both the advisor of and investor in Highland Multi Strategy Credit Fund, L.P. (“Multistrat”), a Delaware limited partnership. Highland Multi Strategy Credit Fund GP, L.P., itself a Delaware limited partnership, is the general partner of Multistrat, and HCMLP is the sole member of the general partner of Highland Multi Strategy Credit Fund GP, L.P.

8. HCMLP’s advisory capacity is governed, or at all relevant times was governed, by the Third Amended and Restated Investment Management Agreement, effective November 1, 2013 (the “IMA”).

9. The purpose of Multistrat as a vehicle was stated as such: “The Fund’s investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.”

10. The Confidential Private Placement Memorandum for Multistrat disclosed that “[t]he Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the ‘Advisers Act’).

Each prospective investor will be required to make a representation to indicate that it is a ‘qualified client’ as defined in the Advisers Act.”

**11.** Because of these agreements and roles as the General Partner and RIA, Highland owed contractual and fiduciary duties to Plaintiff as an investor in Multistrat.

**12.** James Seery, the principal, CEO, and CRO of HCMLP, in its capacity as a debtor, admitted under oath that HCMLP owes fiduciary duties to the investors of the funds HCMLP manages—which would include Multistrat—and therefore, has admitted under oath that HCMLP and its governed persons owe fiduciary duties to the investors in Multistrat, which include Plaintiff, The Charitable DAF Fund, and Highland Capital Management Services, Inc., among others.

**13.** As an investment vehicle advised at all times and controlled at all times by HCMLP, Multistrat purchased and owned a pool of viaticals—investments in life insurance policies keyed to the lives of other persons. When a person passes away, the life insurance money is paid to the owner of the policy—in this case, Multistrat.

**14.** The notional value of the viatical pool was approximately \$145 million.

**15.** In or around August 2020, HCMLP sold the entire viatical pool for approximately \$35,000,000—less than one quarter of the insured value.

**16.** The policies insured people aged 90 on average, suggesting that the policies were highly likely to pay off in the ensuing few years given the age and life expectancies of the insureds, as well as considering the actuarial impact of the COVID pandemic.

**17.** In the spring of 2020, Multistrat raised funds specifically for the purpose of paying the premiums on the viatical pool—amounts raised, borrowing availability, and liquid securities provided enough cash to pay the premiums. But HCMLP did not pursue this path as promised.

Instead, it sold the assets. To this day, it is unclear why the policies were sold, and why, just prior to a planned mediation.

18. Furthermore, the process of selling was severely flawed. For example, the health assessments used to determine the likelihood and timeline for the payout were two years old. HCMLP did not cause new, up-to-date health assessments to be performed, and instead was content to rely on stale information or worse, no information at all.

19. Furthermore, HCMLP made no effort to adjust the projected life expectancies due to the increasing age of the insureds during a process that stretched over seven months, nor for the potential impact of COVID on people over the age of 90, which would have impacted the price..

20. Equally troubling is that Multistrat obtained the funds to pay the premiums from another investor—yet, it apparently did not use the funds for that purpose.

21. HCMLP apparently used the proceeds of the sale to pay itself, notwithstanding the fact that there were redeemed interests waiting to be paid—interests to whom HCMLP also owed fiduciary duties.

22. In short, HCMLP caused Multistrat to sell the viatical pool at a substantially discounted amount to curry favor with the brokers and buyers in the marketplace for no apparent benefit to Multistrat’s investors or the debtor’s estate.

### III.

#### **CAUSES OF ACTION**

##### **First Cause of Action** **Breach of the Advisers Act**

23. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
24. Highland’s actions violate the Advisers Act.
25. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.

26. The IMA imposes and incorporates the duties and obligations of the Investment Advisers Act of 1940.

27. Under this federal law, an investment adviser is a fiduciary.<sup>1</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.

28. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”

29. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>2</sup> In order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

---

<sup>1</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s “references to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. 2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”).

<sup>2</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

30. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>3</sup>

31. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

32. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

33. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

34. Therefore, Plaintiff seeks to declare the sale of the viaticals void because they were accomplished in violation of the Advisers Act.

35. Plaintiff further seeks to declare the agreement(s) between Highland and Multistrat void because they were continued in violation of the Advisers Act.

**Second Cause of Action**  
**Breach of Fiduciary Duty**

36. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

---

<sup>3</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *Sec. & Exch. Commission v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

37. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.
38. The IMA imposes and incorporates the duties and obligations of the Investment Advisers Act of 1940.
39. Under this federal law, an investment adviser is a fiduciary.<sup>4</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.
40. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules, but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”
41. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>5</sup> In order for disclosure to be full and fair, it should be

---

<sup>4</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. IA2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”)).

<sup>5</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

42. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>6</sup>

43. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

44. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

45. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

46. HCMLP’s CEO testified under oath that he and HCMLP were aware of these duties and had to comply with them.

47. Section 204 of the Advisers Act requires HCMLP to carry written policies and procedures that must be followed in order to adhere to its federal obligations.

---

<sup>6</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *SEC v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

48. Section 206 of the Advisers Act prohibits transactions by an adviser that were accomplished via a “deceit” on a client or prospective client, e.g., by concealing the role and interest the adviser has in the transaction, or via engaging in a course of conduct that has a tendency to mislead a client or which is manipulative.

49. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

50. The Advisers Act declares any contract that was made in violation of its provisions or regulations, or any contract that has been performed in violation of the Advisers Act, **void**.

51. The Advisers Act created a private right of action to void unlawful agreements and acts and to seek such equitable relief as accompanies such claims.

52. Texas law allows a fiduciary plaintiff to seek damages for breaches of fiduciary duty and to seek disgorgement of all ill-gotten gains obtained by a fiduciary.

53. Plaintiff has been damaged due to the breaches of fiduciary duty outlined herein, and it is entitled to recover damages, punitive damages, and attorneys’ fees.



54. To the extent this claim must be brought as a derivative action, it is plain that the demand requirement under Delaware law could not be met because serving a demand on Highland or to sue Highland would have been futile.

**Third Cause of Action**  
**Breach of Contract**

55. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

56. The IMA imposes a duty of prudent investment management for the benefit of the investors in Multistrat and incorporate the duties and obligations of the Investment Advisers Act of 1940.

57. The violations set forth above constitute a breach of each or both of these agreements.

58. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

59. Plaintiff has been damaged by the breaches of contract outlined herein.

60. Plaintiff is entitled to recover damages and attorneys' fees.

**JURY DEMAND AND PRAYER**

61. Plaintiff demands trial by jury.
62. Plaintiff respectfully requests judgment and an order:
- Disgorging all ill-gotten gains in an amount to be determined at trial;
  - Voiding the sale and other relevant agreements herein with HCMLP pursuant to the Advisers Act;
  - Awarding damages in an amount to be determined at trial;
  - Awarding punitive damages in an amount to be determined at trial;
  - Awarding attorneys' fees and costs in an amount to be determined at trial;
  - Awarding all interim and final relief to which Plaintiff is legally or equitably entitled under the facts and circumstances raised herein.

Dated: July 22, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

/s/ Mazin A. Sbaiti

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Plaintiff**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>The Charitable DAF Fund, L.P.</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Cayman Islands</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c) Attorneys (Firm Name, Address, and Telephone Number)</b></p> <p>Sbaiti &amp; Company PLLC, 2200 Ross Avenue, Suite 4900W, Dallas, TX 75201</p>	<p><b>DEFENDANTS</b></p> <p>Highland Capital Management, L.P.</p> <p>County of Residence of First Listed Defendant <u>Dallas County, TX</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
---	--

<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
15 U.S.C. § 80b-1  
 Brief description of cause:  
Adviser's Act violation

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*    JUDGE Stacey G. Jernigan    DOCKET NUMBER 19-34054-sgj11 NDTX-BK

DATE July 22, 2021    SIGNATURE OF ATTORNEY OF RECORD /s/ Mazin A. Sbaiti

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

000053

**U.S. District Court  
Northern District of Texas (Dallas)  
CIVIL DOCKET FOR CASE #: 3:21-cv-01710-N**

Charitable DAF Fund LP v. Highland Capital Management LP  
Assigned to: Judge David C Godbey  
Cause: 28:1331 Fed. Question

Date Filed: 07/22/2021  
Jury Demand: Plaintiff  
Nature of Suit: 890 Other Statutes: Other  
Statutory Actions  
Jurisdiction: Federal Question

**Plaintiff**

**Charitable DAF Fund LP**

represented by **Mazin A Sbaiti**  
Sbaiti & Company PLLC  
J.P. Morgan Chase Tower  
2200 Ross Avenue  
Suite 4900W  
Dallas, TX 75201  
214-432-2899  
Fax: 214-853-4367  
Email: MAS@SbaitiLaw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*  
*Bar Status: Admitted/In Good Standing*

**Jonathan Bridges**  
Sbaiti & Company PLLC  
2200 Ross Ave  
Suite 4900W  
Dallas, TX 75201  
214-432-2899  
Fax: 214/754-1933 FAX  
Email: jeb@sbaitilaw.com  
*ATTORNEY TO BE NOTICED*  
*Bar Status: Admitted/In Good Standing*

V.

**Defendant**

**Highland Capital Management LP**

represented by **Zachery Z. Annable**  
Hayward PLLC  
10501 N. Central Expressway  
Suite 106  
Dallas, TX 75231  
972-755-7108  
Fax: 972-755-7110  
Email: zannable@haywardfirm.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*  
*Bar Status: Admitted/In Good Standing*

**Gregory V Demo**

Pachulski Stang Ziehl & Jones LLP  
780 Third Ave  
34th Floor  
New York, NY 10017  
212-561-7700  
Fax: 212-561-7777  
Email: gdemo@pszjlaw.com  
*ATTORNEY TO BE NOTICED*  
*Bar Status: Not Admitted*

**Hayley R Winograd**

Pachulski Stand Ziehl & Jones LLP  
780 Third Avenue  
34th Floor  
New York, NY 10017  
212-561-7700  
Fax: 212-561-7777  
*Bar Status: Not Admitted*

**Jeffrey N Pomerantz**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd  
13th Floor  
Los Angeles, CA 90067  
310-227-6910  
Fax: 310-201-0760  
Email: jpomerantz@pszjlaw.com  
*ATTORNEY TO BE NOTICED*  
*Bar Status: Not Admitted*

**John A Morris**

Pachulski Stang Ziehl & Jones LLP  
780 Third Avenue, 34th Floor  
New York, NY 10017-2024  
212-561-7700  
Fax: 212-561-7777  
Email: jmorris@pszjlaw.com  
*ATTORNEY TO BE NOTICED*  
*Bar Status: Not Admitted*

**Melissa S Hayward**

Hayward PLLC  
10501 N Central Expwy  
Suite 106  
Dallas, TX 75231  
972-755-7100  
Fax: 972-755-7104  
Email: mhayward@haywardfirm.com  
*ATTORNEY TO BE NOTICED*  
*Bar Status: Admitted/In Good Standing*

Date Filed	#	Docket Text
07/22/2021	<u>1</u>	COMPLAINT WITH JURY DEMAND against Highland Capital Management LP filed by Charitable DAF Fund LP. (Filing fee \$402; Receipt number 0539-12078150) Plaintiff will submit summons(es) for issuance. In each Notice of Electronic Filing, the judge assignment is indicated, and a link to the <a href="#">Judges Copy Requirements and Judge Specific Requirements</a> is provided. The court reminds the filer that any required copy of this and future documents must be delivered to the judge, in the manner prescribed, within three business days of filing. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at <a href="http://www.txnd.uscourts.gov">www.txnd.uscourts.gov</a> , or by clicking here: <a href="#">Attorney Information - Bar Membership</a> . If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # <u>1</u> Civil Cover Sheet) (Sbaiti, Mazin) (Entered: 07/22/2021)
07/22/2021	<u>2</u>	Request for Clerk to issue Summons to Highland Capital Management, L.P. filed by Charitable DAF Fund LP. (Sbaiti, Mazin) (Entered: 07/22/2021)
07/22/2021	<u>3</u>	New Case Notes: A filing fee has been paid. Pursuant to Misc. Order 6, Plaintiff is provided the Notice of Right to Consent to Proceed Before A U.S. Magistrate Judge (Judge Rutherford). Clerk to provide copy to plaintiff if not received electronically. (ndt) (Entered: 07/23/2021)
07/23/2021	<u>4</u>	Summons Issued as to Highland Capital Management LP. (ndt) (Entered: 07/23/2021)
07/23/2021	<u>5</u>	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Charitable DAF Fund LP. (Sbaiti, Mazin) (Entered: 07/23/2021)
08/26/2021	<u>6</u>	MOTION to Stay filed by Charitable DAF Fund LP (Sbaiti, Mazin) (Entered: 08/26/2021)
09/07/2021	7	ELECTRONIC ORDER granting <u>6</u> Motion to Stay. (Ordered by Judge David C Godbey on 9/7/2021) (chmb) (Entered: 09/07/2021)
10/05/2021	<u>8</u>	MOTION for Reconsideration re 7 Order on Motion to Stay ( <i>Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order</i> ) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit(s) A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty:dft) (Annable, Zachery) (Entered: 10/05/2021)
10/05/2021	<u>9</u>	Brief/Memorandum in Support filed by Highland Capital Management LP re <u>8</u> MOTION for Reconsideration re 7 Order on Motion to Stay ( <i>Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order</i> ) (Annable, Zachery) (Entered: 10/05/2021)
10/05/2021	<u>10</u>	Appendix in Support filed by Highland Capital Management LP re <u>8</u> MOTION for Reconsideration re 7 Order on Motion to Stay ( <i>Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order</i> ) (Attachments: # <u>1</u> Exhibit(s) 1, # <u>2</u> Exhibit(s) 2, # <u>3</u> Exhibit(s) 3, # <u>4</u> Exhibit(s) 4, # <u>5</u> Exhibit(s) 5, # <u>6</u> Exhibit(s) 6, # <u>7</u> Exhibit(s) 7, # <u>8</u> Exhibit(s) 8, # <u>9</u> Exhibit(s) 9, # <u>10</u> Exhibit(s) 10, # <u>11</u> Exhibit(s) 11, # <u>12</u> Exhibit(s) 12, # <u>13</u> Exhibit(s) 13, # <u>14</u> Exhibit(s) 14, # <u>15</u> Exhibit(s) 15, # <u>16</u> Exhibit(s) 16, # <u>17</u> Exhibit(s) 17, # <u>18</u> Exhibit(s) 18, # <u>19</u> Exhibit(s) 19, # <u>20</u> Exhibit(s) 20, # <u>21</u> Exhibit(s) 21, # <u>22</u> Exhibit(s) 22, # <u>23</u> Exhibit(s) 23, # <u>24</u> Exhibit(s) 24, # <u>25</u> Exhibit(s) 25, # <u>26</u> Exhibit(s) 26, # <u>27</u> Exhibit(s) 27) (Annable, Zachery) (Entered: 10/05/2021)
10/05/2021	<u>11</u>	MOTION to Dismiss ( <i>Highland Capital Management, L.P.'s Motion to Dismiss</i> ) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit(s) A) (Annable, Zachery) (Entered: 10/05/2021)
10/05/2021	<u>12</u>	Brief/Memorandum in Support filed by Highland Capital Management LP re <u>11</u> MOTION to Dismiss ( <i>Highland Capital Management, L.P.'s Motion to Dismiss</i> ) (Annable, Zachery)

000056



10/05/2021	<u>13</u>	Appendix in Support filed by Highland Capital Management LP re <u>11</u> MOTION to Dismiss ( <i>Highland Capital Management, L.P.'s Motion to Dismiss</i> ) (Attachments: # <u>1</u> Exhibit(s) 1, # <u>2</u> Exhibit(s) 2, # <u>3</u> Exhibit(s) 3) (Annable, Zachery) (Entered: 10/05/2021)
10/11/2021	<u>14</u>	CERTIFICATE OF SERVICE by Highland Capital Management LP re: <u>8</u> MOTION for Reconsideration, <u>9</u> Brief/Memorandum in Support of Motion, <u>10</u> Appendix in Support, <u>11</u> MOTION to Dismiss ( <i>Highland Capital Management, L.P.'s Motion to Dismiss</i> ), <u>12</u> Brief/Memorandum in Support of Motion, <u>13</u> Appendix in Support. (Annable, Zachery) Modified text on 10/12/2021 (mjr). (Entered: 10/11/2021)
10/27/2021	<u>15</u>	RESPONSE filed by Charitable DAF Fund LP re: <u>8</u> MOTION for Reconsideration re 7 Order on Motion to Stay ( <i>Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order</i> ) (Sbaiti, Mazin) (Entered: 10/27/2021)
11/05/2021	<u>16</u>	REPLY filed by Highland Capital Management LP re: <u>8</u> MOTION for Reconsideration re 7 Order on Motion to Stay ( <i>Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order</i> ) (Annable, Zachery) (Entered: 11/05/2021)
11/12/2021	<u>17</u>	CERTIFICATE OF SERVICE by Highland Capital Management LP re <u>16</u> Reply (Annable, Zachery) (Entered: 11/12/2021)
05/19/2022	<u>18</u>	ORDER re: <u>8</u> Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022)

PACER Service Center			
Transaction Receipt			
05/25/2022 16:21:04			
<b>PACER Login:</b>	mmathews01:5861713:5854364	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	3:21-cv-01710-N
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.30
<b>Exempt flag:</b>	Exempt	<b>Exempt reason:</b>	Always

PACER fee: Exempt





**HIGHLAND CAPITAL MANAGEMENT, L.P.’S MOTION FOR  
RECONSIDERATION OF STAY ORDER**

Highland Capital Management, L.P., a defendant in the above-captioned case (the “Debtor” or “Highland”), by and through its undersigned counsel, files this motion (the “Motion”) seeking reconsideration of the Stay Order (as defined below) that was recently entered by the Court without notice to, or opposition by, Highland. In support of its Motion, Highland states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), and Rule 59(a) of the Federal Rules of Civil Procedure.

**RELIEF REQUESTED**

4. Through this Motion, Highland requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Motion for Reconsideration of Stay Order* (the “Memorandum of Law”) filed contemporaneously with this Motion, Highland requests that the Court: (a) re-open the Stay Order, amend the findings and conclusions, and issue a new order denying the Stay Motion, and (b) grant such other and further relief as the Court deems just and proper.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of the Motion Highland is filing: (a) its Memorandum of Law, and (b) the *Appendix in*

*Support of Motion for Reconsideration of Stay Order* (the “Appendix”), together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Appendix and the arguments contained in the Memorandum of Law, Highland is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. Highland submits that no other or further notice need be provided.

WHEREFORE, Highland respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Highland such other and further relief as the Court may deem proper.

*[Remainder of Page Intentionally Blank]*

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

---

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Motion was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*

\_\_\_\_\_  
Zachery Z. Annable

**EXHIBIT A**

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

THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**ORDER GRANTING MOTION FOR  
RECONSIDERATION OF STAY ORDER**

Before the Court is *Highland Capital Management L.P.’s Motion for Reconsideration of Stay Order* [Docket No. \_\_\_] (the “Motion”)<sup>1</sup> Having considered: (a) the Motion; (b) *Highland Capital Management, L.P.’s Memorandum of Law in Support of Motion for Reconsideration of Order to Enforce the Order of Reference* [Docket No. \_\_\_] (the “Memorandum of Law”); and (c) the *Appendix in Support of Motion for Reconsideration of Stay Order* [Docket No. \_\_\_] (the “Appendix”), and the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that (a) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; (b) Highland was not served with the Stay Motion and had no opportunity to contest it; (c) the Court was presented with new facts and arguments in the Motion, the Memorandum of Law, and the Appendix of which it was unaware when it entered the Stay Order; (d) based on those new facts,

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Memorandum of Law.

the Court finds and determines that Plaintiff has not met its burden of proving that a stay of the Action is warranted; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. Pursuant to Rule 59, the Court re-opens and vacates the Stay Order and enters this new Order **DENYING** the Stay Motion.

**It is so ordered** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

The Honorable David C. Godbey  
United States District Judge





**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. PRELIMINARY STATEMENT .....	1
II. RELEVANT BACKGROUND .....	3
A. Case Background .....	3
B. The Plan and Confirmation Order.....	3
C. Appellants’ Appeals of the Confirmation Order.....	6
D. Motions to Stay Pending Appeals of Confirmation Order are Filed and Denied .....	6
E. Plaintiff Commences the Action but Never Serves Highland, and the Plan Goes Effective.....	8
F. Plaintiff Moves for a Stay of the Action.....	8
III. ARGUMENT.....	9
Plaintiff Failed to Demonstrate a Stay Was Warranted.....	9
CONCLUSION.....	11

**TABLE OF AUTHORITIES**

**CASES**

*Belcher v. Birmingham Trust Nat’l Bank*,  
395 F.2d 685 (5<sup>th</sup> Cir. 1968) ..... 9

*Earl v. Boeing Co.*,  
4:19-CV-507, 2021 WL 1080689 (E.D. Tex. Mar. 18, 2021) ..... 9

*In re First S. Sav. Assoc.*,  
820 F.2d 700 (5<sup>th</sup> Cir. 1987) ..... 9

Highland Capital Management, L.P. (“Highland”), the reorganized debtor and the putative defendant in the above-captioned action (the “Action”), submits this Memorandum of Law in support of its motion for reconsideration of the Stay Order (as defined below) that was recently entered by the Court without notice to, or opposition by, Highland (the “Motion”). In support of its Motion, Highland states as follows:

### I. PRELIMINARY STATEMENT<sup>1</sup>

1. Highland is a reorganized debtor, having emerged from bankruptcy on August 11, 2021, when its Plan went effective.

2. The Charitable DAF Fund, L.P. (“Plaintiff”), a “trust” that exists for the benefit of James Dondero, Highland’s former owner who is waging a never-ending grudge match against Highland’s stakeholders, commenced this action on July 22, 2021, but never served its Complaint.<sup>2</sup> Instead, on August 26, 2021, without notice to Highland, it filed *Plaintiffs’ Motion to Stay All Proceedings* [Docket No. 6] (the “Stay Motion”). On September 7, 2021, this Court entered an electronic order granting the unopposed Stay Motion [Docket No. 7] (the “Stay Order”).

3. The Stay Motion was just another piece of Mr. Dondero’s coordinated litigation strategy against Highland, its stakeholders, and its judicially approved fiduciaries to waste resources, delay adjudication of pending disputes, and impede the wind-down of Highland’s estate pursuant to the terms of its confirmed Plan.<sup>3</sup>

---

<sup>1</sup> All capitalized terms used but not defined in this section have the meanings given to them below.

<sup>2</sup> Plaintiff filed the Complaint ostensibly to recover damages it incurred from Highland’s mismanagement of the Highland Multi Strategy Credit Fund, L.P. (“MSCF”) during Highland’s bankruptcy. Plaintiff has no interest in MSCF.

<sup>3</sup> Exhibit 1 (Appx. 1-15) to the Appendix lists the substantial litigation commenced or caused by Mr. Dondero and his controlled entities in furtherance of his strategy of harassment. As set forth in Exhibit 2 to the Appendix (Appx. 16-19), **the Stay Motion is one of nineteen motions for a continuance, stay, or abatement (exclusive of the motions to stay the Confirmation Order) filed by Mr. Dondero and his controlled entities since the entry of the Confirmation Order** – each of which seeks to delay final resolution of several pending lawsuits and appeals, most of which (like this action) they commenced.

4. Pursuant to Federal Rule of Civil Procedure 59(a) (“Rule 59”), the Court should reopen the Stay Order, amend its findings, and enter a new order denying the Stay Motion because the Stay Motion was never served (and Highland was therefore never given an opportunity to respond to the relief requested in the Stay Motion) and Plaintiff has mischaracterized the underlying facts.

5. In context, Plaintiff failed to satisfy its heavy burden of showing the extraordinary remedy of a stay is warranted. Indeed, Plaintiff did not even address the four-pronged test routinely applied to a request for a stay pending appeal in the Fifth Circuit. For example, (i) Plaintiff *cannot* succeed on the merits because it is not a party to the underlying appeal, (ii) there is no irreparable harm in the absence of a stay, and (iii) a stay would not serve the public interest.

6. Plaintiff did not object to or appeal the Confirmation Order, yet Plaintiff’s Stay Motion is premised on the pending appeals to which it is not a party. Further, and significantly, the Bankruptcy Court, the United States District Court, and the Fifth Circuit Court of Appeals previously denied the motions to stay the Confirmation Order that were filed by the actual Appellants (each of which is owned and/or controlled by Mr. Dondero).<sup>4</sup> There is no basis for Plaintiff to effectively obtain a stay of the Confirmation Order – particularly after the actual Appellants were unable to obtain a stay pending their own appeal of the Confirmation Order. Finally, Plaintiff’s reliance on certain Plan provisions, such as the Injunction Provision referenced above, is misplaced. While Highland maintains that this Action ultimately belongs in the Bankruptcy Court based on, among other reasons, the Injunction Provision, the extraordinary remedy of a stay pending appeal of the Confirmation Order has no application, or relevance, to the

---

<sup>4</sup> The only parties appealing the Confirmation Order are the Appellants, which are Mr. Dondero and entities he owns and/or controls. Ex. 3, Appx. 40. (“[T]he Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero”).

effect of the Injunction Provision on the Action. Any stay of this Action premised on the Appeal of the Confirmation Order is simply not an appropriate remedy here.

7. For the reasons set forth above and below, and pursuant to Rule 59, Highland respectfully requests that the Court re-open the Stay Order, amend its findings, and enter a new order denying the Stay Motion.<sup>5</sup>

## II. RELEVANT BACKGROUND

### A. Case Background

8. On October 16, 2019 (the “Petition Date”), Highland commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Case”).

### B. The Plan and Confirmation Order

9. On February 22, 2021, the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) entered its *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Bankr. Dkt. No. 1943] (the “Confirmation Order”) which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P (as Modified)* (the “Plan”). Pursuant to the Plan, as of the Effective Date (as defined in the Plan), Enjoined Parties (as defined in the Plan) are prohibited from pursuing or continuing actions of any kind against Highland (the “Injunction Provision”). The Plan and the Confirmation Order each provide, in pertinent part:

---

<sup>5</sup> Pursuant to the Confirmation Order and the Plan, as of the Effective Date, Plaintiff is enjoined from conducting or continuing any suit or proceeding of any kind against Highland. See Docket No. 1943 (Confirmation Order) at 76-78 (Ex. 3, Appx. 96-98), and Ex. A (Plan) at 50-51 (Ex. 3, Appx. 167-168). For that reason, Highland is simultaneously filing a motion to dismiss this Action (the “Motion to Dismiss”). As set forth in the Plan, the Confirmation Order, and the Motion to Dismiss, Plaintiff will not be left without a remedy but has the right to seek to pursue the claims asserted in the Action as an administrative claim in the Bankruptcy Court.

## **Injunction**

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, **all Enjoined Parties are and shall be permanently enjoined**, on and after the Effective Date, with respect to any Claims and Equity Interests, **from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor**, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

Confirmation Order at 76-78 (Ex. 3, Appx. 96-98), and Ex. A (Plan) at 50-51 (Ex. 3, 167-168) (emphasis added).<sup>6</sup> No appellant has appealed or challenged the foregoing language in the Injunction Provision. Plaintiff is an “Enjoined Party”<sup>7</sup> under the Plan, and by their express terms, the Confirmation Order and Plan expressly enjoin Plaintiff from continuing the Action.

---

<sup>6</sup> The Injunction Provision also included a permanent injunction which enjoined “all Enjoined Parties. . . from taking any actions to interfere with the implementation or consummation of the Plan” (the “Permanent Injunction”) and a “gatekeeper” provision that prohibited all “Enjoined Parties” from pursuing claims against certain “Protected Parties” unless the Bankruptcy Court first found those claims to be colorable (the “Gatekeeper Provision”). Ex. 3, Appx. 74. While the Gatekeeper Provision also prevents Plaintiff from proceeding with the Action in this Court, it is the language in the Injunction Provision set forth above –which is not involved in the Appeal – that independently prohibits pursuit of this Action.

<sup>7</sup> “Enjoined Party” means, *inter alia*, “(i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.” Ex. 3, Appx. 125. Plaintiff satisfies sections (i), (iii), (iv), and (v) of the definition of “Enjoined Party.”



10. The Injunction Provision, however, does not leave putative claimants, like Plaintiff, without a course to pursue their claims. The Plan includes a mechanism allowing holders of claims arising after the Petition Date but prior to the Effective Date to assert claims. They may, at their election, file an application with the Bankruptcy Court seeking an allowed administrative claim. Article II of the Plan provides, in relevant part:

**Administrative Expensive Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; provided, however, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Plan at 16-17 (Ex. 4, Appx. 204-205). If Plaintiff wish to continue its Action, the Confirmation Order mandates that it do so by filing for an administrative claim.<sup>8</sup>

---

<sup>8</sup> Under the Plan, the Administrative Expense Claim Bar Date passed on September 25, 2021, so Plaintiff would, in fact, be required to request an order from the Bankruptcy Court permitting it to file a late claim. Highland reserves the right to contest any such request.

**C. Appellants' Appeals of the Confirmation Order**

11. Following entry of the Confirmation Order, in March 2021, James Dondero and certain of his related entities, including: (i) Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc. (collectively, the "Funds"); (ii) Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (together, the "Advisors"); and (iii) The Dugaboy Investment Trust (the "Trust," and together with James Dondero, the Advisors, and the Funds, the "Appellants") appealed the Confirmation Order.<sup>9</sup>

The only aspects of the Injunction Provision challenged by the Appellants were:

- The Permanent Injunction which the Appellants argued (i) is overbroad and vague because "implementation" and "consummation" were not defined; (ii) restricts certain of the Appellants' rights under contracts assumed via the Plan; and (iii) is an impermissible third-party release; and
- The Gatekeeper Provision which Appellants argued exceeded the Bankruptcy Court's jurisdiction.

Ex. 3, Appx. 74-75. No Appellant challenged or appealed the language of the Injunction Provision that "enjoin[s] [all Enjoined Parties]. . . from directly or indirectly (i) commencing, conducting, *or continuing in any manner* any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor." That is the language enjoining Plaintiff from continuing this Action.

**D. Motions to Stay Pending Appeals of Confirmation Order are Filed and Denied**

12. In March 2021, the Appellants also sought a stay of the Confirmation Order pending appeal (the "Bankruptcy Court Stay Motions").<sup>10</sup>

13. Unlike the Appellants, however, Plaintiff never objected to the Plan and never appealed the Confirmation Order.

---

<sup>9</sup> See Bankruptcy Docket Nos. 1990, 1986, 1988, and 1992, respectively (Exs. 5-8, Appx. 249-273).

<sup>10</sup> See Bankruptcy Docket Nos. 1955, 1967, 1971, and 1973, respectively (Exs. 9-12, Appx. 274-381).

14. On March 16, 2021, the Bankruptcy Court entered an *Order Certifying Appeals of the Confirmation Order for Direct Appeal to the United States Court of Appeals for the Fifth Circuit* [Bankr. Dkt. No. 2034] (the “Certification Order”). (Ex. 13, Appx. 382-384).

15. On March 24, 2021, the Bankruptcy Court entered orders<sup>11</sup> denying the Bankruptcy Court Stay Motions (the “First Stay Denials”), finding, among other things, that Appellants “did not meet their burden of proof on the four-factor test articulated in case law to obtain a discretionary stay pending appeal.” [Bankr. Dkt. No. 2095 at 3]. (Ex. 15, Appx. 392).

16. In April 2021, Appellants filed motions for a stay pending appeal of the Confirmation Order in the District Court for the Northern District of Texas, Dallas Division (the “District Court”) (collectively, the “District Court Stay Motions”).<sup>12</sup>

17. Appellants subsequently filed petitions for direct appeal of the Confirmation Order to the Fifth Circuit.<sup>13</sup> On May 4, 2021, the Fifth Circuit entered an Order granting the Advisors’ Petition for direct appeal,<sup>14</sup> and on June 2, 2021, the Fifth Circuit entered an Order granting the remaining Appellants’ Petitions for direct appeal (collectively, the “Appeal”).<sup>15</sup>

18. Shortly after the District Court Stay Motions became ripe, on May 19, 2021, the Advisors filed a stay motion in the Fifth Circuit pending appeal of the Confirmation Order based on arguments identical to those asserted in the District Court Stay Motions (the “Fifth Circuit Stay”).

---

<sup>11</sup> See Bankruptcy Docket Nos. 2084 and 2095, respectively. Exs. 14-15, Appx. 385-393.

<sup>12</sup> See Case Nos. 3:21-cv-550 (Docket No. 5) Ex. 16, Appx. 394-398; 3:21-cv-538 (Docket No. 2) Ex. 17, Appx. 399-403; 3:21-cv-539, and 3:21-cv-546.

<sup>13</sup> See Case No. 21-90011, Documents 515826308, 515803515, 515824511, 515824443. Exs. 18-21, Appx. 404-953.

<sup>14</sup> See Case No. 21-90011, Document 515847079. Ex. 22, Appx. 954-957.

<sup>15</sup> See Case No. 21-90011, Document 515884578. Ex. 23, Appx. 958-961.

Motion”).<sup>16</sup> On June 21, 2021, the Fifth Circuit denied the Fifth Circuit Stay Motion (the “Second Stay Denial”).<sup>17</sup>

19. On June 23, 2021, the District Court entered its Order denying the District Court Stay Motions [Dist. Ct. Docket No. 28] (Ex. 26, Appx. 999-1002) (the “Third Stay Denial,” and together with the First Stay Orders and Second Stay Order, the “Stay Denials”) on the ground that “the Fifth Circuit has already reviewed and denied a motion with identical arguments.” *Id.* at 3.

**E. Plaintiff Commences the Action but Never Serves Highland, and the Plan Goes Effective**

20. On July 22, 2021, Plaintiff commenced the Action by filing its *Original Complaint*. [Docket No. 1] (the “Complaint”). Plaintiff never served the Complaint.

21. On August 11, 2021, the Plan became Effective (as defined in the Plan), and Highland became the Reorganized Debtor (as defined in the Plan). *See Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Bankr. Dkt. No. 2700] (Ex. 27, Appx. 1003-1007).

**F. Plaintiff Moves for a Stay of the Action**

22. On August 26, 2021, Plaintiff filed the Stay Motion, requesting a stay of the Action pending resolution of the Fifth Circuit Appeal of the Confirmation Order. In support of its Motion, Plaintiff contended that the Appeal “includes direct challenges to the validity” of the Plan’s exculpation and injunction provisions, that these “provisions are currently in force and prohibit Plaintiffs from continuing this [A]ction,” and the “most efficient course of action” is for a stay. Stay Motion at 4. As discussed below, even if this Court determines that the Appeal of the Confirmation Order is somehow relevant, the Motion would still be denied as no aspect of the

---

<sup>16</sup> See Case No. 21-10449, Document 515869234. Ex. 24, Appx. 962-995.

<sup>17</sup> See Case No. 21-10449, Document 515906886. Ex. 25, Appx. 996-998.

Appeal challenges the provisions of the Injunction Provision that enjoin Plaintiff from prosecuting the Action in this Court.

23. For the reasons that follow, the Court should (a) re-open the Order, amend the findings and conclusions, and issue a new order denying the Stay Motion, and (b) grant such other and further relief as the Court deems just and proper.

### **III. ARGUMENT**

#### **Plaintiff Failed to Demonstrate a Stay Was Warranted**

24. As set forth herein, there was no factual, legal, or equitable basis for the Stay Motion and, pursuant to Rule 59, this Court should re-open the Order, amend the findings and conclusions, and issue a new order denying the Stay Motion.

25. Plaintiff failed to address, let alone satisfy, the strict four-pronged test required for a stay pending appeal in the Fifth Circuit. A stay pending appeal is warranted only if a movant establishes the following four elements: (1) substantial likelihood of success on the merits of its appeal; (2) irreparable injury if the stay is not granted; (3) the stay will not substantially harm other parties; and (4) the stay would serve the public interest. *See Belcher v. Birmingham Trust Nat'l Bank*, 395 F.2d 685, 686-87 (5<sup>th</sup> Cir. 1968); *In re First S. Sav. Assoc.*, 820 F.2d 700, 704 (5th Cir. 1987). The moving party “bears the burden of establishing its need,” and must “make out a clear case of hardship or inequity in being required to go forward.” *Earl v. Boeing Co.*, 4:19-CV-507, 2021 WL 1080689, at \*3 (E.D. Tex. Mar. 18, 2021) (internal quotations omitted).

26. For obvious reasons, Plaintiff ignored these four factors in its Motion. Plaintiff did not object to or appeal the Confirmation Order. Instead, Plaintiff sought a stay of the Action premised on a pending Appeal (a) in which (i) it is not a party and (ii) there is no challenge to the portion of the Injunction Provision prohibiting Plaintiff from proceeding with the Action in this Court, and (b) where three different courts, including this Court and the Fifth Circuit, issued the

Stay Denials against the Appellants when they requested stays pending this same Appeal. Plaintiff has no standing to seek a stay of an order pending an Appeal to which they are not a party and, therefore, cannot satisfy the “likelihood of success” element. Plaintiff equally fails to show any irreparable injury in the absence of a stay or that a stay would serve the public interest.

27. Moreover, Plaintiff’s vague and conclusory assertion that “many complex legal questions exist” in the Fifth Circuit Appeal that “may affect the viability of this Action” also does not support the imposition of a stay. Motion at 4. Again, three courts, including the Fifth Circuit, have already rejected Stay Motions premised on this Appeal.

28. Finally, Plaintiff’s reliance on the Appellants’ challenges to Injunction Provision are misguided. *See* Motion at 4. As set forth above, the Appellants are challenging the Permanent Injunction and the Gatekeeper Provision in their appeal of the Confirmation Order – not the provisions of the Injunction Provision relevant to the Motion, *i.e.*, the provision enjoining Plaintiff from continuing the Action in this Court. Highland maintains that the Action belongs in the Bankruptcy Court for many reasons, including the Injunction Provision, and that if Plaintiff wishes to pursue remedies that it should do so by seeking leave to file a late claim against Highland’s bankruptcy estate as required by the Plan and Confirmation Order. However, pursuant to this very provision, the remedy of a stay of proceedings is an entirely distinct procedural device that has no application to the Plan or the Appeal.

29. To the extent Plaintiff relies on the exculpation provision, such reliance is irrelevant for purposes of the Motion.<sup>18</sup> Plaintiff otherwise failed to demonstrate why the extraordinary remedy of a stay of this Action is warranted or appropriate

---

<sup>18</sup> That provision deals with the exculpation from liability of Highland’s independent directors, their agents, and their advisors. *See* Plan, Art. IX.C. Neither Highland nor the viability of this Action is implicated by such a provision.

**CONCLUSION**

WHEREFORE, Highland respectfully requests that the Court (a) re-open the Stay Order, amend the findings and conclusions, and issue a new order denying the Stay Motion, and (b) grant such other and further relief as the Court deems just and proper.

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[rfeinstein@pszjlaw.com](mailto:rfeinstein@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

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

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



**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Memorandum of Law was served electronically upon all parties registered to receive electronic notice in this case via the Court’s CM/ECF system.

*/s/ Zachery Z. Annable*

\_\_\_\_\_  
Zachery Z. Annable



<b>Ex.</b>	<b>Description</b>	<b>Appx. #</b>
1.	Summary of Dondero and Related Entity Litigation	1-15
2.	Summary of Dondero and Related Entities Motions to Continue, Stay, or Abate	16-19
3.	<i>Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief</i> , Case No. 19-34054-sgj, D.I. 1943 (Bankr. N.D. Tex. Feb. 22, 2021)	20-181
4.	<i>Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> , Case No. 19-34054-sgj, D.I. 1808 (Bankr. N.D. Tex. Jan. 22, 2021)	182-248
5.	James Dondero's <i>Notice of Appeal</i> , Case No. 19-34054-sgj, D.I. 1990 (Bankr. N.D. Tex. March 8, 2021)	249-252
6.	Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc.'s <i>Notice of Appeal</i> , Case No. 19-34054-sgj, D.I. 1986 (Bankr. N.D. Tex. March 8, 2021)	253-260
7.	Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.'s <i>Notice of Appeal</i> , Case No. 19-34054-sgj, D.I. 1988 (Bankr. N.D. Tex. March 8, 2021)	261-264
8.	The Dugaboy Investment Trust and Get Good Trust's <i>Notice of Appeal</i> , Case No. 19-34054-sgj, D.I. 1992 (Bankr. N.D. Tex. March 8, 2021)	265-273
9.	<i>Emergency Motion of the Advisors for Stay Pending Appeal of the Confirmation Order, and Brief in Support Thereof</i> , Case No. 19-34054-sgj, D.I. 1955 (Bankr. N.D. Tex. Feb. 28, 2021)	274-308
10.	<i>Motion for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan</i> , Case No. 19-34054-sgj, D.I. 1967 (Bankr. N.D. Tex. Mar. 4, 2021)	309-329
11.	<i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan</i> , Case No. 19-34054-sgj, D.I. 1971 (Bankr. N.D. Tex. Mar. 4, 2021)	330-375
12.	<i>Joinder in Motion for Stay Pending Appeal and Additional Grounds for the Issuance of a Stay Pending Appeal</i> , Case No. 19-34054-sgj, D.I. 1973 (Bankr. N.D. Tex. Mar. 4, 2021)	376-381
13.	<i>Order Certifying Appeals of the Confirmation Order for Direct Appeal to the United States Court of Appeals for the Fifth Circuit</i> , Case No. 19-34054-sgj11, D.I. 2034 (Bankr. N.D. Tex. Mar. 16, 2021)	382-384
14.	<i>Order on Motions for Stay Pending Appeal</i> , Case No. 19-34054-sgj11, D.I. 2084 (Bankr. N.D. Tex. Mar. 22, 2021)	385-388
15.	<i>Supplemental Order on Motions for Stay Pending Appeal</i> , Case No. 19-34054-sgj11, D.I. 2095 (Bankr. N.D. Tex. Mar. 24, 2021)	389-393
16.	<i>Motion for Stay Pending Appeal</i> , Case No. 3:21-cv-00550-L, D.I. 5 (N.D. Tex. Apr. 6, 2021)	394-398
17.	<i>Appellants' Motion for Stay Pending Appeal</i> , Case No. 3:21-cv-00538-N, D.I. 2 (N.D. Tex. Apr. 1, 2021)	399-403
18.	Nexpoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P.'s <i>Petition for Permission to Appeal (Direct Appeal From</i>	404-652

	<i>Bankruptcy Court, 28 U.S.C. § 158(d)</i> ), Case No. 21-90011 (5th Cir. March 31, 2021)	
19.	Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund and NexPoint Capital, Inc.’s <i>Petition for Direct Appeal Under 28 U.S.C. § 158(d)</i> , Case No. 21-90011 (5th Cir. April 14, 2021)	653-918
20.	The Dugaboy Investment Trust and Get Good Trust’s <i>Petition for Direct Appeal Under 28 U.S.C. § 158(d)</i> , Case No. 21-90011 (5th Cir. April 15, 2021)	919-935
21.	James Dondero’s <i>Petition for Direct Appeal Under 28 U.S.C. § 158(d)</i> , Case No. 21-90011 (5th Cir. April 15, 2021)	936-953
22.	<i>Order</i> , Case No. 21-90011 (5th Cir. May 4, 2021)	954-957
23.	<i>Order</i> , Case No. 21-90011 (5th Cir. June 2, 2021)	958-961
24.	<i>Appellants’ Motion for Stay Pending Appeal</i> , Case No. 21-10449 (5th Cir. May 19, 2021)	962-995
25.	<i>Order</i> , Case No. 21-10449 (5th Cir. June 21, 2021)	996-998
26.	<i>Order</i> , Case No. 3:21-cv-00550-L, D.I. 28 (N.D. Tex. June 23, 2021)	999-1002
27.	<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> , Case No. 19-34054-sgj, D.I. 2700 (Bankr. N.D. Tex. Aug. 11, 2021)	1003-1007

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Ira D. Kharasch (CA Bar No. 109084)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
ikharasch@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Appendix was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*

\_\_\_\_\_  
Zachery Z. Annable

# EXHIBIT 1

**SUMMARY OF DONDERO AND RELATED ENTITY LITIGATION\***

***In re Highland Capital Management, L.P., Case No. 19-34054-sgj11 (Bankr. N.D. Tex.)***

9/23/20 ***Debtor’s Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith [D.I. 1087]***

**Objectors:** Dondero [D.I. 1121] Acis filed a claim for at least \$75 million. Acis claim was the result of an involuntary bankruptcy initiated when the Debtor refused to pay an arbitration award and instead transferred assets to become judgment proof. Debtor settled claim for an allowed Class 8 claim of \$23 million and approximately \$1 million in cash payments. Dondero objected to the settlement alleging that it was unreasonable and constituted vote buying.

The Acis Settlement Motion was approved and Dondero’s [D.I. 1347]. The appeal has been briefed and the decision is pending.

11/18/20 ***Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements [D.I. 1424]***

**Objectors:** Dondero [D.I. 1447] The Debtor filed a motion seeking to retain a sub-servicer to assist in its reorganization consistent with the proposed plan. Dondero alleged that the sub-servicer was not needed; was too expensive; and would not be subject to Bankruptcy Court jurisdiction [D.I. 1447].

Dondero withdrew his [D.I. 1460] after forcing the Debtor to incur costs responding [D.I. 1459]

11/19/20 ***James Dondero’s Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside of the Ordinary Course [D.I. 1439]***

**Movant:** Dondero Dondero alleged the Debtor sold significant assets in violation of 11 U.S.C. § 363 and without providing Dondero a chance to bid. Dondero requested an emergency hearing on this motion [D.I. 1443]. Dondero filed this motion despite having agreed to the Protocols governing such sales.

Dondero withdrew this motion [D.I. 1622] after the Debtor and the Committee were forced to incur costs responding and preparing for trial [D.I. 1546, 1551].

12/8/20 ***Motion for Order Imposing Temporary Restrictions on Debtor’s Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles [D.I. 1522]***

**Movants:** Advisors Funds Movants argued that the Debtor should be precluded from causing the CLOs to sell assets without Movants’ consent. Movants provided no support for this position which directly contradicted the terms of the CLO Agreements; and was filed notwithstanding the Protocols which governed such sales. Movants requested an emergency hearing on this motion [D.I. 1523].

The motion was denied [D.I. N/A] and was characterized as “frivolous.”

\* The following is by way of summary only and does not include discovery disputes or similar matters. Nothing herein shall be deemed or considered a waiver of any rights or an admission of fact. The Debtor reserves all rights that it may have whether in law or in equity.



12/23/20

**Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 150, 153, 154) and Authorizing Actions Consistent Therewith [D.I. 1625]**

**Objectors:** Dondero [D.I. 1697] The HarbourVest Entities asserted claims in excess of \$300 million in connection with an investment in a fund indirectly managed by the Debtor for, among other things, fraud and fraudulent inducement, concealment, and misrepresentation. Debtor settled for an allowed Class 8 claim of \$45 million and an allowed Class 9 claim of \$35 million. Dondero and the Trusts alleged that the settlement was unreasonable; was a windfall to the HarbourVest Entities; and constituted vote buying. CLOH argued that the settlement could not be effectuated under the operative documents.

Trusted [D.I. 1706] CLOH [D.I. 1707] The Trusts appealed [D.I. 1870], and the appeal has been briefed. CLOH recently filed a complaint alleging, among other things, that the settlement was a breach of fiduciary duty and a RICO violation.

1/14/21

**Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c) [D.I. 1752]**

**Movants:** Trusts Dondero [D.I. 1756] Movants sought the appointment of an examiner 14 months after the Petition Date and commencement of Plan solicitation to assess the legitimacy of the claims against the various Dondero Entities and to avoid litigation. Movants requested an emergency hearing on this motion [D.I. 1748].

The motion was denied [D.I. N/A 1960].

1/20/21

**James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith [D.I. 1784]**

**Objector:** Dondero Dondero withdrew his objection [D.I. 1876] after forcing the Debtor to incur the expense of responding (which included a statement that the Debtor limited partnership agreement was not being assumed).

1/22/20

**Objections to Fifth Amended Plan of Reorganization [D.I. 1472]**

**Objectors:<sup>1</sup>**

Dondero Trusts [D.I. 1661] [D.I. 1667]  
 Advisors & Senior Employees Funds<sup>2</sup> [D.I. 1670] [D.I. 1669]  
 HCRE [D.I. 1673] [D.I. 1675]  
 NexBank Entities [D.I. 1676]

All objections to the Plan were consensually resolved prior to the confirmation hearing except for the objections of the Dondero Entities and the U.S. Trustee. The U.S. Trustee did not press its objection at confirmation.

All objections were overruled and the Confirmation Order was entered. The Confirmation Order specifically found that Mr. Dondero would “burn the place down” if his case resolution plan was not accepted.

Dondero, the Trusts, the Advisors, and the Funds appealed [D.I. 1957, 1966, 1970, 1972]. The appeal is being briefed.

1/24/21

**Application for Allowance of Administrative Expense Claim [D.I. 1826]**

**Movants:** Advisors

The Advisors seek an administrative expense claim for approximately \$14 million they allege they overpaid to the Debtor during the bankruptcy case under the Shared Services Agreement. Notably, the Advisors have not paid \$14 million to the Debtor during the bankruptcy.

This matter is currently being litigated. N/A

2/3/21

**NexBank’s Application for Allowance of Administrative Expense Claim [D.I. 1888]**

**Movant:** NexBank

NexBank seeks an administrative expense claim for reimbursement of \$2.5 million paid to the Debtor under its Shared Services Agreement and investment advisory agreement. NexBank alleges that it did not receive the services.

This matter is currently being litigated. N/A

<sup>1</sup> In addition to the Dondero Entities’ objections, the following objections were filed: State Taxing Authorities [D.I. 1662]; Former Employees [D.I. 1666]; IRS [D.I. 1668]; US Trustee [D.I. 1671]; Daugherty [D.I. 1678]. These objections were either resolved prior to confirmation or not pressed at confirmation.

<sup>2</sup> In addition to the Funds, this objection was joined by: Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Healthcare Opportunities Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Real Estate Strategies Fund, NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., and NexPoint Real Estate Advisors VIII, L.P. [D.I. 1677].

**2/8/21** *James Dondero Motion for Status Conference [D.I. 1914]*

**Movant:** Dondero Dondero requested a chambers conference to convince the Court to delay confirmation of the Plan to allow for continued negotiation of the “pot plan.” N/A.

**2/28/21** *Motions for Stay Pending Appeal*

**Movants:** Dondero Advisors [D.I. 1973] Funds [D.I. 1967] The only parties requesting a stay pending appeal were the Dondero Entities. They alleged a number of potential harms to the Dondero Entities if a stay was not granted and offered to post a \$1 million bond. Relief was denied [D.I. 2084, 2095] and a number of the Movants’ arguments were found to be frivolous. Movants sought a stay pending appeal from this Court.

**3/18/21** *James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, The Get Good Trust, and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC, a Delaware Limited Liability Company’s Motion to Recuse Pursuant to 28 U.S.C. § 455 [D.I. 2060]*

**Movants:** Dondero Advisors Trusts HCRE Dondero argued that Judge Jernigan should recuse herself as her rulings against him and his related entities were evidence of her bias. Judge Jernigan denied the motion without briefing from any other party on March 23, 2021 [D.I. 2083]. The Movants appealed [D.I. 2149]. The opening brief and the Debtor’s response have been filed.

**4/15/21** *Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith [D.I. 2199]*

**Movants:** Debtor UBS Securities LLC and UBS AG London Branch (collectively, “UBS”) asserted claims against the Debtor in excess of \$1 billion arising from two Debtor-managed funds’ breach of contract in 2008. The settlement resolved ten plus years of litigation but had to be renegotiated when the Debtor discovered that the Dondero-controlled Debtor had caused the funds to transfer cash and securities with a face amount of over \$300 million to a Cayman-based Dondero controlled entity in 2017, presumably to thwart UBS’s ability to collect on its judgment. The only parties to object were Dondero [D.I. 2295] and Dugaboy [D.I. 2268, 2293]. The Debtor filed an omnibus reply on May 14, 2021 [D.I. 2308]. UBS also filed a reply [D.I. 2310]. The UBS settlement was approved on May 24, 2021 [D.I. 2389]. The objectors appealed the settlement.

4/23/21

**Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders [D.I. 2247]**

**Movants:** Debtor

Debtor filed a motion seeking an order to show cause as to why Dondero, CLOH, DAF, and their counsel should not be held in contempt of court for willingly violating two final Bankruptcy Court orders. The Bankruptcy Court entered an order to show cause on April 29, 2021 [D.I. 2255] and set an in-person hearing for June 8, 2021.

Dondero, CLOH, the DAF, Mark Patrick (allegedly the person in control of the DAF), and their counsel filed responses to the order to show cause on May 14, 2021 [D.I. 2309, 2312, 2313]. The Debtor filed its reply on May 21, 2021 [D.I. 2350]. On August 4, 2021, the Court found each of Dondero, CLOH, the DAF, Patrick, and Sbaiti & Co. in contempt of court [D.I. 2660]

4/23/21

**Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction [D.I. 2242]**

**Movants:** Debtor

DAF and CLOH filed a motion asking the Bankruptcy Court to modify the July 16, 2020, order appointing Seery as the Debtor's CEO/CRO alleging the Bankruptcy Court lacked subject matter jurisdiction.

On May 14, 2021, the Debtor DAF and CLOH filed a response [D.I. 2311] stating that DAF and CLOH's motion was a collateral attack and barred by res judicata, among other things. The Committee joined in the Debtor's response [D.I. 2315]. DAF and CLOH filed their reply on May 21, 2021 [D.I. 2347]. The Motion was denied on June 25, 2021 [D.I. 2506]

4/20/21

**Debtor's Motion for Entry of an Order (i) Authorizing the Debtor to (a) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (b) Incur and Pay Related Fees and Expenses and (ii) Granting Related Relief [D.I. 2229]**

**Movants:** Debtor

The Debtor filed a motion seeking authority to enter into an exit financing facility. The facility was required, in part, to fund the increased costs to the estate from Dondero's litigiousness. Dugaboy filed two objections to the motion alleging, among other things, that there was no basis for the financing [D.I. 2403; 2467]

The motion was granted on June 30 [D.I. 2503]

N/A

4/29/21

**Motion to Compel Compliance with Bankruptcy Rule 2015.3 [D.I. 2256]**

**Movants:** Trusts  
 The Trusts filed a motion on negative notice seeking to compel the Debtor to file certain reports under Rule 2015.3 [D.I. 2256]. The Debtor opposed that motion on May 20, 2021 [D.I. 2341], which was joined by the Committee [D.I. 2343]. The Trusts filed their reply on June 8, 2021 [D.I. 2424].  
 A hearing was held on June 10, 2021 [D.I. 2442] and the motion was adjourned. The motion was denied as moot on September 7, 2021 [D.I. 2812].  
 The Trusts appealed [D.I. 2840].

6/25/21

**Debtor's Motion for Entry of an Order (i) Authorizing the (a) Creation of an Indemnity Subtrust and (b) entry into an Indemnity Trust Agreement and (ii) Granting Related Relief [D.I. 2491]**

**Movants:** Debtor  
 The Debtor filed a motion seeking authority to create an indemnity trust to secure the Reorganized Debtor, Claimant Trust, and Litigation Trust's indemnification obligations [D.I. 2491]. Dondero, HCMFA, NPA, and Dugaboy objected [D.I. 2563] arguing that it constituted an improper plan modification. The Debtor and the Committee filed replies in support [D.I. 2576, 2577].  
 A hearing was held and the Debtor's motion was granted [D.I. 2599].  
 Dondero, HCMFA, NPA, and Dugaboy appealed [D.I. 2673].

8/3/21

**James Dondero's First Amended Motion for Entry of an Order (i) Compelling Mediation and (ii) Granting Related Relief [D.I. 2657]**

**Movants:** Dondero  
 Dondero filed a motion to compel mediation nearly six months after confirmation of the Debtor's plan [D.I. 2657]. The Debtor filed a response setting forth certain conditions for the appointment of a mediator [D.I. 2756].  
 Dondero withdrew his motion N/A to compel mediation after reviewing the Debtor's conditions [D.I. 2763].

**Highland Capital Management, L.P. v. James D. Dondero, Adv. Proc. No. 20-03190-sgj (Bankr. N.D. Tex.)**

12/7/20

**Plaintiff Highland Capital Management, L.P.'s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero [D.I. 2]**

**Movant:** Debtor  
 The Debtor commenced an adversary proceeding seeking an injunction against Dondero. Dondero actively interfered with the management of the estate. Seery had instructed Debtor employees to sell certain securities on behalf of the CLOs. Dondero disagreed with Seery's direction and intervened to prevent these sales from being executed. Dondero also threatened Seery via text message and sent threatening emails to other Debtor employees.  
 A TRO was entered on December 10 [D.I. 10], which prohibited Dondero from, among other things, interfering with the Debtor's estate and communicating with Debtor employees unless it related to the Shared Services Agreements. A preliminary injunction was entered on January 12 after an exhaustive evidentiary hearing [D.I. 59]. This matter was resolved consensually by order entered  
 Dondero appealed to the District Court, which declined to hear the interlocutory appeal. Dondero is seeking a writ of mandamus from the Fifth Circuit. The writ of mandamus was withdrawn as part of the settlement.



May 18, 2021 [D.I. 182], which enjoined Dondero from certain conduct until the close of the Bankruptcy Case.

**1/7/21** *Plaintiff's Motion for an Order Requiring Mr. James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO [D.I. 48]*

**Movant:** Debtor

In late December, the Debtor discovered that Dondero had violated the TRO in multiple ways, including by destroying his cell phone, his text messages, and conspiring with the Debtor's then general counsel and assistant general counsel<sup>3</sup> to coordinate offensive litigation against the Debtor. The hearing on this matter was delayed and there was litigation on evidentiary issues, among other things. An extensive evidentiary hearing was held on March 22.

The Court entered an order finding Mr. Dondero in contempt of court on June 7, 2021 [D.I. 190]

Mr. Dondero has appealed [D.I. 212]

---

<sup>3</sup> As a result of this conduct, among other things, the Debtor terminated its general counsel and assistant general counsel for cause on January 5, 2021.



The Debtor brought this action to force the Advisors to admin claim since both matters formulate a transition plan and to avoid exposure to the arise from Shared Services SEC, among others. Agreements.

**Highland Capital Management, L.P. v. James Dondero, Adv. Proc. No. 21-03003-sgj (Bankr. N.D. Tex.)**

**1/22/21 Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate [D.I. 1]**

**Movant:** Debtor Dondero borrowed \$8.825 million from Debtor The parties are currently N/A pursuant to a demand note. Dondero did not pay when conducting discovery and the note was called and the Debtor was forced to file an engaging in motion practice. adversary. Dondero subsequently amended his answer The parties entered into a global to add a series of affirmative defenses, including that revised scheduling agreement the notes had been forgiven because of an for all five notes litigations. undocumented oral agreement with Dondero's sister.

**4/15/21 James Dondero's Motion and Memorandum of Law in Support to Withdraw the Reference [D.I. 21]**

**Movant:** Dondero Three months after the complaint was filed Dondero A hearing was held on May 25, 2021, and a stay was granted until mid-July 2021. The Court filed a motion to withdraw the bankruptcy reference and a motion to stay the adversary pending resolution of his transmitted a report and motion [D.I. 22]. recommendation on July 7 [D.I. 69]. Dondero filed a limited objection to the R&R.

**Highland Capital Management, L.P. v. Highland Capital Management Fund Advisors, L.P., Adv. Proc. No. 21-03004-sgj (Bankr. N.D. Tex.)**

**1/22/21 Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate [D.I. 1]**

**Movant:** Debtor HCMFA borrowed \$7.4 million from Debtor pursuant The parties are currently N/A to a demand note. Dondero did not pay when the note conducting discovery and was called and the Debtor was forced to file an engaging in motion practice. adversary. HCMFA subsequently amended its answer The parties entered into a global to add a series of affirmative defenses, including that revised scheduling agreement the notes had been forgiven because of an for all five notes litigations. undocumented oral agreement between Dondero and his sister.



4/13/21 Defendants Motion to Withdraw the Reference [D.I. 20]

**Movant:** HCMFA Three months after the complaint was filed HCMFA A hearing was held on May 25, N/A  
filed a motion to withdraw the bankruptcy reference. 2021. The Court transmitted a  
R&R on July 9 [D.I. 52].  
HCMFA filed a limited  
objection to the R&R.

**Highland Capital Management, L.P. v. NexPoint Advisors, L.P., Adv. Proc. No. 21-03005-sgj (Bankr. N.D. Tex.)**

1/22/21 Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate [D.I. 1]

**Movant:** Debtor NPA borrowed approximately \$30.75 million under an The parties are currently N/A  
installment note. NPA did not pay the note when and conducting discovery and  
the Debtor was forced to file an adversary. NPA engaging in motion practice.  
subsequently amended its answer to add a series of The parties entered into a global  
affirmative defenses, including that the notes had been revised scheduling agreement  
forgiven because of an undocumented oral agreement for all five notes litigations.  
between Dondero and his sister.

4/13/21 Defendants Motion to Withdraw the Reference [D.I. 19]

**Movant:** NPA Three months after the complaint was filed HCMFA A hearing was held on May 25, N/A  
filed a motion to withdraw the bankruptcy reference. 2021. The Court transmitted a  
R&R on July 9 [D.I. 42]. NPA  
filed a limited objection to the  
R&R. The District Court  
adopted the R&R. [D. Ct. D.I.  
10].

**Highland Capital Management, L.P. v. Highland Capital Management Services, Inc., Adv. Proc. No. 21-03006-sgj (Bankr. N.D. Tex.)**

1/22/21

**Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate [D.I. 1]**

**Movant:** Debtor Highland Capital Management Services, Inc. The parties are currently N/A ("HCMS"), borrowed \$900,000 in demand notes and conducting discovery and approximately \$20.5 million in installment notes. engaging in motion practice. HCMS did not pay the notes when due and the Debtor The parties entered into a global revised scheduling agreement was forced to file an adversary. HCMS subsequently amended its answer to add a series of affirmative defenses, including that the notes had been forgiven because of an undocumented oral agreement between Dondero and his sister.

6/3/21

**Defendants Motion to Withdraw the Reference [D.I. 19]**

**Movant:** HCMS A hearing was held on July 8, 2021. The Court issued its R&R on July 15, 2021 [D. I. 52]. HCMS filed a limited objection to the R&R. the District Court adopted the R&R. [D. Ct. Docket No. 5]. HCMS filed a Motion for Reconsideration of the District Court's Order adopting R&R [D. Ct. Docket No. 8].

**Highland Capital Management, L.P. v. HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Adv. Proc. No. 21-03007-sgj (Bankr. N.D. Tex.)**

1/22/21

**Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate [D.I. 1]**

**Movant:** Debtor HCRE borrowed \$4.25 million in demand notes and N/A approximately \$6.05 million in installment notes. conducting discovery and HCRE did not pay the notes when due and the Debtor engaging in motion practice. HCRE was forced to file an adversary. HCRE subsequently amended its answer to add a series of affirmative defenses, including that the notes had been forgiven because of an undocumented oral agreement between Dondero and his sister.

6/3/21

**Defendants Motion to Withdraw the Reference [D.I. 20]**

**Movant** HCMS Five months after the complaint was filed HCMS filed a motion to withdraw the reference.  
 A hearing was held on July 8, 2021. The Court issued its R&R on July 15, 2021 [D.I. 47]. HCRE filed a limited objection to the R&R [D. Ct. Docket No. 5].

**Charitable DAF Fund, L.P., and CLO Holdco, Ltd., v. Highland Capital Management, L.P., Highland HCF Advisor, Ltd., and Highland CLO Funding, Ltd., Case No. 21-cv-00842-B (N.D. Tex. April 12, 2021)**  
 4/12/21 Original Complaint

**Movants:** DAF CLOH  
 Movants allege that the Debtor and Seery violated SEC rules, breached fiduciary duties, engaged in self-dealing, and violated RICO in connection with its settlement with the HarbourVest Entities. The Movants brought this complaint despite CLOH having objected to the HarbourVest settlement; never raised this issue; and withdrawn its objection. The Debtor believes the complaint is frivolous and represents a collateral attack on the order approving the HarbourVest settlement. The Debtor will take all appropriate actions.

On May 19, the Debtor filed a motion to enforce the order of reference seeking to have the case referred to the Bankruptcy Court [D.I. 22]. On May 27, 2019, the Debtor filed a motion to dismiss the complaint [D.I. 26]. Briefing was completed for both motions. After briefing was completed, CLOH and the DAF filed a motion seeking to stay the proceeding pending resolution of the appeal of the confirmation order [D.I. 55] and the Debtor filed a responsive brief.

the Court entered an order enforcing the reference on September 20, 2021 [D.I. 64],a and this matter is proceeding in the Bankruptcy Court.

4/19/21 Plaintiff's Motion for Leave to File First Amended Complaint in the District Court

**Movants:** DAF CLOH  
 Movants filed a motion seeking leave from this Court to add Seery as a defendant and to seek, in this Court, a reconsideration of two final Bankruptcy Court orders.

This Court denied the motion but with leave to refile.  
 N/A

**PCMG Trading Partners XXIII, L.P. v. Highland Capital Management, L.P., Case No. 21-cv-01169-N (N.D. Tex. May 21, 2021)**  
 4/12/21 Original Complaint

**Movants:** PCMG Trading Partners XXIII, L.P.  
 Movants allege that the Debtor violated SEC rules and breached fiduciary duties by causing one of its managed investment vehicles to sell certain assets. The Movant is an entity owned and controlled by Dondero, which had less than a 0.05% interest in the investment vehicle at issue and is no longer an investor. The Debtor believes the complaint is frivolous. The Debtor will take all appropriate actions. The Complaint was recently filed and the Debtor has not yet been served. Although the Complaint was not served, the movant filed a motion to stay on August 26, 2021 pending the appeal of the confirmation order [D.I. 6]. N/A

**The Dugaboy Investment Trust v. Highland Capital Management, L.P., Case No. 21-cv-01479-S (N.D. Tex. June 23, 2021)**  
 6/23/21 Original Complaint

**Movants:** Dugaboy  
 Dugaboy alleges that the Debtor violated SEC rules and breached fiduciary duties by causing one of its managed investment vehicles to sell certain assets. Dugaboy is Dondero's family trust with less than a 2% interest in the vehicle. Dugaboy's allegations in the complaint are duplicative of allegations it made in proofs of claim filed in the Bankruptcy Court. The Complaint was withdrawn after the Debtor informed the Bankruptcy Court of the filing. N/A

**The Charitable DAF Fund, LP v. Highland Capital Management, L.P., Case No. 21-cv-01710-N (N.D. Tex. July 22, 2021)**  
 7/22/21 Original Complaint

**Movants:** Dugaboy  
 DAF alleges that the Debtor violated SEC rules and breached fiduciary duties by causing one of its managed investment vehicles to sell certain assets. DAF's allegations in the complaint are duplicative of allegations Dugaboy made in proofs of claim filed in the Bankruptcy Court and in its complaint filed in the Northern District of Texas. The Complaint was recently filed and the Debtor has not yet been served. Although the Complaint was not served, the movant filed a motion to stay on August 26, 2021 pending the appeal of the confirmation order [D.I. 6]. N/A

***In re James Dondero, Petitioner, Cause No. DC-21-09534 (Tex. July 22, 2021)***  
7/22/21 *Original Complaint*

**Movants:** Dondero

Dondero seeks pre-suit discovery from Farallon Capital, a purchaser of certain claims in this case, and the Crusader Fund. Dondero alleges that Farallon breached certain U.S. Trustee requirements when it purchased those claims. Dondero also alleges that Farallon purchased those claims because of its relationship to Mr. Seery and that Mr. Seery was leveraging his relationship with Farallon to ensure that he remains in control of the Debtor.

Farallon and the Crusader Fund removed this action to the Bankruptcy Court [D.I. 1]. Dondero moved to remand [D.I. 4], which is being opposed.

This matter is currently being litigated.

## **EXHIBIT 2**

**SUMMARY OF DONDERO AND RELATED ENTITIES MOTIONS TO CONTINUE, STAY, OR ABATE**

**ADVERSARY PROCEEDING TO ENJOIN DONDERO FROM INTERFERING WITH HIGHLAND’S  
 BANKRUPTCY ESTATE AND RELATED CONTEMPT PROCEEDING<sup>1</sup>**

<u>Motion</u>	<u>Court</u>	<u>Movant</u>
<i>Motion to Continue Contempt Hearing</i> , Adv. Proc. No. 21-3190-sgj-11, D.I. 102 (Bankr. N.D. Tex. Feb. 17, 2021)	Bankruptcy Court	Dondero
<i>Motion to Continue Further Contempt Hearing</i> , Adv. Proc. No. 21-3190-sgj-11, D.I. 119 (Bankr. N.D. Tex. Mar. 2, 2021)	Bankruptcy Court	Dondero
<i>Motion for Continuance of Contempt Hearing</i> , Adv. Proc. No. 21-3190-sgj-11 (Bankr. N.D. Tex. Mar. 10, 2021)	Bankruptcy Court	Dondero
<i>Defendant’s Emergency Motion to Stay Proceedings Pending Resolution of Defendant’s Petition for Writ of Mandamus or, Alternatively, Motion to Continue Trial Setting</i> , Adv. Proc. No. 21-3190-sgj-11, D.I. 154 (Bankr. N.D. Tex. Apr. 30, 2021)	Bankruptcy Court	Dondero
<i>Motion to Stay Permanent Injunction Proceedings Pending Resolution of Mandamus</i> , Case No. 21-10219 (5th Cir. May 6, 2021)	Fifth Circuit	Dondero
<i>Defendant’s Emergency Motion for Stay Pending Appeal and for Approval of Supersedeas Bond or Other Security</i> , Adv. Proc. No. 21-3190-sgj-11, D.I. 196 (Bankr. N.D. Tex. June 15, 2021)	Bankruptcy Court	Dondero

**ADVERSARY PROCEEDING TO COLLECT ON CERTAIN DEMAND AND TERM NOTES ISSUED TO  
 DONDERO AND HIS RELATED ENTITIES**

<u>Motion</u>	<u>Court</u>	<u>Movant</u>
<i>Defendant James Dondero’s Emergency Motion to Continue Docket Call and Trial and/or Amend Scheduling Order</i> , Adv. Proc. No. 21-03003-sgj-11, D.I.8 (Bankr. N.D. Tex. Mar. 26, 2021)	Bankruptcy Court	Dondero

---

<sup>1</sup> This chart excludes the seven motions filed in the Bankruptcy Court, the District Court, and the Fifth Circuit Court of Appeals by the Dondero Entities to stay the effective date of the Confirmation Order pending appeal.



**SUMMARY OF DONDERO AND RELATED ENTITIES MOTIONS TO CONTINUE, STAY, OR ABATE**

<i>James Dondero's Motion to Stay Pending the Motion to Withdraw the Reference of Plaintiff's Complaint</i> , Adv. Proc. No. 21-03003-sgj-11, D.I. 22 (Bankr. N.D. Tex. Apr. 15, 2021)	Bankruptcy Court	Dondero
<i>Defendant's Expedited Motion to Stay Pending Resolution of Motion to Withdraw the Reference of Adversary Proceeding</i> , Adv. Proc. No. 21-03006-sgj-11, D.I. 23 (Bankr. N.D. Tex. June 3, 2021)	Bankruptcy Court	Highland Capital Management Services, Inc.
<i>Defendant's Expedited Motion to Stay Pending Resolution of Motion to Withdraw the Reference of Adversary Proceeding</i> , Adv. Proc. No. 21-03006-sgj-11, D.I. 26 (Bankr. N.D. Tex. June 4, 2021)	Bankruptcy Court	Highland Capital Management Services, Inc.
<i>Defendant's Motion to Stay Pending Resolution of Motion to Withdraw the Reference of Adversary Proceeding</i> , Adv. Proc. No. 21-03007-sgj-11, D.I. 24 (Bankr. N.D. Tex. June 3, 2021)	Bankruptcy Court	HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)
<i>Defendant's Motion to Stay Pending Resolution of Motion to Withdraw the Reference of Adversary Proceeding</i> , Adv. Proc. No. 21-03007-sgj-11, D.I. 27 (Bankr. N.D. Tex. June 3, 2021)	Bankruptcy Court	HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)

**CHAPTER 11 BANKRUPTCY PROCEEDING OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

<u>Motion</u>	<u>Court</u>	<u>Movant</u>
<i>Motion to Continue Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims</i> , Case No. 19-34054-sgj-11, D.I. 2226 (Bankr. N.D. Tex. Apr. 20, 2021)	Bankruptcy Court	CPCM, LLC <sup>2</sup>

---

<sup>2</sup> CPCM, LLC, is an entity created, on information and belief, by Scott Ellington and James Dondero to purchase the claims of former Highland employees in order to litigate those claims against Highland.



**SUMMARY OF DONDERO AND RELATED ENTITIES MOTIONS TO CONTINUE, STAY, OR ABATE**

**DISTRICT COURT PROCEEDINGS FILED BY APPELLANTS AND OTHER DONDERO RELATED ENTITIES TO SUE HIGHLAND FOR ALLEGED MISMANAGEMENT OF ITS ESTATE DURING ITS BANKRUPTCY**

<u>Motion</u>	<u>Court</u>	<u>Movant</u>
<i>Plaintiff's Motion to Stay All Proceedings</i> , Case No. 3:21-cv-01710-N, D.I. 6 (N.D. Tex. Aug. 26, 2021)	District Court	DAF
<i>Plaintiff's Motion to Stay All Proceedings</i> , Case No. 3:21-cv-00842-B, D.I. 55 (N.D. Tex. Aug. 26, 2021)	District Court	Appellants
<i>Plaintiff's Motion to Stay All Proceedings</i> , Case No. 3:21-cv-01169-N, D.I. 6 (N.D. Tex. Aug. 26, 2021)	District Court	PCMG Trading Partners XXIII, L.P. <sup>3</sup>
<i>Appellants' Opposed Motion to Stay or Abate Appeal</i> , Case No. 3:21-cv-01585-S, D.I. 10 (N.D. Tex. Sept. 22, 2021)	District Court	Appellants
<i>Partially Opposed Motion for Extension of Time to File Appellants' Opening Brief</i> , Case No. 3:21-cv-01585-S, D.I. 13 (N.D. Tex. Sept. 29, 2021)	District Court	Appellants

---

<sup>3</sup> PCMG Trading Partners XXIII, L.P., is an entity majority owned indirectly by Dondero which was used to invest in certain investment vehicles managed by Highland.

## **EXHIBIT 3**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

  
United States Bankruptcy Judge

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

\_\_\_\_\_)  
In re: ) Chapter 11  
)  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> ) Case No. 19-34054-sgj11  
)  
Debtor. )  
\_\_\_\_\_)

**ORDER (I) CONFIRMING THE FIFTH AMENDED  
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court<sup>2</sup> having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.



*Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

*Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

*Certificate of Service* dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed<sup>3</sup> pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;<sup>4</sup> (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

---

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

<sup>4</sup> The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.



## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor’s Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an “asset monetization plan” because it involves the orderly wind-down of the Debtor’s estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor’s economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the



bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.<sup>5</sup> As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,<sup>6</sup> and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

---

<sup>5</sup> This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

<sup>6</sup> See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was



much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.<sup>7</sup> The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

---

<sup>7</sup> See *Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

#### 17. **Questionability of Good Faith as to Outstanding Confirmation**

**Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." See Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and



Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors



will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the



Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

**46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

**47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, un rebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.



- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R. 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.<sup>8</sup> Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

---

<sup>8</sup> See Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith [Docket No. 1876]



creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15<sup>th</sup> Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.<sup>9</sup>

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

---

<sup>9</sup> The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan’s release, discharge and release provisions (the “Injunction Provision”). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor’s assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor’s assets and those assets could be monetized for less money to the detriment of the Debtor’s creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a “third-party release.” The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms “implementation” and “consummation” are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the “Gatekeeper Provision”). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court’s time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor’s settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court’s order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero’s affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the “Dondero Post-Petition Litigation”).

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery’s credible testimony, that if Mr. Dondero’s plan proposal was not accepted, he would “burn down the place.” The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery’s testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result



in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5<sup>th</sup> Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5<sup>th</sup> Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5<sup>th</sup> Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots<sup>10</sup> – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

---

<sup>10</sup> As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**A. Confirmation of the Plan.** The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.<sup>11</sup>

**B. Findings of Fact and Conclusions of Law.** The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

**C. Objections.** Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

**D. Plan Supplements and Plan Modifications.** The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

---

<sup>11</sup> The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**E. Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

**F. Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the



representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

**G. Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

**H. Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.



**I. Preservation of Causes of Action.** Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**J. Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

**K. Cancellation of Equity Interests and Issuance of New Partnership**

**Interests.** On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

**L. Transfer of Assets to Claimant Trust.** On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

**M. Transfer of Estate Claims to Litigation Sub-Trust.** On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

**N. Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

**O. Objections to Claims.** The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

**P. Assumption of Contracts and Leases.** Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

**Q. Rejection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

**R. Assumption of Issuer Executory Contracts.** On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers<sup>12</sup> a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples”) and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

**S. Release of Issuer Claims.** Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

---

<sup>12</sup> The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

**T. Release of Debtor Claims against Issuer Released Parties.** Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Feronia Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

**U. Authorization to Consummate.** The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

**V. Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date



must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

**W. Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

**X. Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**Y. Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

*provided, however,* the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

**Z. Releases by the Debtor.** On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

**AA. Injunction.** Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

**in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in**

**Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.**

**BB. Duration of Injunction and Stays.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

**CC. Continuance of January 9 Order and July 16 Order.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

**DD. No Governmental Releases.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

**EE. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**FF. Cancellation of Notes, Certificates and Instruments.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the



Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

**GG. Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

**HH. Post-Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

**II. Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**JJ. Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

**KK. Notice of Effective Date.** As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

**LL. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

**MM. Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

**NN. References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

**OO. Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

**PP. Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

**QQ. Resolution of Objection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

**RR. Resolution of Objections of Scott Ellington and Isaac Leventon.**

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

**SS. No Release of Claims Against Senior Employee Claimants.** For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

**TT. Resolution of Objection of Internal Revenue Service.** Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

**UU. IRS Proof of Claim.** Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.



**VV. CLO Holdco, Ltd. Settlement** Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

**WW. Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

**XX. Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**YY. Dissolution of the Committee.** On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have



any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

**ZZ. Miscellaneous.** After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

**###END OF ORDER###**

**Exhibit A**

**Fifth Amended Plan (as Modified)**

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

---

In re: )  
 ) Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> )  
 ) Case No. 19-34054-sgj11  
Debtor. )  
 )  
 )  
 )

---

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

---

**PACHULSKI STANG ZIEHL & JONES LLP**

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

**HAYWARD & ASSOCIATES PLLC**

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

Counsel for the Debtor and Debtor-in-Possession

---

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

ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS .....	1
A. Rules of Interpretation, Computation of Time and Governing Law.....	1
B. Defined Terms .....	2
ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS.....	16
A. Administrative Expense Claims.....	16
B. Professional Fee Claims.....	17
C. Priority Tax Claims.....	17
ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS .....	18
A. Summary .....	18
B. Summary of Classification and Treatment of Classified Claims and Equity Interests .....	18
C. Elimination of Vacant Classes .....	19
D. Impaired/Voting Classes .....	19
E. Unimpaired/Non-Voting Classes .....	19
F. Impaired/Non-Voting Classes.....	19
G. Cramdown.....	19
H. Classification and Treatment of Claims and Equity Interests.....	19
I. Special Provision Governing Unimpaired Claims.....	24
J. Subordinated Claims .....	24
ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN .....	24
A. Summary .....	24
B. The Claimant Trust .....	25
1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.....	25
2. Claimant Trust Oversight Committee.....	26

	<u>Page</u>
3. Purpose of the Claimant Trust. ....	27
4. Purpose of the Litigation Sub-Trust.....	27
5. Claimant Trust Agreement and Litigation Sub-Trust Agreement. ....	27
6. Compensation and Duties of Trustees. ....	29
7. Cooperation of Debtor and Reorganized Debtor. ....	29
8. United States Federal Income Tax Treatment of the Claimant Trust. ....	29
9. Tax Reporting. ....	30
10. Claimant Trust Assets. ....	30
11. Claimant Trust Expenses. ....	31
12. Trust Distributions to Claimant Trust Beneficiaries. ....	31
13. Cash Investments. ....	31
14. Dissolution of the Claimant Trust and Litigation Sub-Trust. ....	31
C. The Reorganized Debtor.....	32
1. Corporate Existence.....	32
2. Cancellation of Equity Interests and Release.....	32
3. Issuance of New Partnership Interests.....	32
4. Management of the Reorganized Debtor.....	33
5. Vesting of Assets in the Reorganized Debtor.....	33
6. Purpose of the Reorganized Debtor.....	33
7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets.....	33
D. Company Action.....	34
E. Release of Liens, Claims and Equity Interests.....	35
F. Cancellation of Notes, Certificates and Instruments.....	35

	<u>Page</u>
G. Cancellation of Existing Instruments Governing Security Interests.....	35
H. Control Provisions .....	35
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	36
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	38
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	39
C. Cash Distributions.....	40
D. Disputed Claims Reserve.....	40
E. Distributions from the Disputed Claims Reserve .....	40
F. Rounding of Payments.....	40
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	41
I. General Distribution Procedures.....	41
J. Address for Delivery of Distributions.....	41
K. Undeliverable Distributions and Unclaimed Property.....	41
L. Withholding Taxes.....	42

	<u>Page</u>
M. Setoffs .....	42
N. Surrender of Cancelled Instruments or Securities .....	42
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	43
A. Filing of Proofs of Claim.....	43
B. Disputed Claims.....	43
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	43
D. Allowance of Claims and Equity Interests.....	44
1. Allowance of Claims.....	44
2. Estimation .....	44
3. Disallowance of Claims .....	44
ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	45
A. Conditions Precedent to the Effective Date .....	45
B. Waiver of Conditions.....	46
C. Dissolution of the Committee .....	46
ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	47
A. General.....	47
B. Discharge of Claims.....	47
C. Exculpation .....	47
D. Releases by the Debtor.....	48
E. Preservation of Rights of Action.....	49
1. Maintenance of Causes of Action.....	49
2. Preservation of All Causes of Action Not Expressly Settled or Released .....	49



	<u>Page</u>
F. Injunction .....	50
G. Duration of Injunctions and Stays.....	51
H. Continuance of January 9 Order .....	51
ARTICLE X. BINDING NATURE OF PLAN .....	51
ARTICLE XI. RETENTION OF JURISDICTION.....	52
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	54
A. Payment of Statutory Fees and Filing of Reports .....	54
B. Modification of Plan .....	54
C. Revocation of Plan.....	54
D. Obligations Not Changed.....	55
E. Entire Agreement .....	55
F. Closing of Chapter 11 Case .....	55
G. Successors and Assigns.....	55
H. Reservation of Rights.....	55
I. Further Assurances.....	56
J. Severability .....	56
K. Service of Documents .....	56
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	57
M. Governing Law .....	58
N. Tax Reporting and Compliance .....	58
O. Exhibits and Schedules .....	58
P. Controlling Document .....	58

---

**DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

**ARTICLE I.**  
**RULES OF INTERPRETATION, COMPUTATION OF TIME,**  
**GOVERNING LAW AND DEFINED TERMS**

**A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests



unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized



Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.



102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.



130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## ARTICLE II.

### ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

#### A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6



Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.



- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

### **ARTICLE IV.** **MEANS FOR IMPLEMENTATION OF THIS PLAN**

#### **A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### **1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.**

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer



of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.



11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

### **C. The Reorganized Debtor**

#### **1. Corporate Existence**

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

#### **2. Cancellation of Equity Interests and Release**

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

#### **3. Issuance of New Partnership Interests**

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.



**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

## ARTICLE V.

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),



as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.



**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trust, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**



**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.**  
**EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

**B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

**C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### **1. Maintenance of Causes of Action**

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### **2. Preservation of All Causes of Action Not Expressly Settled or Released**

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,



without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court**

**(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.**

**G. Duration of Injunctions and Stays**

**ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.**

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).



**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

**ARTICLE XII.**  
**MISCELLANEOUS PROVISIONS**

**A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

#### **I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

#### **J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

#### **K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

##### **If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700

Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the  
Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*



Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

Case 19-34054-sgj11 Doc 1943 Filed 02/22/21 Entered 02/22/21 16:48:16 Page 157 of 161

**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

### **Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 3**



SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>				<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>				<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

Vol. 8

001349

001352

001359

001361

001369

001381

Thru Vol. 10

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018				
	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024				
	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036				
	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051				
Thru Vol 14				
Vol. 15	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
002916				
Thru Vol. 18				
Vol. 19	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
003783				
Thru Vol. 22				



001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti



## **EXHIBIT 4**



ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
 GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law ..... 1

    B. Defined Terms ..... 2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 18

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
 AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
 Equity Interests ..... 19

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes ..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests..... 20

    I. Special Provision Governing Unimpaired Claims..... 24

    J. Subordinated Claims ..... 25

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN ..... 25

    A. Summary ..... 25

    B. The Claimant Trust ..... 26

        1. *Creation and Governance of the Claimant Trust and Litigation Sub-  
 Trust.* ..... 26

        2. *Claimant Trust Oversight Committee* ..... 27

	<u>Page</u>
3. <i>Purpose of the Claimant Trust</i> .....	27
4. <i>Purpose of the Litigation Sub-Trust</i> .....	28
5. <i>Claimant Trust Agreement and Litigation Sub-Trust Agreement</i> .....	28
6. <i>Compensation and Duties of Trustees</i> .....	29
7. <i>Cooperation of Debtor and Reorganized Debtor</i> .....	30
8. <i>United States Federal Income Tax Treatment of the Claimant Trust</i> .....	30
9. <i>Tax Reporting</i> .....	30
10. <i>Claimant Trust Assets</i> .....	31
11. <i>Claimant Trust Expenses</i> .....	31
12. <i>Trust Distributions to Claimant Trust Beneficiaries</i> .....	31
13. <i>Cash Investments</i> .....	31
14. <i>Dissolution of the Claimant Trust and Litigation Sub-Trust</i> .....	32
C. <i>The Reorganized Debtor</i> .....	32
1. <i>Corporate Existence</i> .....	32
2. <i>Cancellation of Equity Interests and Release</i> .....	33
3. <i>Issuance of New Partnership Interests</i> .....	33
4. <i>Management of the Reorganized Debtor</i> .....	33
5. <i>Vesting of Assets in the Reorganized Debtor</i> .....	34
6. <i>Purpose of the Reorganized Debtor</i> .....	34
7. <i>Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets</i> .....	34
D. <i>Company Action</i> .....	34
E. <i>Release of Liens, Claims and Equity Interests</i> .....	35
F. <i>Cancellation of Notes, Certificates and Instruments</i> .....	36
G. <i>Cancellation of Existing Instruments Governing Security Interests</i> .....	36

	<u>Page</u>
H. Control Provisions .....	36
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	37
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	39
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	40
C. Cash Distributions.....	41
D. Disputed Claims Reserve.....	41
E. Distributions from the Disputed Claims Reserve .....	41
F. Rounding of Payments.....	41
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	42
I. General Distribution Procedures.....	42
J. Address for Delivery of Distributions.....	42
K. Undeliverable Distributions and Unclaimed Property.....	42
L. Withholding Taxes.....	43
M. Setoffs .....	43

	<u>Page</u>
N. Surrender of Cancelled Instruments or Securities .....	43
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
 ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	
44	
A. Filing of Proofs of Claim .....	44
B. Disputed Claims.....	44
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	44
D. Allowance of Claims and Equity Interests.....	44
1. <i>Allowance of Claims</i> .....	45
2. <i>Estimation</i> .....	45
3. <i>Disallowance of Claims</i> .....	45
 ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	
46	
A. Conditions Precedent to the Effective Date .....	46
B. Waiver of Conditions.....	47
C. Effect of Non-Occurrence of Conditions to Effectiveness	<b>Error! Bookmark not defined.</b>
D. Dissolution of the Committee .....	47
 ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	
48	
A. General.....	48
B. Discharge of Claims.....	48
C. Exculpation .....	48
D. Releases by the Debtor.....	49
E. Preservation of Rights of Action.....	50
1. <i>Maintenance of Causes of Action</i> .....	50
2. <i>Preservation of All Causes of Action Not Expressly Settled or Released</i> .....	50
F. Injunction .....	51

	<u>Page</u>
G. Term of Injunctions or Stays.....	52
H. Continuance of January 9 Order .....	52
ARTICLE X. BINDING NATURE OF PLAN .....	52
ARTICLE XI. RETENTION OF JURISDICTION.....	53
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	55
A. Payment of Statutory Fees and Filing of Reports .....	55
B. Modification of Plan .....	55
C. Revocation of Plan.....	55
D. Obligations Not Changed.....	56
E. Entire Agreement .....	56
F. Closing of Chapter 11 Case .....	56
G. Successors and Assigns.....	56
H. Reservation of Rights.....	56
I. Further Assurances.....	57
J. Severability .....	57
K. Service of Documents .....	57
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	58
M. Governing Law .....	59
N. Tax Reporting and Compliance .....	59
O. Exhibits and Schedules .....	59
P. Controlling Document .....	59



---

## **DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### **ARTICLE I.** **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

#### **A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold



Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or



Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.



101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any

damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized



Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized

Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee

Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF  
CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the

Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

## **H. Classification and Treatment of Claims and Equity Interests**

### *1. Class 1 – Jefferies Secured Claim*

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

### *2. Class 2 – Frontier Secured Claim*

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.



3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.



- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

#### 11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor’s limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor’s current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be

cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust**<sup>2</sup>

*1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.



Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and

monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.



Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust

Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are

investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.



5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in

the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of



doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a

contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed

and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity

Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the



Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.



**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.**  
**PROCEDURES FOR RESOLVING CONTINGENT,**  
**UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH**

**LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding

upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

#### **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's



Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross

negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation



Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

## **E. Preservation of Rights of Action**

### *1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

### *2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final

Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or**

arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state,

Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or

expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such



orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.** **MISCELLANEOUS PROVISIONS**

### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

### **B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

### **C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement

executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this



Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego

the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

## EXHIBIT 5

D. Michael Lynn – State Bar ID 12736500  
 John Y. Bonds, III – State Bar ID 02589100  
 Clay M. Taylor – State Bar ID 24033261  
 Bryan C. Assink – State Bar ID 24089009  
**BONDS ELLIS EPPICH SCHAFFER JONES LLP**  
 420 Throckmorton Street, Suite 1000  
 Fort Worth, Texas 76102  
 (817) 405-6900 – Telephone  
 (817) 405-6902 – Facsimile  
[Michael.lynn@bondsellis.com](mailto:Michael.lynn@bondsellis.com)  
[john@bondsellis.com](mailto:john@bondsellis.com)  
[clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)  
[bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)

**ATTORNEYS FOR JAMES DONDERO**

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

In re:	§	Case No. 19-34054-SGJ-11
	§	
HIGHLAND CAPITAL MANAGEMENT, LP,	§	
	§	Chapter 11
	§	
Debtor.	§	

---

**NOTICE OF APPEAL**

James Dondero (the “Appellant”), creditor, indirect equity holder, and party-in-interest in the above styled and numbered bankruptcy case (the “Bankruptcy Case”) of Highland Capital Management, L.P. (the “Debtor”), and pursuant to 28 U.S.C. § 158(a), hereby appeals to the United States District Court for the Northern District of Texas that certain *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* (the “Confirmation Order”) entered by the Bankruptcy Court on February 22, 2021 at docket no. 1943 in the Bankruptcy Case.<sup>1</sup>

<sup>1</sup> Appellant anticipates that the Appeal will actually be certified for a direct appeal to the 5<sup>th</sup> Circuit by agreement of all Appellants and Appellee based on the parties’ prior agreements, but hereby directs this appeal to the District Court as that direct appeal to the Circuit Court is not yet procedurally ripe.



A copy of the Confirmation Order is attached hereto as Exhibit “A.”

The names of the parties to the Confirmation Order, and the contact information for their attorneys, is as follows:

1. Appellant:<sup>2</sup>

James Dondero

Attorneys:

D. Michael Lynn  
John Y. Bonds  
Clay M. Taylor  
Bryan C. Assink  
Bonds Ellis Eppich Schafer Jones LLP  
420 Throckmorton Street, Ste. 1000  
Fort Worth, Texas 76102  
Telephone: (817) 405-6900  
Facsimile: (817) 405-6902  
[Michael.lynn@bondsellis.com](mailto:Michael.lynn@bondsellis.com)  
[john@bondsellis.com](mailto:john@bondsellis.com)  
[clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)  
[bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)

---

<sup>2</sup> Two other Notices of Appeal have already been filed by other Appellants to this Order and are found at Docket Nos. 1957 and 1966 which were filed by Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. on the one hand; and Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc. on the other hand, respectively. It is possible that other appellants may additionally file separate notices of appeal.



2. Appellee:

Highland Capital Management, L.P.

Attorneys:

Jeffrey N. Pomerantz  
Ira D. Kharasch  
John A. Morris  
Gregory V. Demo  
Hayley R. Winograd  
Pachulski Stang Ziehl & Jones, L.L.P.  
10100 Santa Monica Blvd., 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[ikharasch@pszjlaw.com](mailto:ikharasch@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

Signed: March 4, 2021.

BONDS ELLIS EPPICH SCHAFFER JONES LLP

By: /s/ Clay M. Taylor  
Clay M. Taylor  
Texas Bar No. 24033261  
420 Throckmorton Street, Ste. 1000  
Fort Worth, Texas 76102  
Telephone: (817) 405-6900  
Facsimile: (817) 405-6902  
Email: [clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)

ATTORNEYS FOR JAMES DONDERO

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this on March 4, 2021, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on counsel for the Appellee.

By: /s/ Clay M. Taylor  
Clay M. Taylor

## **EXHIBIT 6**

K&L GATES LLP  
 Artoush Varshosaz (TX Bar No. 24066234)  
 1717 Main Street, Suite 2800  
 Dallas, TX 75201  
 Tel: (214) 939-5659  
 artoush.varshosaz@klgates.com

A. Lee Hogewood, III (*pro hac vice*)  
 4350 Lassiter at North Hills Ave., Suite 300  
 Raleigh, NC 27609  
 Tel: (919) 743-7306  
 Lee.hogewood@klgates.com

*Counsel for Highland Income Fund, NexPoint  
 Strategic Opportunities Fund, Highland Global  
 Allocation Fund, and NexPoint Capital, Inc.*

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

In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	Case No. 19-34054 (SGJ11)
	)	
Debtor.	)	(Jointly Administered)
	)	
	)	

**NOTICE OF APPEAL**

**Part 1: Identify the appellants**

1. Names of appellants:

Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc.

2. Position of appellants in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding:

Plaintiff  
 Defendant  
 Other (describe) \_\_\_\_\_

For appeals in a bankruptcy case and not in an adversary proceeding:

Debtor  
 Creditor  
 Trustee  
 Other (describe) Interested parties



193405421030800000000001

000339

**Part 2: Identify the subject of this appeal**

1. Describe the judgment, order, or decree appealed from:

The Bankruptcy Court’s Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief [Dkt. No. 1943]

2. State the date on which the judgment, order, or decree was entered: February 22, 2021

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys:

<p><b>1. Debtor-Appellee</b>                  PACHULSKI STANG ZIEHL &amp; JONES LLP                  Jeffrey N. Pomerantz                  Ira D. Kharasch                  jpomerantz@pszjlaw.com                  ikharasch@pszjlaw.com                  10100 Santa Monica Blvd, 13th Floor                  Los Angeles, CA 90067</p> <p>John A. Morris                  Gregory V. Demo                  Hayley R. Winograd                  jmorris@pszjlaw.com                  gdemo@pszjlaw.com                  hwinograd@pszjlaw.com                  780 Third Avenue, 34th Floor                  New York, NY 10017-2024</p> <p>HAYWARD &amp; ASSOCIATES PLLC                  Melissa S. Hayward                  Zachery Z. Annable                  10501 N. Central Expressway, Suite 106                  Dallas, TX 75231                  MHayward@HaywardFirm.com                  zannable@haywardfirm.com</p> <p><i>Counsel for Highland Capital Management, L.P.</i></p>	<p><b>2. Creditor-Appellant</b>                  K&amp;L GATES LLP                  Artoush Varshosaz (TX Bar No. 24066234)                  1717 Main Street, Suite 2800                  Dallas, TX 75201                  Tel: (214) 939-5659                  artoush.varshosaz@klgates.com</p> <p>A. Lee Hogewood, III (<i>pro hac vice</i>)                  4350 Lassiter at North Hills Ave., Suite 300                  Raleigh, NC 27609                  Tel: (919) 743-7306                  Lee.hogewood@klgates.com</p> <p><i>Counsel for Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc.</i></p>
---	--

**Part 4: Optional election to have appeal heard by District Court**

N/A

**Part 5: Sign below**

Dated: March 3, 2021

**K&L GATES LLP**

/s/ A. Lee Hogewood, III

A. Lee Hogewood, III (*pro hac vice*)  
4350 Lassiter at North Hills Ave., Suite 300  
Raleigh, NC 27609  
Telephone: (919) 743-7306  
E-mail: lee.hogewood@klgates.com

Artoush Varshosaz (TX Bar No. 24066234)  
1717 Main Street, Suite 2800  
Dallas, TX 75201  
Telephone: (214) 939-5659  
E-mail: artoush.varshosaz@klgates.com

*Counsel for Highland Income Fund, NexPoint  
Strategic Opportunities Fund, Highland Global  
Allocation Fund, and NexPoint Capital, Inc.*

BTXN 116 (rev. 07/08)

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**APPEAL SERVICE LIST**

**Transmission of the Record**

BK Case No.: 19-34054-sgj11

Received in District Court by: \_\_\_\_\_

Date: \_\_\_\_\_

Volume Number(s): \_\_\_\_\_

cc: Stacey G. Jernigan  
Robert (Bob) Schaaf  
Nathan (Nate) Elner  
Attorney(s) for Appellant  
US Trustee

**Appellant** Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc.

K&L GATES LLP  
Artoush Varshosaz  
1717 Main Street, Suite 2800  
Dallas, TX 75201  
Telephone: (214) 939-5659  
And  
A. Lee Hogewood, III  
4350 Lassiter at North Hills Ave., Suite 300  
Raleigh, NC 27609  
Telephone: (919) 743-7306

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

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz  
Ira D. Kharasch  
10100 Santa Monica Blvd, 13th Floor  
Los Angeles, CA 90067  
(No telephone number)

John A. Morris  
Gregory V. Demo  
Hayley R. Winograd  
780 Third Avenue, 34th Floor  
New York, NY 10017-2024  
(No telephone number)

HAYWARD & ASSOCIATES PLLC  
Melissa S. Hayward  
Zachery Z. Annable  
10501 N. Central Expressway, Suite 106

000342

Case 19-34054-sgj11 Doc 1986-1 Filed 03/08/21 Entered 03/08/21 06:14:10 Page 2 of 4

Dallas, TX 75231  
(No telephone number)



Case 19-34054-sgj11 Doc 1986-1 Filed 03/08/21 Entered 03/08/21 06:14:10 Page 3 of 4

Case 19-34054-sgj11 Doc 1986-1 Filed 03/08/21 Entered 03/08/21 06:14:10 Page 4 of 4

## **EXHIBIT 7**

MUNSCH HARDT KOPF & HARR, P.C.  
 Davor Rukavina, Esq.  
 Texas Bar No. 24030781  
 Julian P. Vasek, Esq.  
 Texas Bar No. 24070790  
 3800 Ross Tower  
 500 N. Akard Street  
 Dallas, Texas 75202-2790  
 Telephone: (214) 855-7500  
 Facsimile: (214) 978-4375

ATTORNEYS FOR HIGHLAND CAPITAL  
 MANAGEMENT FUND ADVISORS, L.P. AND  
 NEXPOINT ADVISORS, L.P.

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

	)	
In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	Case No. 19-34054 (SGJ11)
	)	
Debtor.	)	
	)	
	)	
	)	

**NOTICE OF APPEAL**

COME NOW Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (the “Appellants”), creditors and parties-in-interest in the above styled and numbered bankruptcy case (the “Bankruptcy Case”) of Highland Capital Management, L.P. (the “Debtor”), and, pursuant to 28 U.S.C. § 158(a), hereby appeal to the United States District Court for the Northern District of Texas that certain *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* (the “Confirmation Order”) entered by the Bankruptcy Court on February 22, 2021 at docket no. 1943 in the Bankruptcy Case.

A copy of the Confirmation is attached hereto as Exhibit “A.”



The names of the parties to the Confirmation Order, and the contact information for their attorneys, is as follows:

1. Appellants:

Highland Capital Management Fund Advisors, L.P.  
NexPoint Advisors, L.P.

Attorneys:

Davor Rukavina  
Julian P. Vasek  
MUNSCH HARDT KOPF & HARR, P.C.  
3800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7587  
Facsimile: (214) 855-7584  
Email: [drukavina@munsch.com](mailto:drukavina@munsch.com)

2. Appellee:

Highland Capital Management, L.P.

Attorneys:

Jeffrey N. Pomerantz  
Ira D. Kharasch  
John A. Morris  
Gregory V. Demo  
Hayley R. Winograd  
PACHULSKI STANG ZIEHL & JONES LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[ikharasch@pszjlaw.com](mailto:ikharasch@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March, 2021.

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Davor Rukavina  
Davor Rukavina, Esq.  
Texas Bar No. 24030781  
3800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
Email: [drukavina@munsch.com](mailto:drukavina@munsch.com)

**ATTORNEYS FOR HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P. AND  
NEXPOINT ADVISORS, L.P.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 1st day of March, 2021, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on counsel for the Appellee.

By: /s/ Davor Rukavina  
Davor Rukavina, Esq.

## **EXHIBIT 8**



Douglas S. Draper, La. Bar No. 5073  
[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)

Leslie A. Collins, La. Bar No. 14891  
[llcollins@hellerdraper.com](mailto:llcollins@hellerdraper.com)

Greta M. Brouphy, La. Bar No. 26216  
[gbrouphy@hellerdraper.com](mailto:gbrouphy@hellerdraper.com)

Heller, Draper & Horn, L.L.C.  
650 Poydras Street, Suite 2500

New Orleans, LA 70130  
Telephone: (504) 299-3300

Fax: (504) 299-3399

*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor \*

**NOTICE OF APPEAL AND STATEMENT OF ELECTION**

**Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s): \_\_\_\_\_

*The Dugaboy Investment Trust and Get Good Trust*

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

- Plaintiff
- Defendant
- Other (describe)

For appeals in a bankruptcy case and not in an adversary proceeding.

- Debtor
- Creditor
- Trustee
- Other (describe)

\_\_\_\_\_

\_\_\_\_\_

**Part 2: Identify the subject of this appeal**

1. Describe the judgment, order, or decree appealed from: *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) and (II) Granting Related Relief [Dkt. # 1943]*

{00375211-1}



2. State the date on which the judgment, order, or decree was entered: February 22, 2021

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. **Party/Appellee:** Debtor: Highland Capital Management, L.P.

Attorney:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffery N. Pomerantz

Ira D. Kharasch

John A. Morris

Gregory V. Demo

Hayley R. Winograd

780 Third Avenue, 34th Floor

New York, NY 10017-2024

Telephone: (212) 561-7700

Fax: (212) 561-7777

And

Hayward & Associates PLLC

Melissa S. Hayward

Zachery Z. Annable

10501 N. Central Expy. Ste. 106

Dallas, TX 75231

Telephone: (972) 755-7100

Fax: (972) 755-7110

2. **Party/Appellants:** Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc.

Attorney:

K&L GATES LLP

Artoush Varshosaz

1717 Main Street, Suite 2800

Dallas, TX 75201

Telephone: (214) 939-5659

Artoush.varshosaz@klgates.com

And

{00375211-1}

A. Lee Hogewood, III  
4350 Lassiter at North Hills Ave., Suite 300  
Raleigh, NC 27609  
Telephone: (919) 743-7306  
Lee.hogewood@klgates.com

**3. *Party/Appellants:* Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.**

Attorney:

MUNSCH HARDT KOPF & HARR, P.C.  
Davor Rukavina  
Julian P. Vasek  
3800 Ross Tower  
500 N. Akard Street  
Dallas, TX 75201-6659  
Telephone: (214) 855-7587  
Facsimile: (214) 855-7584  
E-mail: drukavina@munsch.com

**4. *Party/Appellants:* The Dugaboy Investment Trust and Get Good Trust**

Attorney:

HELLER, DRAPER & HORN, L.L.C.  
Douglas S. Draper  
Leslie A. Collins  
Greta M. Brouphy  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
Telephone: (504) 299-3300  
Fax: (504) 299-3399

**5. *Party/Appellants:* James Dondero**

Attorney:

BONDS ELLIS EPPICH SCHAFFER JONES LLP  
D. Michael Lynn  
John Y. Bonds  
Clay M. Taylor  
Bryan C. Assink  
420 Throckmorton Street, Ste. 1000

{00375211-1}

Fort Worth, Texas 76102  
Telephone: (817) 405-6900  
Facsimile: (817) 405-6902  
[Michael.lynn@bondsellis.com](mailto:Michael.lynn@bondsellis.com)  
[john@bondsellis.com](mailto:john@bondsellis.com)  
[clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)  
[bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)

**Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)**

**Not applicable.**

March 4, 2021

Respectfully submitted,

*/s/Douglas S. Draper.*  
Douglas S. Draper, La. Bar No. 5073  
[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)  
Leslie A. Collins, La. Bar No. 14891  
[lcollins@hellerdraper.com](mailto:lcollins@hellerdraper.com)  
Greta M. Brouphy, La. Bar No. 26216  
[gbrouphy@hellerdraper.com](mailto:gbrouphy@hellerdraper.com)  
Heller, Draper & Horn, L.L.C.  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
Telephone: (504) 299-3300  
Fax: (504) 299-3399  
*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

BTXN 116 (rev. 07/08)

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**APPEAL SERVICE LIST**

**Transmission of the Record**

BK Case No.: 19-34054-sgj11

Received in District Court by: \_\_\_\_\_

Date: \_\_\_\_\_

Volume Number(s): \_\_\_\_\_

cc: Stacey G. Jernigan  
Robert (Bob) Schaaf  
Nathan (Nate) Elner  
Attorney(s) for Appellant  
US Trustee

**Appellant** : Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc.

K&L GATES LLP  
Artoush Varshosaz  
1717 Main Street, Suite 2800  
Dallas, TX 75201  
Telephone: (214) 939-5659  
And  
A. Lee Hogewood, III  
4350 Lassiter at North Hills Ave., Suite 300  
Raleigh, NC 27609  
Telephone: (919) 743-7306

**Appellant** Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.

MUNSCH HARDT KOPF & HARR, P.C.  
Davor Rukavina  
Julian P. Vasek  
3800 Ross Tower  
500 N. Akard Street  
Dallas, TX 75201-6659  
Telephone: (214) 855-7587

**Appellant** The Dugaboy Investment Trust and Get Good Trust

HELLER, DRAPER & HORN, L.L.C.  
Douglas S. Draper  
Leslie A. Collins  
Greta M. Brouphy  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130

000355

Case 19-34054-sgj11 Doc 1992-1 Filed 03/08/21 Entered 03/08/21 06:28:13 Page 2 of 4

Telephone: (504) 299-3300

Case 19-34054-sgj11 Doc 1992-1 Filed 03/08/21 Entered 03/08/21 06:28:13 Page 3 of 4

**Appellant** James Dondero

BONDS ELLIS EPPICH SCHAFFER JONES LLP  
D. Michael Lynn  
John Y. Bonds  
Clay M. Taylor  
Bryan C. Assink  
420 Throckmorton Street, Ste. 1000  
Fort Worth, Texas 76102  
Telephone: (817) 405-6900

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

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffery N. Pomerantz  
Ira D. Kharasch  
John A. Morris  
Gregory V. Demo  
Hayley R. Winograd  
780 Third Avenue, 34th Floor  
New York, NY 10017-2024  
Telephone: (212) 561-7700

And

Hayward & Associates PLLC  
Melissa S. Hayward  
Zachery Z. Annable  
10501 N. Central Expy. Ste. 106  
Dallas, TX 75231  
Telephone: (972) 755-7100





## EXHIBIT 9

MUNSCH HARDT KOPF & HARR, P.C.  
 Davor Rukavina, Esq.  
 Texas Bar No. 24030781  
 Julian P. Vasek, Esq.  
 Texas Bar No. 24070790  
 3800 Ross Tower  
 500 N. Akard Street  
 Dallas, Texas 75202-2790  
 Telephone: (214) 855-7500  
 Facsimile: (214) 978-4375

Counsel for Highland Capital Management Fund  
 Advisors, L.P. and NexPoint Advisors, L.P.

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	
	)	Case No. 19-34054 (SGJ11)
Debtor.	)	
	)	
	)	

**EMERGENCY MOTION OF THE ADVISORS FOR STAY PENDING APPEAL OF  
 THE CONFIRMATION ORDER, AND BRIEF IN SUPPORT THEREOF**

TO THE HONORABLE STACEY G.C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

COME NOW Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (the “Movants”), creditors and parties-in-interest in the above styled and numbered bankruptcy case (the “Bankruptcy Case”) of Highland Capital Management, L.P. (the “Debtor”), and file this their *Emergency Motion for Stay Pending Appeal of the Confirmation Order, and Brief In Support Thereof* (the “Motion”), respectfully stating as follows:

**I. SUMMARY**

1. The Movants respectfully request a stay of the Confirmation Order pending appeal in order to protect their appellate rights and ensure that, if they are successful on their



appeal of the Confirmation Order, their rights will not be mooted by that time. Not only is there the threat of equitable mootness, but there is also a more immediate threat that, if the Movants cannot exercise their legitimate rights and fulfil their fiduciary obligations to the funds due to the Plan's gatekeeper injunction, those rights will effectively be vitiated by the time of any final resolution of the appeal. A stay pending appeal would not harm the Debtor or the creditors because the Plan does not give the Debtor any tools or ability to manage its assets any more or better than it has at present; the Debtor will continue doing what it is doing today, albeit through a different corporate form, but will not receive any new money, exit financing, or other assets under the Plan. Thus, while the absence of a stay pending appeal may well irreparably harm the legitimate interests of the Movants, no legitimate interest of the Debtor will be implicated or harmed.

2. The Movants submit that they have a likelihood of success on the merits of their appeal. The issues being appealed with respect to: (i) the Absolute Priority Rule; (ii) satisfaction of section 1129(a)(2) of the Bankruptcy Code; and (iii) the confirmed plan's exculpation and injunction provisions are all legal issues reviewed *de novo*. While the Court has overruled the Movants' objections to the Plan on these bases, an objective analysis of these issues demonstrates that they are subject to material dispute and that the Movants have a reasonable likelihood of success on the merits. The public interest supports a stay because the Advisors, those whose money the Debtor manages, and the public at large all have a strong interest in ensuring that the Debtor complies with its contractual, fiduciary, and statutory obligations to its investors. And, because the Plan does not afford the Debtor any tools to manage its business and monetize its assets, any bond for the stay pending appeal should not be punitive but should instead compensate for the time value of money at the federal postjudgment interest rate.

## II. BACKGROUND

3. On February 22, 2021, the Court entered its *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [docket no. 1943] (the “Confirmation Order”).

4. By the Confirmation Order, and over the Movants’ objections, the Court confirmed the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [docket no. 1808], as further modified (the “Plan”).

5. The Movants, although controlled by James Dondero, advise and manage various funds and investment vehicles including, of relevance to this Bankruptcy Case, various publicly traded retail funds. The Movants are registered as investment advisors under the Investment Advisors Act of 1940. The Movants have fiduciary duties to the funds and other investment vehicles they advise and manage.

6. Three of these retail funds managed by the Advisors are Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. In turn, these funds have invested approximately \$140 million in various collateralized loan obligations (“CLOs”) managed by the Debtor pursuant to portfolio management agreements (the “Portfolio Management Agreements”). Under most of the Portfolio Management Agreements, defined “cause” is required to remove the Debtor as manager of the CLOs, but in a handful such removal is possible without cause.

7. Under at least three of the Portfolio Management Agreements, these funds have the right to remove the Debtor as the manager of the CLOs, because these funds hold the requisite percentage of shares under the agreements to remove the CLO manager. There are various other CLOs where the funds do not hold the requisite percentage of shares to remove the Debtor as manager unilaterally, but are able to vote their shares to remove the Debtor as

manager if other preference shareholders join in such removal and, collectively, the contractual threshold of voting preference shares for removal is met.

8. As the Advisors have informed the Court (and as the funds have also informed the Court), they do not believe that the Debtor is properly managing more than \$1 billion invested in the CLOs because the Debtor, in contravention of the Advisors' and funds' stated objectives otherwise, has been liquidating the CLOs even though they do not need liquidity, and will liquidate the CLOs in approximately 18 to 24 months. The Advisors recognize that the Court did not agree with these concerns. Nevertheless, the Advisors submit that these are legitimate concerns motivated by business interests and not by any desire to harm the Debtor.

9. The Plan contains various exculpation, release, and injunction provisions that are of particular concern to the Advisors. Article IX of the Plan contains the following exculpation provision (the "Exculpation Provision"):

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other

releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

Plan at 54-55. “Exculpated Parties,” in turn, means, collectively:

(i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

Plan at 15.

10. Article IX of the Plan also contains an injunction provision (the “Injunction”),

which provides, in pertinent part, as follows:

**F. Injunction**

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

....

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct,



fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; provided, however, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

Plan at 57-58. “Enjoined Parties,” in turn, is defined to mean:

(i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

Plan at 14. “Protected Parties” means, collectively:

(i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

Plan at 19.

11. The Advisors are subject to the Injunction. The Injunction prohibits the Advisors from taking any action to “interfere with the implementation or consummation of the Plan.” As the evidence at the confirmation hearing made clear, the Debtor considers this injunction to prohibit the Advisors from advising the funds or others to cause the removal of the Debtor as the manager of the CLOs. As also made clear at the confirmation hearing, the Injunction applies to the Debtor’s postconfirmation operations, including its management of the CLOs. Thus, the Plan prohibits the Advisors from fully exercising their fiduciary duties to the funds.

### **III. ARGUMENTS AND AUTHORITIES**

#### **A. STANDARD FOR A STAY PENDING APPEAL**

12. Bankruptcy Rule 8007 allows a bankruptcy court, in the first instance, to stay a judgment in order to maintain the status quo pending appeal. FED. R. BANKR. P. 8007(a)(1)(A). In determining whether to grant a discretionary stay pending appeal under Bankruptcy Rule 8007, courts consider the following criteria:

- (1) the likelihood that the movant will prevail on the merits of the appeal;
- (2) whether the movant will suffer irreparable injury if the stay is denied;
- (3) whether other parties would suffer substantial harmed if the stay is granted; and
- (4) whether the public interest will be served by granting the stay.

*In re First S. Sav. Ass’n*, 820 F.2d 700, 709 (5th Cir. 1987); *In re Texas Equip. Co.*, 283 B.R. 222, 226-27 (Bankr. N.D. Tex. 2002). The first two elements are the most critical. *Saldana v. Saldana*, 2015 WL 502145, at \*2 (N.D. Tex. Aug. 25, 2015).

13. The fundamental purpose of a stay pending appeal, especially with respect to an order of an Article I court, is aptly summarized as follows:

The application for a stay of an order confirming a chapter 11 reorganization plan in a highly litigated and complex bankruptcy proceeding presents a classic clash of competing interests, all of which have merit. Without a stay, it is extremely unlikely that Appellants will ever be able to have meaningful appellate review of the rulings of the Bankruptcy Court, a non-Article III court, and in any event, a lower court. The ability to review decisions of the lower courts is the guarantee of accountability in our judicial system. In other words, no single judge or court can violate the Constitution and laws of the United States, or the rules that govern court proceedings, with impunity, because nearly all decisions are subject to appellate review. At the end of the appellate process, all parties and the public accept the decision of the courts because we, as a nation, are governed by the rule of law. Thus, the ability to appeal a lower court ruling is a substantial and important right.

*In re Adelpia Commc'ns. Corp.*, 361 B.R. 337, 342 (S.D.N.Y. 2007).

**B. THERE IS A LIKELIHOOD OF SUCCESS ON THE MERITS**

**i. Legal Standard.**

14. With respect to the first factor, the likelihood of success on the merits of the appeal, this Court has summarized as follows:

With respect to the first element, the Fifth Circuit has explained that the movant need not always show a ‘probability’ of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay. When the issue appealed is mostly a factual question over which the bankruptcy court has broad discretion, such discretion is unlikely to be overturned on appeal. Thus, with respect to questions of fact, the movant usually fails to satisfy the first element. With respect to questions of law, however, especially questions involving the application of law, or when the law has not been definitively addressed by a higher court, the movant more easily satisfies the first element.

*In re Tex. Equip. Co.*, 283 B.R. at 227 (internal citations and quotations omitted); *accord In re First S. Sav. Assoc.*, 820 F.2d at 704 (“the movant need only present a substantial case on the merits when a serious legal question is involved”).

15. When considering the confirmation of a chapter 11 plan on appeal, the Court’s findings of fact are reviewed for clear error, while its conclusions of law are reviewed *de novo*. See *In re Tex. Grand Prairie Hotel Realty LLC*, 710 F.3d 324, 326 n. 1 (5th Cir. 2013).

Here, the Movants challenge the Court’s ruling on issues of law: the Absolute Priority Rule, section 1129(a)(2) of the Bankruptcy Code, and the Plan’s exculpation and injunction provisions. As these are issues of law, the standard of review will be *de novo*, and as such, “the movant more easily satisfies the first element.” *In re Tex. Equip. Co.*, 283 B.R. at 227.

**ii. Absolute Priority Rule.**

16. Class 8, a class of unsecured creditors, rejected the plan.<sup>1</sup> That means that the Plan could have only been confirmed under the cramdown provisions of section 1129(b) of the Bankruptcy Code. *See* 11 U.S.C. §§ 1129(b)(1); 1129(a)(8). This means that, in order to be confirmed, the Plan must “not discriminate unfairly” and that it must be “fair and equitable” with respect to Class 8. Because Class 8 consists of unsecured creditors, in order to be “fair and equitable”:

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

11 U.S.C. § 1129(b)(2)(B).

17. The Plan estimates a recovery to Class 8 creditors of 71% over time. *See* Confirmation Order at p. 41. While the Debtor testified that there may be a higher return based on causes of action, the Debtor did not value those causes of action or offer any evidence that Class 8 would be paid in full. As such, subsection (i) above does not apply because Class 8 will not be paid in full. That means that the only way the Plan could be confirmed is under subsection (ii), also known as the Absolutely Priority Rule. This Rule is

---

<sup>1</sup> The Movants do not hold Class 8 claims. Nevertheless, as the Plan alters their legal rights, they have standing to object to any portion of the Plan that may prevent the Plan from being confirmed.

simple: if the Class rejects the Plan and is not paid in full under the Plan, then the holder of any junior interest; *i.e.* equity interest, cannot “receive or retain . . . any property” on account of its junior interest.

18. Here, the Plan violates the Absolute Priority Rule as a matter of law, and the Movants respectfully submit that Court erred as a matter of law in concluding otherwise. This is because the Plan gives the holders of limited partnership interests in the Debtor contingent interests in the Claimant Trust. *See* Plan at p. 45. There can be no question that the contingent trust interests the Plan gives to holders of equity interests is “property” within the meaning of the Absolute Priority Rule. The Debtor admitted this during closing arguments: “These are contingent interests. They are property. No doubt they are property.” Confirmation Hearing Transcript at 242:19-20. The Debtor’s Chief Executive Officer and Chief Restructuring Officer, who prepared and authorized the Plan for the Debtor, testified that the contingent interests are, in his belief, inchoate property interests. *See id.* at 177:10-178:21. Moreover, that witness confirmed that these contingent interests may have some value in the future. *See id.* at 178:22-25. As a matter of law, an interest in a trust, even if a contingent one subject to a contingency that may never happen, is “property.” *See In re Edmonds*, 273 B.R. 527, 529 (Bankr. E.D. Mich. 2000) (“[t]he question should not be whether a future interest is vested or contingent. Clearly a contingent future interest is a legally cognizable interest, and thus property of the estate”).

19. That is the beginning and end of the inquiry: the Absolute Priority Rule prohibits equity from receiving or retaining any “property” under the Plan, and that is precisely what they are receiving under the Plan. It does not matter that that property is subject to a contingency that is only triggered if and when unsecured creditors are paid in full,

or that the property has little to no value, or that the contingency may never occur: “property” is being received under the Plan.

20. The Debtor argued, and the Court agreed, that these contingent interests may have no value and would only vest and be paid if unsecured creditors are paid in full, thus preserving the priority scheme of the Bankruptcy Code. As for the argument regarding value, the United States Supreme Court has squarely rejected any such argument:

Respondents further argue that the absolute priority rule has no application in this case, where the property which the junior interest holders wish to retain has no value to the senior unsecured creditors. In such a case, respondents argue, the creditors are deprived of nothing if such a so-called interest continues in the possession of the reorganized debtor. Here, respondents contend, because the farm has no ‘going concern’ value (apart from their own labor on it), any equity interest they retain in a reorganization of the farm is worthless and therefore is not ‘property’ under 11 U. S. C. § 1129(b)(2)(B)(ii).

We join with the overwhelming consensus of authority which has rejected this ‘no value’ theory. . . . Whether the value is present or prospective, for dividends or only for purposes of control a retained equity interest is a property interest. . . . And while the Code itself does not define what ‘property’ means as the term is used in § 1129(b), the relevant legislative history suggests that Congress’ meaning was quite broad. Property includes both tangible and intangible property.

*Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 207-08 (1988) (internal quotations and citations omitted). Thus, it does not matter that the “property” may be prospective, or that it may be intangible, or that it may have no value. All that matters is that “property,” which is intended to be read broadly, is retained or received under the Plan. There can be no question that it is.

21. The Debtor and the Court also relied on *In re Introgen Therapeutics*, 429 B.R. 570 (Bankr. W.D. Tex. 2010) for the proposition that, so long as the contingent interests are not paid unless and until all unsecured claims are paid in full, the Absolute Priority Rule is not violated and is, in fact, preserved. As is the case here, the plan in *Introgen* provided that

equity interests, which were retained, would only be paid if and when unsecured creditors were paid in full:

The right to receive something imaginary is not property. The only way Class 4 will receive anything is if Class 3 in fact gets paid in full, in satisfaction of § 1129(b)(2)(B)(i), meaning the absolute priority rule would not be an issue. If Class 3 is not paid in full, Class 4’s ‘property interest’ is not just valueless, as Creditors argue, it simply does not exist.

*Id.*

22. This opinion is wrongly decided. First, it directly contradicts the language of the Bankruptcy Code, which implicates the Absolute Priority if *any* “property” is being retained or received. Second, this opinion looked to the present value of what was being retained, something directly foreclosed by the Supreme Court’s opinion in *Norwest Bank Worthington v. Ahlers* quoted above. It cannot be doubted that a contingent, non-vested interest in a trust is “property.” It may have no present value or other benefits, and it may never have a value or any other benefits, but there is a condition precedent which, if triggered, converts it to something of value, benefit, and present interest. Whatever it is that is converted into the “property” is itself “property.”

23. Third, this opinion fails to take into account the Supreme Court’s opinion in *Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. Lasalle P’ship*, 526 U.S. 434 (1999). That well know opinion considered whether the Absolute Priority Rule was triggered under a plan where equity was retained. While it may be obvious that equity is “property” and that the retention of equity therefore violated the Rule, the Supreme Court’s reasoning was different. Rather, the Supreme Court equated the exclusive opportunity to bid on new equity under a plan as itself “property” that was being granted or retained in violation of the Rule: “[t]his opportunity should, first of all, be treated as an item of property in its own right.” *Id.* at 455.

The Supreme Court reasoned as follows:



While it may be argued that the opportunity has no market value, being significant only to old equity holders owing to their potential tax liability, such an argument avails the Debtor nothing, for several reasons. It is to avoid just such arguments that the law is settled that any otherwise cognizable property interest must be treated as sufficiently valuable to be recognized under the Bankruptcy Code. Even aside from that rule, the assumption that no one but the Debtor's partners might pay for such an opportunity would obviously support no inference that it is valueless, let alone that it should not be treated as property. And, finally, the source in the tax law of the opportunity's value to the partners implies in no way that it lacks value to others.

*Id.* at 455. If an exclusive “opportunity” is “property” for purposes of the Absolute Priority Rule, then the “opportunity” to perhaps share in a future recovery, however remote, is also “property.” Even a contingent, non-vested interest is “otherwise cognizable property,” since the law recognizes such interests and even brings them into an estate as property of the estate.

24. For similar reasons, the Plan also violates the Absolute Priority Rule because the Debtor retains control of its property and its business after confirmation. *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 207-08 (holding that retention of control is “property” under the Absolute Priority Rule). In this respect, it must be understood that the Plan, while creating a trust for creditors and funding that trust with certain assets, also reorganizes the Debtor and vests the Debtor's business assets in the reorganized Debtor, while the creditor trust will own the reorganized debtor. Before the Plan, the Debtor controlled its property and its business. Under the Plan, the Debtor will continue to do so, through the same CEO/CRO, even though the Debtor will be indirectly owned by its creditors. But it is the retention of control that matters, not the ownership of the new equity.

25. As summarized by one court in denying confirmation, “the power to control a corporation, through its board of directors, that a majority shareholder has, *is a separate property interest*, distinct from the value of the shares themselves.” *In re 4 C Solutions Inc.*, 302 B.R. 592, 597 (Bankr. C.D. Ill. 2003) (emphasis added). Likewise, the U.S. Court of

Appeals for the Tenth Circuit has concluded that the retention of control is “property” within the meaning of the Absolute Priority Rule. *See Unruh v. Rushville State Bank*, 987 F.2d 1506, 1509 (10th Cir. 1993). Stated differently, “[i]t is the control of the reorganized entity which is a valuable asset, and that asset should not be passed on to the junior class.” *In re Pecht*, 53 B.R. 768, 772 (Bankr. E.D. Va. 1985). This conclusion also applies where there is a change in ownership but control is retained. In *In re Perdido Motel Group Inc.*, 101 B.R. 289, 291-92 (Bankr. N.D. Ala. 1989), the debtor principals proposed to transfer ownership of the debtor to someone else (their parents) but with them retaining control after confirmation. Setting aside the potential of a sham transaction, the court denied confirmation because, while current equity would lose its equity, it would retain control: “by indirection, a retention of control of the debtor’s property.” *Id.* at 292. Indeed, the Absolute Priority Rule would lose all meaning if a debtor could create a trust, have that trust own the reorganized debtor, yet retain control of the reorganized debtor.

26. Therefore, under the Plan, current holders of equity interests retain “property” in the form of contingent trust interests, and the Debtor retains controls on account of its current equity interests, both in violation of the Absolute Priority Rule because Class 8 has rejected the Plan and Class 8 is not paid in full under the Plan. The Movants therefore submit that they have presented “a substantial case on the merits when a serious legal question is involved.” *In re Tex. Equip. Co.*, 283 B.R. at 227. Moreover, with respect to the conclusion that the Absolute Priority Rule is not violated because equity would not be paid anything unless and until all unsecured creditors are paid in full, and the holding of *In re Introgen Therapeutics* supporting that conclusion, neither the Supreme Court nor the Fifth Circuit has addressed this argument. Thus, because this issue has not been “definitively addressed by a higher court,” the Movants have “more easily” satisfied this element. *See id.*

**iii. Exculpation and Injunction Provisions.**

27. The Movants recognize that the Court, through its oral and written findings and conclusions, carefully considered the Plan’s exculpation and injunction provisions and carefully considered all objections to the same in detail, prior to approving these provisions. Respectfully, the Movants believe that the Court’s findings and conclusions on these points do not comport with established Fifth Circuit precedent because, among other things: (i) these provisions apply to *business* decisions as well as to case administration, and exculpating and providing injunctions for business decisions appears unprecedented; (ii) these provisions apply to non-debtor entities, *i.e.* the Debtor’s general partner and its management; and (iii) these provisions apply to *postconfirmation* matters.

28. The Fifth Circuit has held that exculpation provisions designed to absolve parties other than the debtor and the creditors’ committee of any negligent conduct that occurred during the course of the bankruptcy are unenforceable. *In re Pacific Lumber Co.*, 584 F.3d 229, 253 (5th Cir. 2009). To the contrary, Fifth Circuit authorities broadly “foreclose non-consensual non-debtor releases and permanent injunctions.” *Id.* at 252 (citing authorities); *see also In re Thru, Inc.*, Civil Action No. 3:17-CV-1958-G, 2018 WL 5113124, at \*22-23 (N.D. Tex. Oct. 19, 2018). Whereas exculpation of the debtor is justified by section 524 of the Bankruptcy Code, and exculpation of creditors’ committees has been deemed justified by section 1103 of the Bankruptcy Code, there is no authority justifying an extension of exculpation protections to other parties, even if the parties sought to be exculpated participated significantly in formulating the confirmed plan. *In re Pacific Lumber*, 584 F.3d at 253 (noting that the creditors’ committee and its members were “the only disinterested volunteers among the parties sought to be released”).

29. However, the Plan extends the Exculpation Provision to not only the Debtor,

the creditors' committee, and their professionals, but also impermissibly to the Debtor's majority-owned subsidiaries, Strand, the Independent Directors, the CEO/CRO, and other Related Persons, in contravention of established precedent. Such parties are not "disinterested volunteers" akin to the creditors' committee, and even if they were, Fifth Circuit precedent does not support their exculpation from liability. Furthermore, there is no clear end date with respect to the Exculpation Provision. The Exculpation Provision has the practical effect of allowing the Exculpated Parties to escape liability for post-confirmation conduct that goes beyond activity relating to the bankruptcy case or the administration of the estate, and allows the Exculpated Parties to escape liability that may arise in ordinary course, post-petition relationships of the parties, such as liability for an ordinary breach of contract.

30. Indeed, the District Court, in *In re Thru, Inc.*, struck down a virtually identical exculpation clause as the one in the Plan. 2018 WL 5113124, at \*22-23. The exculpation clause in that case provided as follows:

Neither the Debtor nor any of its present officers, directors, employees, agents, advisors, or affiliates, nor any of its Professionals (collectively, the "Exculpated Persons"), shall have or incur any liability to any Entity for any act taken or omission made in good faith in connection with or related to formulating, negotiating, implementing, confirming or consummating the Plan, the Disclosure Statement or any Plan Document. The Exculpated Persons shall have no liability to the Debtor, any Creditor, Interest holder, any other party in interest in the Chapter 11 Case or any other Entity for actions taken or not taken under the Plan, in connection herewith or with respect thereto, or arising out of their administration of the Plan or the property to be distributed under the Plan, in good faith, including failure to obtain Confirmation or to satisfy any condition or conditions, or refusal to waive any condition or conditions, to the occurrence of the Effective Date, and in all respects such Exculpated Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

*Id.* at \*22.

31. Because the District Court has already concluded that confirmation of a plan containing a virtually identical exculpation provision constituted an error as a matter of law,

the Movants have demonstrated a likelihood of success on the merits of their appeal. Here, however, the exculpation provision is even broader, protecting non-debtor entities and their directors, not being limited to bankruptcy administration matters but also affecting business decisions, and not being limited in time to the pre-confirmation period.

32. Furthermore, the sweeping Injunction preventing parties from pursuing causes of action against the non-debtor Protected Parties effectively discharges non-debtors and contravenes established Fifth Circuit precedent. The Injunction is significantly broader than injunctions that have been struck down by courts in the Fifth Circuit. In the recent case of *In re Thru, Inc.*, the District Court struck down an injunction that purported to enjoin causes of action held against the debtor or the estate and that arose prior to the effective date of the plan from being brought against certain non-debtor protected parties. 2018 WL 5113124, at \*21-22. The District Court found that it was clearly erroneous for the bankruptcy court to approve the injunction under section 105 of the Bankruptcy Code. *Id.* The injunction at issue in *In re Thru* was narrower than the Injunction in the Plan in several important respects, as the Plan Injunction is not limited to claims that arose prior to the Effective Date, and is not limited to claims that the Enjoined Parties hold against the Debtor. Rather, the Injunction appears to have no end date, so long as a claim or cause of action arises out of some future administration or implementation of the Plan. Moreover, and significantly, the Injunction precludes Enjoined Parties from bringing claims held *against the Protected Parties* -- not just claims held against the Debtor or the estate.

33. The propriety of the Injunction is not saved by the ability of an Enjoined Party to bring such claim if the Court so allows. In fact, the channeling nature of the Injunction is impermissible as well. As drafted, the Injunction is broad enough to cover claims and causes of action that arise out of postconfirmation, ordinary course transactions between the

reorganized debtor and parties in interest and which do not have any actual relationship to the Plan or its implementation. With result to any such disputes that arise, the Court lacks subject matter jurisdiction. *See In re CJ Holding Co.*, 597 B.R. 597, 604 (S.D. Tex. 2019) (“After confirmation, ‘the debtor’s estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the implementation or execution of the plan.’”) (quoting *In re Galaz*, 841 F.3d 316, 322 (5th Cir. 2016)). Therefore, the channeling Injunction is impermissible because the Court appears to lack jurisdiction to even consider whether an enjoined action is colorable. Parties cannot create indefinite subject matter jurisdiction where none otherwise exists.

34. The Injunction of particular concern to the Movants. Under the Injunction, the Movants are prohibited from advising or causing their clients to exercising their contractual rights against the postconfirmation Debtor pursuant to contracts that the Debtor has assumed under the Plan. The law is clear that, upon assumption, the Debtor must comply with and be subject to all provisions of the assumed contracts. *See In re Nat’l Gypsum Co.*, 208 F.3d 498, 505-06 (5th Cir. 2000); *In re Texas Baseball Partners*, 521 B.R. 134, 179-80 (Bankr. N.D. Tex. 2014). Here, the Plan’s exculpation and injunction provisions alter this clear law by imposing a new requirement that permission from the Court must first be obtained before proceeding against the Debtor, and that, as part of that permission, any party seeking to enforce rights must demonstrate a “colorable claim.” This means that this Court will of necessity be determining some aspect of the underlying dispute, even if the dispute relates solely to postconfirmation matters over which the Court will have no jurisdiction. Moreover, if the Court finds that the action is not colorable, then an Article I court with no post-confirmation jurisdiction will have effectively decided the matter on the merits. In addition to the Court lacking jurisdiction, the Injunction also violates 28 U.S.C. § 959, the first portion of

which expressly provides that no leave from court is required in order to sue a debtor-in-possession based on its management of property—which would be the direct issue involved in any post-confirmation action.

35. The Confirmation Order, by approving the Exculpation Provision and the Injunction, therefore presents a serious legal question. At a minimum, the Movants have shown a substantial case on the merits and the balance of equities weigh heavily in favor of a stay. See *In re First S. Savings*, 820 F.2d at 704; *In re Dernick*, 2019 WL 236999, at \*3; *In re Texas Equipment Co.*, 283 B.R. at 227. “A serious legal question exists when legal issues have far-reaching effects, involve significant public concerns, or have a broad impact on federal/state relations.” *In re Dernick*, 2019 WL 236999, at \*3; see *In re Westwood Plaza Apartments, Ltd.*, 150 B.R. 163, 168 (Bankr. E.D. Tex. 1993). Here, the Exculpation Provision and the Injunction violate established Fifth Circuit precedent and the Confirmation Order’s approval of such provisions is erroneous as a matter of law. Precedent involves significant public concerns, and the allowance of the provisions will cause lasting effects on parties in interest. Indeed, the Injunction is so broad that it will prevent parties from enforcing their rights with respect to postconfirmation transactions unrelated to the bankruptcy case unless they first seek authority to do so from the Court. Not only does this prevent a serious hurdle to the enforcement of rights, but it presents a serious due process concern.

**iv. Section 1129(a)(2) of the Bankruptcy Code.**

36. In order to confirm the Plan, the Bankruptcy Code requires that the “proponent of the plan complies with the applicable provisions of this title [the Bankruptcy Code].” 11 U.S.C. § 1129(a)(2). The proponent of the Plan was the Debtor. The Debtor failed to satisfy section 1129(a)(2) of the Bankruptcy Code, and the Court erred as a matter of law in



concluding that it had, because the Debtor completely failed to comply with Bankruptcy Rule 2015.3—on at least three occasions.

37. Section 1129(a)(2) is a mandatory provision and if it is not satisfied, a plan cannot be confirmed as a matter of law. 11 U.S.C. § 1129(a) (“[t]he court shall confirm a plan only if all of the following requirements are met”). Section 1129(a)(2) is not limited to whether a debtor complies with section 1129 itself; that is the point of the opening clause of section 1129(a). Rather, as the House Judiciary Report confirms, this section “requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure.” H. Rept. No. 95-595 to accompany H.R. 8200, 95th Cong., 1st Sess. (1977) pp. 412–418.

38. The Debtor, as a debtor-in-possession, has the duties and obligations of a trustee under section 1106(a) of the Bankruptcy Code (except with respect to certain such duties not relevant here). 11 U.S.C. § 1107(a). One of those duties is to comply with subsection 8 of section 704(a) of the Bankruptcy Code.” 11 U.S.C. § 1106(a)(1). That subsection provides that that trustee (here, the debtor-in-possession) shall:

if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires.

11 U.S.C. § 704(a)(8).

39. As there is no question that the business of the Debtor was authorized to be operated, this section requires the Debtor to file periodic reports of business operations and such other information as the “United States trustee or the court requires.” *Id.* Bankruptcy Rule 2015.3 provides that:

In a chapter 11 case, the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. The reports shall be prepared as prescribed by the appropriate Official Form, and shall be based upon the most recent information reasonably available to the trustee or debtor in possession.

Bankruptcy Rule 2015.3(a).

40. There is a presumption of “substantial or controlling interest” where the debtor owns or controls at least 20 percent of such entity.” Bankruptcy Rule 2015.3(c). The first Rule 2015.3 report is due seven days before the meeting of creditors, and a subsequent report is due every six months thereafter. Bankruptcy Rule 2015.3(b).

41. The Debtor violated this Rule several times. The Debtor admitted that it held interests in at least eight other companies, with respect to which the Debtor admitted that it held at least 20% of such interests in three of such companies (and did not remember the percentage of interest in the other companies. Confirmation Hearing Transcript (February 3, 2021) at 46:15-48:8. The Debtor admitted that these were not publicly traded entities and were not themselves debtors in bankruptcy. *See id.* at 46:2-14. The reason given for the Debtor for its failure to file its initial Rule 2015.3 report and each subsequent one was that, with all that was going on early in the case, “it fell through the cracks.” *See id.* at 49:17-21. Yet, the Debtor never sought nor received any leave from the Bankruptcy Court to file its Rule 2015.3 reports late. *See id.* at 50:1-8.

42. There is no question, therefore, that the Debtor failed to comply with Bankruptcy Rule 2015.3—indeed the Debtor admitted that fact. The Debtor therefore failed to comply with its duties to file such reports as required by the United States Trustee and Bankruptcy Court under section 704(a)(8) of the Bankruptcy Code, as made applicable to a debtor-in-possession under sections 1106 and 1107 of the Bankruptcy Code. The Debtor

therefore failed to comply with all applicable provisions of the Bankruptcy Code; *i.e.* Chapter 11.

43. That section is broad, requiring the Debtor to “compl[y] with the applicable provisions of this title.” There is no exception for minor things, reports that need to be filed, or anything else. Indeed, courts have correctly construed this section broadly, as it is an important safety mechanism to ensure that a plan proponent cannot simply ignore its obligations under the Bankruptcy Code yet confirm a plan just because its plan otherwise satisfies confirmation requirements, thereby sweeping all prior failures and defaults under the rug. The District Court held that this section prohibited confirmation where the debtor had retained and paid professionals without proper bankruptcy court authority, even though the bankruptcy court later granted this relief *nunc pro tunc*. See *In re Briscoe Enters. Ltd.*, 138 B.R. 795, 808-09 (N.D. Tex. 1992) (“[i]f that were all that was required, there would be no need for § 1129(a)(2)”), *rev’d* 994 F.2d 1160, 1170 (5th Cir.). While this conclusion was reversed on appeal, because the bankruptcy court subsequently permitted the retention and payment *nunc pro tunc*, the Debtor here never made a request for leave to file its Bankruptcy Rule 2015.3 reports late, and it has never sought any *nunc pro tunc* relief regarding the same. And, as the Supreme Court has made clear, a court cannot use its *nunc pro tunc* authority to “make the record what it is not.” *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 701 (2020) (internal quotation omitted).

44. A different district court affirmed a denial of a plan based on section 1129(a)(2) because the plan proponent had spent proceeds from a sale in violation of section 363(c) of the Bankruptcy Code. See *Cothran v. United States*, 45 B.R. 836, 838 (S.D. Ga. 1984) (“[t]o the extent that the administrative provisions of Chapter 3 apply to cases under Chapter 11, a debtor must also abide by Chapter 3 or risk non-confirmation”). One

bankruptcy court denied confirmation under section 1129(a)(2) because the debtor refused to pay court-ordered administrative expense claims. *See In re Midwestern Cos.*, 55 B.R. 856, 863-64 (Bankr. D. Mont. 1985). A different bankruptcy court denied confirmation on the basis of section 1129(a)(2) because the debtor had failed to comply with the deadline to propose a small business plan. *See In re Win Trucking Inc.*, 236 B.R. 774, 778-79 (Bankr. D. Utah 1999).

45. What these opinions demonstrate is that section 1129(a)(2) means what it says, and what it says is broad: if the plan proponent has not complied with chapter 11 (the “applicable provisions”) then its plan cannot be confirmed. Period. And, as these opinions further confirm, the provisions of chapter 11 that must be complied with are all of them, as opposed to merely those governing the plan itself. Indeed, that is the point of section 1129(a)(1) of the Bankruptcy Code and there would be no need for a separate provision if all that was applicable was the statute governing confirmation itself. *See* 11 U.S.C. § 1129(a)(1).

46. Notwithstanding the broad language of section 1129(a)(2) of the Bankruptcy Code, one bankruptcy court has concluded that section 1129(a)(2) “does not provide creditors with a ‘silver bullet’ to defeat confirmation based on each and every minor infraction of Title 11 that a debtor may commit.” *In re Cypresswood Land Partners I*, 409 B.R. 396, 423-24 (Bankr. S.D. Tex. 2009). This opinion is wrong, however, and it should not be followed, for the simple reason that it reads into the statute an exception that is simply not there. *Connecticut Nat’l Bank v Germain*, 503 U.S. 249, 254 (1992) (Congress “says in a statute what it means and means in a statute what it says there”). Nor is a violation of the Bankruptcy Code a “silver bullet” that creditors have. A debtor obtains immense relief and benefits from Chapter 11 and requiring it to comply with its own obligations, and imposing upon it consequences if it fails to do so, should not be a controversial proposition. It is not the

creditor’s “silver bullet”; it is the consequence, perhaps even penalty, for failure to comply with the law.

47. But even if this opinion has some persuasiveness, compliance with Bankruptcy Rule 2015.3 is not a “minor infraction.” This is an important rule that provides all participants with transparency and some level of control over a debtor’s ownership interest in other entities—here, interests worth hundreds of millions of dollars. *See, e.g., In re Sillerman*, 605 B.R. 631, 644 (Bankr. S.D.N.Y. 2019) (discussing importance of Rule 2015.3 reports: “[t]hese reports would supply the Court and creditors with relevant and material information regarding the Debtor’s interest in his dozens of entities, thereby enhancing transparency and potentially laying bare any improper transfers or self-dealing”). What if a debtor is selling its interests and not accounting for the proceeds? What if a debtor is using its control of those entities to cause them to dispose of their assets improperly, so as to remove them from creditor reach? What if a debtor is channeling business or other estate resources into or through those entities? As those entities are not debtors themselves, the bankruptcy court and creditors would have no other way of knowing what is going on with those assets except through compliance with Bankruptcy Rule 2015.3. *See, e.g., In re Hoyle*, 2013 Bankr. LEXIS 420 at \*12-\*14 (Bankr. D. Idaho 2013) (detailing improper use and accounting of non-debtor entities owned by debtor).

48. Bankruptcy Rule 2015.3 is not trivial or minor; it is very important. Failure to comply with the Rule has led to conversion of the bankruptcy case:

Winterhalter’s failure deprived creditors of critical information regarding the Debtor’s partnership interests, and Debtor’s receipt and use of the partnership distributions created suspicion among the creditors, contributed to the multiple litigation between the Debtor and his creditors at almost every juncture of his Chapter 11 case, and ultimately contributed to the conversion of the Debtor’s case from Chapter 11 to Chapter 7.

*In re Grasso*, 586 B.R. 110, 150 (Bankr. E.D. Pa. 2018). Likewise, a failure to file the reports is cause to appoint a chapter 11 trustee or to dismiss the bankruptcy case. *See, e.g., In re Sillerman*, 605 B.R. 631, 644 (Bankr. S.D.N.Y. 2019). Thus, if the failure to timely file these reports is sufficient cause to convert or dismiss the case, or to appoint a chapter 11 trustee, then such failure cannot be described as trivial or a “minor infraction” even if there were a “minor infraction” exception to section 1129(a)(1).

**C. MOVANTS WILL SUFFER IRREPARABLE INJURY WITHOUT A STAY**

49. The focus of the second element is whether, absent a stay pending appeal, the Movants may suffer irreparable injury in the form of effectively being denied appellate review due to mootness or similar considerations. *See In re Tex. Equip. Co.*, 283 B.R. 222, 228 (Bankr. N.D. Tex. 2002). This element puts the Movants in an awkward situation. On the one hand, they are not admitting that their appeal will be moot. On the other hand, they have to address the reality that mootness is a significant concern any time that a chapter 11 plan is on appeal.

50. This is because consummation of a plan may render any challenges to confirmation thereof moot. *In re Westwood Plaza Apartments*, 150 B.R. at 169 (factor tilted in favor of granting stay); *Dropbox, Inc. v. Thru, Inc. (In re Thru, Inc.)*, Case No. 3:17-CV-1958-G, 2018 WL 5113124, at \*12 (N.D. Tex. Oct. 19, 2018) (equitable mootness more likely if no stay has been obtained and plan has been substantially consummated); *see also In re Best Products Co.*, 177 B.R. 791 (S.D.N.Y. 1995) (dismissing appeal of confirmation order as moot where appellant failed to seek stay of confirmation order and plan had been consummated). Indeed, the Fifth Circuit in *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), recognized the potential issues with denying a stay of a confirmation order pending appeal:

Although the exigencies of the case appeared to demand prompt action, simply denying a stay seems to have been, and often will be, too simplistic a response. A plan may be designed to take effect, as it was here, after a lapse of sufficient time to initiate appellate review. A supersedeas bond may be tailored to the scope of the appeal. An appeal may be expedited. As with all facets of bankruptcy practice, myriad possibilities exist. Thus, substantial legal issues can and ought to be preserved for review.

584 F.3d at 243.

51. The unprecedented breadth of the Exculpation Provision and the Injunction has the potential to cause immediate and irreparable harm to the Movants and other parties in interest. These provisions have the cumulative effect of preventing the Movants, among other parties, from exercising their legal rights to pursue any claims or causes of action against non-debtor parties.<sup>2</sup> Indeed, the provisions are so broad that they essentially prevent the Movants from exercising their rights and remedies that arise post-confirmation in the ordinary course of business, despite the same being completely distinct from the bankruptcy case, and notwithstanding the basis or nature of the claim. In practical effect, the Movants will, at the very least, have to seek leave of the Court in order to seek any relief for any present or future actionable wrongs, whether contractual or under applicable non-bankruptcy law. Furthermore, if the stay is denied, the Movants could suffer harm for which they have no legal redress and which becomes moot - equitably or otherwise - before the District Court has an opportunity to rule.

52. The impermissibility of the Exculpation Provision and Injunction is apparent, and absent a stay, will immediately deprive Movants of their due process rights and ability to seek legal redress for wrongs that may be suffered. The possibility of irreparable injury can

---

<sup>2</sup> As the Court is aware, in light of the Debtor's termination of its shared services agreements with the Advisors, the Advisors and the Debtor are in the process of transferring to the Advisors their data held by the Debtor. It is too soon to determine whether this process will be satisfactorily concluded but, if it is not, the Movants may have additional claims and causes of action against the Debtor which would be subject to the Plan's exculpation and injunction provisions.



only be remedied by a stay of the Confirmation Order.

53. Additionally, the Plan has the practical effect of enjoining the Movants from advising or causing the funds to remove the Debtor as manager of the CLOs or to join with other, non-enjoined funds, from removing the Debtor as manager. Should the Debtor engage in conduct after confirmation that justifies the removal of the Debtor as manager, the Movants will be prevented from being able to advise their clients accordingly or to take action on their behalf. This would cause Movants irreparable injury.

54. The Debtor will argue that there is no irreparable harm because the gatekeeper Injunction will permit the Movants to seek relief from the Court in order to exercise their rights. But, as argued above, this Court will not have post-confirmation jurisdiction over post-confirmation and post-assumption transactions and disputes. This is especially the case if the Bankruptcy Case is closed soon after confirmation, as may be likely given that most sizable claims have been adjudicated or compromised. Simply put, the Court, without jurisdiction, may nevertheless decide that a proposed action is not “colorable” as is required by the gatekeeper Injunction, meaning that the Movants will be prevented from acting without a court of proper jurisdiction reviewing the matter. At a minimum, the time it would take Movants to comply with the gatekeeping Injunction, during which time the Movants would be prevented from exercising their legitimate, contractual and statutory rights, imposes a substantial burden.

55. As a subset of the above, mootness will also arise because the Debtor has stated that it intends to liquidate and wind down the CLOs in approximately two years. Thus, by the time that the appeal of the Plan is ultimately concluded, the liquidation of the CLOs will have occurred in full or in large part, and even if the Movants prevail on appeal the damage will already have been done.

**D. NO SUBSTANTIAL HARM TO DEBTOR OR OTHER PARTIES**

56. A stay pending appeal is also justified under the third prong because neither the Debtor, nor any of the Debtor’s creditors, will be substantially harmed by a stay of the Confirmation Order pending appeal. Moreover, the Court can fashion the stay to prevent harm to the Debtor and other parties. *See In re Westwood Plaza Apartments*, 150 B.R. at 169 (conditioning stay of plan on, among other things, debtor’s ability to pay administrative, tax and secured claims as provided for under the plan); *In re Thru*, 2018 WL 5113124, at \*20 (recognizing availability of partial relief on appeal of plan with respect to exculpation provisions).

57. Courts have found substantial harm to other parties if the stay would cause a significant delay in the administration of the estate or a delay in the distribution to creditors under the plan. *In re Dernick*, 2019 WL 236999, at \*4. Here, a stay will not lead to any harm, much less substantial harm, to the Debtor or other creditors. This is because the Debtor can continue doing exactly what it would do under the Plan: (i) the CEO/CRO is still in charge and the members of the creditors committee will be on the trust oversight board, with the addition of one additional member; (ii) the CEO/CRO can continue administering the estate the same as he is doing now; (iii) the CEO/CRO can continue managing affirmative litigation the same as he is doing now; (iv) the CEO/CRO can continue managing the CLOs and funds that the Debtor manages the same as he is doing now; (v) there is no exit financing under the Plan; (vi) there are no asset sales or compromises under the Plan that cannot be effectuated without the Plan; and (vii) there is no new money or new value being contributed under the Plan. 185:3-188:5.

58. As the Debtor’s CEO/CRO confirmed, “post-confirmation, you are basically going to continue managing the CLOs and funds and trying to monetize assets for creditors

the same as you are today.” Confirmation Hearing Transcript (February 2, 2021) at 188:2-5. And, as the CEO/CRO confirmed, he does not “need anything in the plan that [he] does [not] have today to keep managing” the “Funds and the CLOs.” *Id.* 188:23-189:2. Instead, as the CEO/CRO confirmed, the only difference is that he would not be willing to serve as the post-confirmation trustee without the Plan’s channeling Injunction, and that the reorganized debtor would be unable to obtain directors and officers insurance. *Id.* 168:6-18. But that is precisely the point: a Plan should not have as its principal purpose the entry of an injunction limiting the ability of parties to exercise their rights for matters arising *after* confirmation and assumption.

59. The Court should also take into account that 27 Class 8 creditors rejected the Plan, while only 17 accepted the Plan. It is the unsecured creditors who would be the only ones potentially prejudiced if the Plan is stayed, as that may delay their recoveries. But Class 8 overwhelmingly rejected the Plan. While 16 Class 7 convenience class creditors accepted the Plan, the total cost to pay those creditors is approximately \$10 million. The Debtor has more than sufficient cash on hand to pay these creditors with an interim distribution if it so wished. The five subordinated creditors accepting the Plan do not matter, since they are not projected to receive anything under the Plan, and if they do receive anything, it will be years into the future after extensive litigation. As for the Class 2 Frontier Secured Claim, the Debtor has many options to treat this secured claim with adequate protection and other payments that it can do without need for the Plan.

60. Finally, a stay pending appeal will actually protect the Debtor and its professionals. As demonstrated above, the District Court has already rejected an exculpation clause that is similar to the one in the Plan as a matter of law. Yet, as the Court heard at the confirmation hearing, the CEO/CRO would not be willing to serve as the post-confirmation trustee or manager of the Debtor without the Plan’s Exculpation Provision and Injunction, and

the reorganized debtor would not be able to obtain directors and officers insurance. Should something arise after confirmation, with these provisions of the Plan reversed by an appellate court, the CEO/CRO, the reorganized debtor, and potentially others may face potential liability without coverage. All parties, and especially the CEO/CRO and the Debtor, should have a strong interest in ensuring that nothing of that sort happens—something best done by a stay pending appeal.

**E. THE PUBLIC INTEREST IS SERVED BY A STAY PENDING APPEAL**

61. Because the Exculpation Provision and the Injunction impermissibly infringe upon the contractual, legal and due process rights of parties in interest in the bankruptcy case, a stay pending appeal of such provisions will serve the public interest. A stay will ensure that non-debtor parties are held accountable for their post-petition and post-confirmation conduct, while preserving the rights and remedies of parties in interest under applicable non-bankruptcy law. Likewise, a stay will serve the public interest of respecting and upholding judicial precedent. The interests of many innocent, third party investors must also be taken into account, and their interests are not served by the Exculpation Provision and Injunction that may effectively and permanently prevent them from exercising legitimate contract and statutory rights. Finally, the public has a strong interest in ensuring that securities laws are complied with, including the Investment Advisers Act of 1940. The Plan's Exculpation Provision and Injunction threaten to substantially vitiate these laws and effectively relieve the Debtor from its obligations and duties (and potential liabilities) thereunder.

**F. SECURITY FOR STAY PENDING APPEAL**

62. The Court may, but need not, condition a stay pending appeal on a bond or other security being posted. As this Court has summarized:

The purpose of a supersedeas bond is to preserve the status quo while protecting the non-appealing party's rights pending appeal. The bond secures the prevailing party against any loss sustained as a result of being forced to forgo execution on a judgment during the course of an ineffectual appeal. In deciding how best to secure the non-appealing party from loss, the court applies general equitable principles.

*In re Tex. Equip. Co.*, 283 B.R. at 229.

63. Normally, the amount of any bond should be the amount of the judgment being stayed. The Movants are aware of one bankruptcy court concluding that, when the order being stayed is a confirmation order, the amount of the bond should be the entire amount of debt subject to the plan. *See In re Scotia Dev. LLC*, 2008 Bankr. LEXIS 5127 \*32-\*33 (Bankr. S.D. Tex. 2008). Here, however, the Plan does not propose to pay any claims any time soon, except for administrative claims and Class 7 convenience claims, both of which can be satisfied by the amount of cash the Debtor is presently holding. Thus, an analogy to *Scotia Dev. LLC* is not warranted, and applying its reasoning here would lead to a punitive result that would actually better the returns to creditors, meaning that it would do far more than preserve the status quo and protect against harm resulting from the stay pending appeal itself. Moreover, the risk in *Scotia Dev. LLC* was that the debtor's business would collapse from a lack of funding that the confirmed plan provided for. *See id.* at \*25 ("the continued viability and operation of the debtors must be protected. All parties agree that some extraordinary program is required to allow these debtors to survive more than even ten days. Without additional cash, both Scopac and Palco would have to shut down immediately"). No such considerations are present here.

64. Instead, the Movants respectfully submit that any such conclusion would be punitive and would not be warranted by the facts. *See, e.g., In re Gleasman*, 111 B.R. 595, 604 (Bankr. W.D. Tex. 1990) ("The purpose of a bond, after all, is to protect Franklin against

any loss, not to confer a windfall. The property itself is not going anywhere”). As discussed above, the Plan does not give the Debtor anything it does not have now. No new funds are coming in, no exit financing is involved, and no asset sale is provided for in the Plan. Rather, the Debtor will simply continue doing under the Plan what it is doing now: it will manage its assets, funds, and the CLOs, and will continue monetizing its assets and managing litigation the same as now. Whatever the value of the assets being administered is today will be the same under the Plan and without the Plan. No new funds and no exit financing is involved. Nothing in the Plan gives the Debtor tools to administer its estate that it lacks at present, and nothing in the Plan will increase the value of assets available for creditors. Thus, there will be no harm to the Debtor or to the estate.

65. The only conceivable harm is from a delay in certain payments to certain creditors. If the Plan is affirmed, then those creditors would not have the use of those funds for a period of time. Here, the Debtor believes that it will distribute approximately \$60 million to Class 7 and Class 8 creditors within one year of the Plan being confirmed. As unsecured creditors, these creditors would be entitled to interest at the federal rate of post-judgment interest. *See In re Thru Inc.*, 2017 Bankr. LEXIS 1902 at \*28-29. That rate is at present less than 1% and is unlikely to rise past that amount during the period of any stay. Thus, the interest that any creditor may be able to claim for any delay in payment is less than 1%, or less than \$600,000.00.

66. The Movants therefore submit that a bond or security of \$1 million is sufficient to protect the Debtor and its estate from any harm resulting from the delay in the effectiveness of the Plan.

#### IV. CONCLUSION

67. Based on the foregoing, a stay of the Confirmation Order is justified under

each of the applicable factors for a stay pending appeal. Accordingly, the Court should grant a stay of the Confirmation Order.

WHEREFORE, the Movants request that the Court enter an Order:

1. Staying the effectiveness of the Confirmation Order pending appeal; and
2. Granting such other relief as is just and proper.

Dated: February 28, 2021

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Davor Rukavina

Davor Rukavina, Esq.  
Texas Bar No. 24030781  
Julian P. Vasek, Esq.  
Texas Bar No. 24070790  
3800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
E-mail: drukavina@munsch.com

**COUNSEL FOR HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P.,  
AND NEXPOINT ADVISORS, L.P.**



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 28th day of February, 2021, true and correct copies of this document were electronically served on parties entitled to notice thereof, including on counsel for the Debtor.

Dated: February 28, 2021

/s/ Davor Rukavina  
Davor Rukavina

## **EXHIBIT 10**

K&L GATES LLP  
 Artoush Varshosaz (TX Bar No. 24066234)  
 1717 Main Street, Suite 2800  
 Dallas, TX 75201  
 Telephone: (214) 939-5659  
 E-mail: artoush.varshosaz@klgates.com

A. Lee Hogewood, III (*pro hac vice*)  
 4350 Lassiter at North Hills Ave., Suite 300  
 Raleigh, NC 27609  
 Telephone: (919) 743-7306  
 E-mail: lee.hogewood@klgates.com

*Counsel for Highland Income Fund, NexPoint  
 Strategic Opportunities Fund, Highland Global  
 Allocation Fund, and NexPoint Capital, Inc.*

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	Case No. 19-34054 (SGJ11)
Debtor.	)	
	)	
	)	
	)	

**MOTION FOR STAY PENDING APPEAL OF THE COURT’S ORDER  
 CONFIRMING THE DEBTOR’S FIFTH AMENDED PLAN**

Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc. (each, a “**Fund**,” and collectively, the “**Funds**” or “**Movants**”), by and through their undersigned counsel, and pursuant to Rule 8007 of the Federal Rules of Bankruptcy Procedure, respectfully move (the “**Motion**”) this Court to stay its *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* [Dkt. No. 1943] (the “**Confirmation Order**”) pending appeal. In support of the Motion, the Movants respectfully show the Court as follows:

**I. PRELIMINARY STATEMENT**



1. On February 22, 2021, this Court entered its Confirmation Order in the above-captioned chapter 11 case of Highland Capital Management, L.P. (the “**Debtor**”). On March 3, 2021, Movants timely filed a notice of appeal pursuant to Bankruptcy Rule 8002. Movants maintain that the Confirmation Order contravenes established law in the Fifth Circuit by confirming a plan that contains non-consensual non-debtor exculpation and injunction provisions that are overly broad. Further, the Confirmation Order approves a channeling injunction that impermissibly attempts to confer jurisdiction in the Court over post-confirmation matters with respect to which it would otherwise lack subject matter jurisdiction. The aforementioned provisions, which are now part of a confirmed plan, are sweeping and unprecedented.

2. Accordingly, Movants respectfully request a stay pending appeal of the Confirmation Order. If a stay is not granted, Movants’ rights would be severely prejudiced pending the ruling on appeal, even if the ruling on appeal ultimately results in Movants’ favor. There is a present threat that the exculpation and injunction provisions preclude Movants from being able to exercise their contractual rights under certain management contracts with collateralized loan obligations (the “**CLOs**”) that are assumed under the confirmed plan. Moreover, Movants’ rights could be mooted by the time of any final resolution on appeal because by that time, the Debtor may have already completed its liquidation and wind down of the CLOs’ assets. A stay pending appeal does not present any serious risk of harm to the Debtor or its creditors. Furthermore, the public interest supports a stay pending appeal by ensuring that the Debtor and non-debtor parties are held responsible for their performance and compliance under contracts the Debtor has assumed, including the CLO management contracts. Accordingly, and as required by Bankruptcy Rule 8007, Movants, with all due respect, move this Court for a stay of its own Confirmation Order.

## II. BACKGROUND

### A. General Background on the Funds

3. Each of the Funds is a publicly registered investment company or business development company under the Investment Company Act of 1940, as amended, 15 U.S.C. § 80a-1, *et. seq.* (the “**1940 Act**”). Each of the Funds is regulated by the U.S. Securities and Exchange Commission (the “**SEC**”) and by a comprehensive set of securities laws, including the Securities Act of 1933, the Securities Exchange Act of 1934, and the 1940 Act, in addition to various state law provisions (collectively, the “**Securities Laws**”). Collectively, the Funds have thousands of shareholders, ranging from large institutional investors to small individual shareholders, and have more than \$1 billion in assets under management.

4. Each Fund is advised by either Highland Capital Management Fund Advisors, L.P., or NexPoint Advisors, L.P. (each, an “**Advisor**,” and collectively, the “**Advisors**”). The Advisors are investment advisers registered with the SEC as investment advisers under the Investment Advisers Act of 1940, as amended, 15 U.S.C. § 80b-1, *et seq.* (the “**Advisers Act**”).

5. As public registered investment companies and a business development company, each Fund is regulated under the 1940 Act and is governed by a Board of Trustees (a “**Board**”). Each Board owes fiduciary duties to its Funds and to the Funds’ shareholders. The Boards also have obligations under the Securities Laws to exercise independent business judgment and act in the best interests of the Funds and their shareholders.

6. The Boards have regular quarterly meetings, and frequently meet in between the quarterly meetings regarding a variety of Fund operational issues. The SEC routinely describes and emphasizes the oversight duties of investment company boards in its rulemaking efforts. The Boards’ members include a number of sophisticated investment professionals, all but one of whom

is independent from the Advisors and who are advised by their own legal counsel.

7. Additionally, the Funds do not have employees. Rather, the Boards retain the Advisors to advise the Funds, subject to the Boards' oversight.

8. The Funds also own the preference shares in certain CLOs for which the Debtor serves as portfolio manager, and own the majority of preference shares in at least three of such CLOs. The CLOs are securitization vehicles that were formed to acquire and hold pools of debt obligations. They also issued various tranches of notes and preference shares, which are intended to be repaid from proceeds of the subject CLO's pool of debt obligations. The notes issued by the CLOs are paid according to a contractual priority of payments, with the value remaining in the CLOs after the notes are fully paid flowing to the holders of the preference shares.

9. The CLO management agreements generally allow the holders of preference shares, i.e., the Funds, to remove the portfolio manager for cause, and some allow removal without cause.

**B. The Confirmation Order**

10. On October 16, 2019 (the "**Petition Date**"), the Debtor filed a voluntary petition under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"), commencing the above-captioned bankruptcy case.

11. On November 24, 2020, the Debtor filed its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. No. 1472] (the "**Fifth Amended Plan**").

12. Movants, among other parties in interest, filed an objection to the Fifth Amended Plan. *See, e.g.*, Dkt. No. 1670.

13. On January 22, 2021, the Debtor filed its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Dkt. No. 1808] (the "**Plan**").

14. Article IX of the Plan contains the following exculpation provision (the

“Exculpation Provision”):<sup>1</sup>

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); provided, however, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

Dkt. No. 1808 at 54-55. “Exculpated Parties,” in turn, means, collectively:

(i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds,<sup>2</sup> (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of

<sup>1</sup> Capitalized terms used, but not otherwise defined, shall have the meanings ascribed to such terms in the Plan.

<sup>2</sup> To avoid any confusion, Movants note that the Plan defines the Managed Funds as “Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.” Dkt. No. 1808 at 17.



its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

Dkt. No. 1808 at 15.

15. Article IX of the Plan also contains an injunction provision (the “**Injunction**”), which provides, in pertinent part, as follows:

**F. Injunction**

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

....

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; provided, however, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

Dkt. No. 1808 at 57-58. “Enjoined Parties,” in turn, is defined to mean:

- (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan),
- (ii) James Dondero (“Dondero”),
- (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the

capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

Dkt. No. 1808 at 14. “Protected Parties” means, collectively:

(i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

Dkt. No. 1808 at 19.

16. On February 2 and 3, 2021, the Court conducted a hearing on confirmation of the Plan, and on February 22, 2021, entered the Confirmation Order.

17. Movants timely appealed the Confirmation Order by filing a Notice of Appeal on March 3, 2021 [Dkt. No. 1966].

### **III. ARGUMENTS AND AUTHORITIES**

#### **A. Standard for a Stay Pending Appeal**

18. By the Motion, Movants request a stay of the Confirmation Order pending appeal pursuant to Bankruptcy Rule 8007.

19. Bankruptcy Rule 8007 allows a bankruptcy court to stay a judgment in order to maintain the status quo pending appeal. Fed. R. Bankr. P. 8007(a)(1)(A).

20. The decision of whether to grant a stay pending appeal under Bankruptcy Rule 8007 is a matter within the court's discretion. *In re Dye*, Case No. 06-71024, 2007 Bankr. LEXIS 2972, at \*3 (Bankr. N.D. Ga. July 24, 2007) (discussing former Bankruptcy Rule 8005). "That discretion is by design a flexible tool which permits the bankruptcy court to tailor relief to the circumstances of the particular case." *Id.* (citing *Gleasant v. Jones, Day, Reavis & Pogue*, 111 B.R. 595 (Bankr. W.D. Tex. 1990)).

21. In determining whether to grant a discretionary stay pending appeal under Bankruptcy Rule 8007, courts consider the following criteria:

- (1) the likelihood that the movant will prevail on the merits of the appeal;
- (2) whether the movant will suffer irreparable injury if the stay is denied;
- (3) whether other parties would suffer substantial harmed if the stay is granted; and
- (4) whether the public interest will be served by granting the stay.

*In re First S. Sav. Ass'n*, 820 F.2d 700, 709 (5th Cir. 1987); *In re Tex. Equip. Co.*, 283 B.R. 222, 226-27 (Bankr. N.D. Tex. 2002). In the Fifth Circuit, each of the foregoing criteria must be satisfied by the party requesting the stay. *In re Tex. Equip. Co.*, 283 B.R. at 227; *see also In re Dernick*, Case No. 18-32417, 2019 WL 236999, at \*2 (Bankr. S.D. Tex. Jan. 16, 2019) (movants must prove entitlement to relief by a preponderance of the evidence). However, the first two elements are the most critical. *Saldana v. Saldana*, 2015 WL 502145, at \*2 (N.D. Tex. Aug. 25, 2015).

22. The nature of an order confirming a plan of reorganization makes a stay pending appeal uniquely important. Without a stay of such an order, "it is extremely unlikely that Appellants will ever be able to have meaningful appellate review of the rulings of the Bankruptcy Court, a non-Article III court, and in any event, a lower court. The ability to review decisions of

the lower courts is the guarantee of accountability in our judicial system. . . . Thus, the ability to appeal a lower court ruling is a substantial and important right.” *In re Adelpia Commc’ns Corp.*, 361 B.R. 337, 342 (S.D.N.Y. 2007).

23. As discussed herein, a stay of the Confirmation Order is justified.

**B. There is a Likelihood of Success on the Merits**

24. With respect to the first factor, the U.S. Court of Appeals for the Fifth Circuit has recognized that a movant must either present a prima facie case, but need not show that it is certain to win, or, if a serious legal question is involved, must present a substantial case on the merits and show that the balance of equities weighs heavily in favor of granting the stay. *In re First S. Sav.*, 820 F.2d at 704; *In re Dernick*, 2019 WL 236999, at \*2; *In re Tex. Equip. Co.*, 283 B.R. at 227. The standards provided by substantive law guide the court in determining whether a movant has shown a likelihood of success on the merits. *In re Dernick*, 2019 WL 236999, at \*2.

25. Where an appeal involves questions of law, “the movant more easily satisfies the first element.” *In re Tex. Equip. Co.*, 283 B.R. at 227. With respect to confirmation of a chapter 11 plan, the bankruptcy court’s conclusions of law are reviewed *de novo*. *See In re Tex. Grand Prairie Hotel Realty LLC*, 710 F.3d 324, 326 n.1 (5th Cir. 2013). The Movants’ appeal relates to the Exculpation Provision and the Injunction, which are legal issues that will be subject to *de novo* review.

26. The Movants have shown a likelihood of success on the merits. The Exculpation Provision and Injunction provided for in the Plan contravene established law. The Fifth Circuit has held that exculpation provisions designed to absolve parties other than the debtor and the creditors’ committee of any negligent conduct that occurred during the course of the bankruptcy are unenforceable. *In re Pac. Lumber Co.*, 584 F.3d 229, 253 (5th Cir. 2009). To the contrary,

Fifth Circuit authorities broadly “foreclose non-consensual non-debtor releases and permanent injunctions.” *Id.* at 252 (citing authorities); *see also Dropbox, Inc. v. Thru, Inc. (In re Thru, Inc.)*, Civil Action No. 3:17-CV-1958-G, 2018 WL 5113124, at \*22-23 (N.D. Tex. Oct. 19, 2018). Whereas exculpation of the debtor is justified by section 524 of the Bankruptcy Code, and exculpation of creditors’ committees has been deemed justified by section 1103 of the Bankruptcy Code, there is no authority justifying an extension of exculpation protections to other parties, even if the parties sought to be exculpated participated significantly in formulating the confirmed plan. *In re Pac. Lumber*, 584 F.3d at 253 (noting that the creditors’ committee and its members were “the only disinterested volunteers among the parties sought to be released”); *see also In re Pilgrim’s Pride Corp.*, Case No. 08-45664, 2010 WL 200000, at \*5 (Bankr. N.D. Tex. Jan. 14, 2010) (“Because *Pacific Lumber* is binding precedent, the court may not, over objection, approve through confirmation of the Plan third-party protections, other than those provided to the Committees, members of the Committees, and the Committees’ Professionals.”).

27. However, the Plan extends the Exculpation Provision to not only the Debtor, the creditors’ committee, and their professionals, but also, impermissibly, to the Debtor’s majority-owned subsidiaries, the Managed Funds, Employees, Strand, the Independent Directors, the CEO/CRO, and other Related Persons, in contravention of established precedent. Such parties are not “disinterested volunteers” akin to the creditors’ committee, and even if they were, Fifth Circuit precedent does not support their exculpation from liability.

28. Furthermore, there is no clear end date with respect to the Exculpation Provision. The Exculpation Provision has the practical effect of allowing the Exculpated Parties to escape liability for post-confirmation conduct that goes beyond activity relating to the bankruptcy case, formulation of the Plan, or the administration of the estate, and allows the Exculpated Parties to

escape liability that may arise in ordinary course, post-petition relationships of the parties, such as liability for an ordinary breach of contract.

29. Indeed, the district court, in *In re Thru, Inc.*, struck down a virtually identical exculpation clause as the one in the Plan. 2018 WL 5113124, at \*22-23. The exculpation clause in that case provided as follows:

Neither the Debtor nor any of its present officers, directors, employees, agents, advisors, or affiliates, nor any of its Professionals (collectively, the “Exculpated Persons”), shall have or incur any liability to any Entity for any act taken or omission made in good faith in connection with or related to formulating, negotiating, implementing, confirming or consummating the Plan, the Disclosure Statement or any Plan Document. The Exculpated Persons shall have no liability to the Debtor, any Creditor, Interest holder, any other party in interest in the Chapter 11 Case or any other Entity for actions taken or not taken under the Plan, in connection herewith or with respect thereto, or arising out of their administration of the Plan or the property to be distributed under the Plan, in good faith, including failure to obtain Confirmation or to satisfy any condition or conditions, or refusal to waive any condition or conditions, to the occurrence of the Effective Date, and in all respects such Exculpated Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

*Id.* at \*22.

30. Because the district court has already concluded that confirmation of a plan containing a virtually identical exculpation provision constituted clear error, the Movants have demonstrated a likelihood of success on the merits of their appeal. Here, the Exculpation Provision is even broader than the one at issue in *In re Thru*, as it protects non-debtor entities and their directors, is not limited to bankruptcy administration matters, and is not limited in time to the pre-Effective Date period.

31. Moreover, the Court’s stated reasons for allowing the Exculpation Provision, as expressed in the Confirmation Order, on their face do not apply to many of the Exculpated Parties. The Court found that dicta in *Pacific Lumber* that “costs the released parties might incur defending against suits alleging such negligence are unlikely to swamp either these parties or the

consummated reorganization” hinted that the equities and/or economics of a case might justify a non-debtor exculpation provision. While Movants concede it is possible that litigation against some of the Exculpated Parties, such as the Debtor, the Independent Directors, the CEO/CRO, and even the Employees, could hamper reorganization efforts, there is no foreseeable or expressed concern that litigation against other Exculpated Parties, such as the Debtor’s owned subsidiaries and Managed Funds, or the Related Persons, would have any impact on reorganization efforts. The Court also found that the Independent Directors, and by extension the CEO/CRO, fell within a policy-based exclusion as being akin to a creditors’ committee or its members, but the Independent Directors and the CEO/CRO are only one subset of the Exculpated Parties. The Court made no finding that exculpation of any of the other Exculpated Parties could be justified under this rationale. Finally, again only with respect to the Independent Directors, the Court found that they were already exculpated by virtue of its January 9, 2020 order at Docket No. 339. Accordingly, even if there is a basis in law for extending exculpation protections to certain of the Exculpated Parties, namely the Independent Directors and the CEO/CRO, there is no stated or implied basis for allowing the Exculpation Provision with respect to any of the other Exculpated Parties.<sup>3</sup>

32. Furthermore, the sweeping Injunction preventing parties from pursuing causes of action against the non-debtor Protected Parties effectively discharges non-debtors and contravenes

---

<sup>3</sup> It is also worth noting that the breadth of the Exculpation Provision *does* serve to discharge non-debtors in contravention of section 524 of the Bankruptcy Code. Under section 1141(d) of the Bankruptcy Code, confirmation of a plan discharges the debtor from any debt “that arose before the date of such confirmation.” 11 U.S.C. § 1141(d)(1). Section 524 simply provides the effect of a discharge granted under another chapter of the Bankruptcy Code. Thus, to the extent that the Exculpation Provision exculpates non-debtor parties from claims arising prior to the date of confirmation, it has the effect of granting a discharge to such parties. With this understanding in mind, the Fifth Circuit’s bar on exculpation provisions with respect to non-debtor third parties that are not co-liable with the debtor avoids conflict between sections 524(e) and 1141(d)(1) of the Bankruptcy Code. Movants submit that the decision of the U.S. Court of Appeals for the Ninth Circuit, cited favorably by the Court in its oral ruling, misses this point.



established Fifth Circuit precedent. The Injunction is significantly broader than injunctions that have been struck down by courts in the Fifth Circuit. In the recent case of *In re Thru, Inc.*, the district court struck down an injunction that purported to enjoin causes of action held against the debtor or the estate and that arose prior to the effective date of the plan from being brought against certain non-debtor protected parties. 2018 WL 5113124, at \*21-22. The district court found that it was clearly erroneous for the bankruptcy court to approve the injunction, which the bankruptcy court approved under section 105 of the Bankruptcy Code, because it effectively discharged non-debtors. *Id.* The Injunction in the Plan is broader than the injunction at issue in *In re Thru* in several important respects, as the Plan Injunction is not limited to claims that arose prior to the Effective Date, and is not limited to claims that the Enjoined Parties hold against the Debtor. Rather, the Injunction appears to have no end date, so long as a claim or cause of action arises out of some future administration or implementation of the Plan. Moreover, and significantly, the Injunction precludes Enjoined Parties from bringing claims held *against the Protected Parties* -- not just claims held against the Debtor or the estate. *See also In re Pilgrim's Pride*, 2010 WL 200000, at \*5 n.14 (*Pacific Lumber* prohibits exculpatory language that would bar outright actions against the debtor's management and professionals for their actions taken during a chapter 11 case).

33. The propriety of the Injunction is not saved by the ability of an Enjoined Party to bring such claim if the Court so allows. In fact, the channeling nature of the Injunction is impermissible as well. As drafted, the Injunction is broad enough to cover claims and causes of action that arise out of post-confirmation, ordinary course transactions between the Reorganized Debtor and/or non-debtor parties and other parties in interest and which do not have any actual relationship to the Plan or its implementation. The Court lacks subject matter jurisdiction over the

breadth of actions covered by the Injunction. *See In re CJ Holding Co.*, 597 B.R. 597, 604 (S.D. Tex. 2019) (“After confirmation, ‘the debtor’s estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the implementation or execution of the plan.’”) (quoting *In re Galaz*, 841 F.3d 316, 322 (5th Cir. 2016)); *see also In re Pilgrim’s Pride*, 2010 WL 200000, at \*5, n.14 (bankruptcy court could retain *limited* jurisdiction to channel claims against the debtors’ management and professionals stemming from their conduct during the chapter 11 cases, but *Pacific Lumber* prohibits exculpatory language that would bar such claims outright). Therefore, the channeling Injunction is impermissible because the Court appears to lack jurisdiction to even consider whether an enjoined action is colorable. The channeling Injunction goes far beyond what the Court has jurisdiction to channel to itself. Parties cannot create indefinite subject matter jurisdiction where none otherwise exists.

34. Furthermore, the Court’s justification of the gatekeeping Injunction is based primarily on the litigiousness of Dondero and his controlled entities. However, this justification does not extend to the Funds, which are controlled by independent boards, as discussed above, and are wholly independent of Dondero. This reality reflects why the gatekeeping Injunction is overly broad, as it serves to prevent innocent third parties from exercising their legal rights.

35. Accordingly, to the extent that the Confirmation Order authorizes the Exculpation Provision and the Injunction, it does so based upon an erroneous interpretation of the law and is an abuse of discretion. *In re Tex. Equip. Co.*, 283 B.R. at 227.

36. Second, this element is also satisfied because the Confirmation Order, to the extent it approves the Exculpation Provision and the Injunction, presents a serious legal question. At a minimum, Movants have shown a substantial case on the merits and the balance of equities weigh heavily in favor of a stay. *See In re First S. Sav.*, 820 F.2d at 704; *In re Dernick*, 2019 WL 236999,

at \*3; *In re Tex. Equip. Co.*, 283 B.R. at 227. “A serious legal question exists when legal issues have far-reaching effects, involve significant public concerns, or have a broad impact on federal/state relations.” *In re Dernick*, 2019 WL 236999, at \*3; see *In re Westwood Plaza Apartments, Ltd.*, 150 B.R. 163, 168 (Bankr. E.D. Tex. 1993) (serious legal question existed with respect to the appropriate standard for determining the market rate of interest in a cramdown plan, even though no likelihood of success on the merits). Here, the Exculpation Provision and the Injunction violate established Fifth Circuit precedent, and the Confirmation Order’s approval of such provisions is clearly erroneous. Upholding judicial precedent is a significant public interest, and the allowance of these provisions will cause lasting effects on parties in interest. Indeed, the Injunction is so broad that it will prevent parties, such as the Movants, from enforcing their rights with respect to post-confirmation transactions unrelated to the bankruptcy case unless they first seek authority to do so from the Court. Not only does this present a significant hurdle to the enforcement of rights, but it presents a serious due process concern.

37. Accordingly, it is likely that the Confirmation Order will be reversed to the extent it allows the Exculpation Provision and the Injunction. At the very least, the validity of the Exculpation Provision and the Injunction presents serious legal issues, Movants have presented a substantial case on the merits, and as discussed herein, the balance of equities weigh in favor of issuing a stay.

**C. Movants will Suffer Irreparable Injury without a Stay**

38. The second factor concerns whether the moving party will suffer irreparable injury if the stay is denied because it will effectively be denied appellate review due to mootness or similar considerations. *In re Tex. Equip. Co.*, 283 B.R. at 228. This factor also warrants a stay of the Confirmation Order.

39. Consummation of a plan may render any challenges to confirmation thereof moot. *In re Westwood Plaza Apartments*, 150 B.R. at 169 (factor tilted in favor of granting stay); *In re Thru, Inc.*, 2018 WL 5113124, at \*12 (equitable mootness more likely if no stay has been obtained and plan has been substantially consummated); *see also In re Best Products Co.*, 177 B.R. 791 (S.D.N.Y. 1995) (dismissing appeal of confirmation order as moot where appellant failed to seek stay of confirmation order and plan had been consummated). Indeed, the Fifth Circuit in *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), recognized the potential issues with denying a stay of a confirmation order pending appeal:

Although the exigencies of the case appeared to demand prompt action, simply denying a stay seems to have been, and often will be, too simplistic a response. A plan may be designed to take effect, as it was here, after a lapse of sufficient time to initiate appellate review. A supersedeas bond may be tailored to the scope of the appeal. An appeal may be expedited. As with all facets of bankruptcy practice, myriad possibilities exist. Thus, substantial legal issues can and ought to be preserved for review.

584 F.3d at 243.

40. The unprecedented breadth of the Exculpation Provision and the Injunction has the potential to cause immediate and irreparable harm to the Movants and other parties in interest. These provisions have the cumulative effect of preventing Movants, among other parties, from exercising their legal rights to pursue any claims or causes of action, however distantly related to the bankruptcy case. Indeed, the provisions are so broad that they would prevent Movants from exercising their contractual rights and remedies that arise post-confirmation in the ordinary course of business under the CLO management agreements, and insulate the Debtor as well as non-debtor parties from any corresponding liability, despite the same being completely distinct from the bankruptcy case, and notwithstanding the basis or nature of the claim. In effect, even if the Debtor were to engage in conduct post-confirmation that presented a basis for the Movants to remove the

Debtor as manager under the CLO management agreements, they would be prevented from doing so. The Exculpation Provision and the Injunction impermissibly shields the Debtor and non-debtor parties from liability for post-petition and post-confirmation breaches of contract.

41. In practical effect, Movants will, at the very least, have to seek leave of the Court in order to seek any relief for any present or future actionable wrongs, whether contractual or under applicable non-bankruptcy law. However, the Court will not have jurisdiction with respect to disputes that arise post-confirmation. It is thus foreseeable that the Court, without jurisdiction, could decide that a proposed claim is not colorable, preventing Movants from pursuing their contractual rights and remedies without review by a court of proper jurisdiction. At a minimum, the time it would take Movants to comply with the gatekeeping Injunction, during which time the Movants would be prevented from exercising their legitimate contractual rights, imposes a substantial burden.

42. Clearly, if the stay is denied, Movants could suffer harm for which they have no legal redress and which becomes moot - equitably or otherwise - before a decision is rendered on appeal.

43. The impermissibility of the Exculpation Provision and Injunction is apparent, and absent a stay, will immediately deprive Movants of their rights and ability to seek legal redress for wrongs that may be suffered. The possibility of irreparable injury can only be remedied by a stay of the Confirmation Order.

**D. No Substantial Harm to the Debtor or Other Parties**

44. A stay pending appeal is also justified under the third prong because neither the Debtor, nor any of the Debtor's creditors, will be substantially harmed by a stay of the Confirmation Order pending appeal. Moreover, the Court can fashion the stay to prevent harm to

the Debtor and other parties. *See In re Westwood Plaza Apartments*, 150 B.R. at 169 (conditioning stay of plan on, among other things, debtor's ability to pay administrative, tax and secured claims as provided for under the plan); *In re Thru*, 2018 WL 5113124, at \*20 (recognizing availability of partial relief on appeal of plan with respect to exculpation provisions).

45. Courts have found substantial harm to other parties if the stay would cause a significant delay in the administration of the estate or a delay in the distribution to creditors under the plan. *In re Dernick*, 2019 WL 236999, at \*4. However, a stay of the Confirmation Order does not prevent the Debtor from continuing to operate as it has been doing during the bankruptcy case. Indeed, the Plan largely contemplates a continuation of the pre-confirmation business. The Debtor can thus continue administering the estate, as well as the CLOs and other managed funds. There are no asset sales or compromises under the Plan that depend upon it becoming effective, nor is there any contingent exit financing. Accordingly, staying the Confirmation Order will not hamper the reorganization.

46. To the contrary, if the Confirmation Order is not stayed, parties in interest in the case would be significantly injured by the serious deprivation of their rights.

47. A stay pending appeal is critical to preserve the status quo, which, in this instance involves preservation of the Movants' legal rights and remedies, while important legal issues are determined by the appellate court. *In re Tolco Props., Inc.*, 6 B.R. 490, 491 (Bankr. E.D. Va. 1980) ("The Court is of the opinion that the purpose of a stay pending appeal is to maintain the status quo and to prevent harm to the moving party between the time the original order was entered and the decision to appeal.").

**E. The Public Interest is Served by a Stay**

48. Because the Exculpation Provision and the Injunction impermissibly infringe upon

the contractual, legal and due process rights of parties in interest in the bankruptcy case, a stay pending appeal of the Confirmation Order will serve the public interest. A stay will ensure that the Debtor as well as non-debtor parties are held accountable for their post-petition and post-confirmation conduct, while preserving the rights and remedies of parties in interest under applicable non-bankruptcy law. Likewise, a stay will serve the public interest of respecting and upholding judicial precedent.

49. Moreover, a stay will protect the interests of the Movants and other innocent third party investors that have collectively invested more than \$1 billion in the CLOs that the Debtor manages. The Exculpation Provision and Injunction, if not stayed, may effectively and permanently prevent these parties from exercising legitimate contractual rights.

50. The public interest will further be served by preserving the status quo among the parties while the propriety of the Exculpation and Injunction provisions is resolved by the appellate court. “The case law signals a preference in favor of maintaining the status quo.” *Skinner v. SBA (In re Skinner)*, 202 B.R. 867, 869 (W.D. Va. 1996) (citing *Feller v. Brock*, 802 F.2d 722, 727 (4th Cir. 1986)).

#### IV. CONCLUSION

51. Based on the foregoing, a stay of the Confirmation Order is justified under each of the applicable factors for a stay pending appeal. Accordingly, the Court should grant a stay of the Confirmation Order with respect to such provisions pending appeal.

WHEREFORE, Movants request that the Court enter an Order:

1. Staying the Confirmation Order pending appeal; and
2. Granting such other relief as is just and proper.



Dated: March 3, 2021

**K&L Gates LLP**

/s/ A. Lee Hogewood, III

A. Lee Hogewood, III (*pro hac vice*)  
4350 Lassiter at North Hills Ave., Suite 300  
Raleigh, NC 27609  
Telephone: (919) 743-7306  
E-mail: lee.hogewood@klgates.com

Artoush Varshosaz (TX Bar No. 24066234)  
1717 Main Street, Suite 2800  
Dallas, TX 75201  
Telephone: (214) 939-5659  
E-mail: artoush.varshosaz@klgates.com

*Counsel for Highland Income Fund,  
NexPoint Strategic Opportunities Fund,  
Highland Global Allocation Fund, and  
NexPoint Capital, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2021, I caused the foregoing document to be served via first class United States mail, postage prepaid and/or electronic email through the Court's CM/ECF system to the parties that consented to such service.

Dated: March 3, 2021

/s/ A. Lee Hogewood, III

A. Lee Hogewood, III

## **EXHIBIT 11**

Douglas S. Draper, La. Bar No. 5073  
[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)  
 Leslie A. Collins, La. Bar No. 14891  
[lcollins@hellerdraper.com](mailto:lcollins@hellerdraper.com)  
 Greta M. Brouphy, La. Bar No. 26216  
[gbrouphy@hellerdraper.com](mailto:gbrouphy@hellerdraper.com)  
 Heller, Draper & Horn, L.L.C.  
 650 Poydras Street, Suite 2500  
 New Orleans, LA 70130  
 Telephone: (504) 299-3300  
 Fax: (504) 299-3399  
*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:	*	Chapter 11
	*	
	*	Case No. 19-34054sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.	*	
	*	
Debtor	*	

**JOINDER TO MOTIONS FOR STAY PENDING APPEAL  
 OF THE COURT’S ORDER CONFIRMING THE  
DEBTOR’S FIFTH AMENDED PLAN**

Now into Court, through undersigned counsel, come The Dugaboy Investment Trust and Get Good Trust (“Movers”) who hereby submit this *Joinder to Motions for Stay Pending Appeal of the Court’s Order Confirming the Debtor’s Fifth Amended Plan* (“Joinder”), and respectfully represent as follows:

**Notice of Joinder**

1. The Dugaboy Investment Trust and Get Good Trust hereby join and adopt all assertions as stated in the following:
  - a. *Emergency Motion of the Advisors for Stay Pending Appeal of the Confirmation Order, and Brief in Support thereof* filed on February 28, 2021 (Dkt.

{00375210-8}



#1955) filed by Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.; and

b. *Motion for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan* filed on March 3, 2021 (Dkt. #1967) filed by Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc.

(collectively, "Motions for Stay").

2. Further, to the extent any other parties seek the relief requested in the Motions for Stay subsequent to filing this Joinder, The Dugaboy Investment Trust and Get Good Trust shall support the relief requested in the subsequent filing.

3. In addition to the reasons set forth in the Motions for Stay, Movers believe that a stay is warranted based upon the following:

a. Success on the Merits -

i. The Court, in confirming the Debtor's Plan, distinguished 5th Circuit case law (*In Re Pacific Lumber*, 584 F.3d 229 (5<sup>th</sup> Cir 2009) regarding the release and exculpation provisions set forth in the Plan. Movers believe the 5th Circuit's decision in *Securities and Exchange Commission v. Stanford International Bank, Ltd.*, No. 17-10663 (5th Cir. 2019) (copy attached) is the latest expression by the 5th Circuit that such release and exculpation provisions are not permissible as a matter of law. Judge Jones in *Stanford* stated:

"The prohibition on enjoining unrelated, third party claims without the third parties' consent does not depend on the Bankruptcy Code, but it is a maxim of law not abrogated by the district court's equitable power to fashion ancillary relief measures."

The *Stanford* decision rendered some ten (10) years after *In re Pacific Lumber* reaffirms the 5th Circuit's bright line prohibition concerning release and exculpation provisions and that, notwithstanding the equitable powers of District and Bankruptcy Courts, such provisions are not permissible as a matter of law.

b. Public Policy -

The other issue raised by Movers is the issue relative to the unfair discrimination contained in the Plan. As a policy matter, absent a clear directive by the 5<sup>th</sup> Circuit that the language in 11 U.S.C. § 1129(b) means something other than prohibiting unfair discrimination, this Court should suspend the effect of the Plan that discriminates against the Class 8 creditors.

**WHEREFORE**, based upon the foregoing Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan, The Dugaboy Investment Trust and Get Good Trust assert a stay of the Confirmation Order is justified under each of the applicable factors for a stay pending appeal. Therefore, The Dugaboy Investment Trust and Get Good Trust pray that this Court grant a stay of the Confirmation Order with respect to such provisions pending appeal and for all other relief that is just and equitable.

March 4, 2021

/s/Douglas S. Draper.  
Douglas S. Draper, La. Bar No. 5073  
[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)  
Leslie A. Collins, La. Bar No. 14891  
[lcollins@hellerdraper.com](mailto:lcollins@hellerdraper.com)  
Greta M. Brouphy, La. Bar No. 26216  
[gbrouphy@hellerdraper.com](mailto:gbrouphy@hellerdraper.com)  
Heller, Draper & Horn, L.L.C.  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
Telephone: (504) 299-3300

Fax: (504) 299-3399

*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on March 4, 2021, a copy of the above and foregoing *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan* has been served electronically to all parties entitled to receive electronic notice in this matter through the Court's ECF system as follows:

- David G. Adams david.g.adams@usdoj.gov, southwestern.taxcivil@usdoj.gov;dolores.c.lopez@usdoj.gov
- Amy K. Anderson aanderson@joneswalker.com, lfields@joneswalker.com;amy-anderson-9331@ecf.pacerpro.com
- Zachery Z. Annable zannable@haywardfirm.com
- Bryan C. Assink bryan.assink@bondsellis.com
- Asif Attarwala asif.attarwala@lw.com
- Joseph E. Bain JBain@joneswalker.com, kvrana@joneswalker.com;joseph-bain-8368@ecf.pacerpro.com;msalinas@joneswalker.com
- Michael I. Baird baird.michael@pbgc.gov, efile@pbgc.gov
- Sean M. Beach bankfilings@ycst.com, sbeach@ycst.com
- Paul Richard Bessette pbessette@KSLAW.com, ccisneros@kslaw.com;jworsham@kslaw.com;kbryan@kslaw.com;jcarvalho@kslaw.com ;rmatsumura@kslaw.com
- John Y. Bonds john@bondsellis.com
- Larry R. Boyd lboyd@abernathy-law.com, lameson@abernathy-law.com
- Jason S. Brookner jbrookner@grayreed.com, lwebb@grayreed.com;acarson@grayreed.com;cpatterson@grayreed.com
- Greta M. Brouphy gbrouphy@hellerdraper.com, dhepting@hellerdraper.com;vgamble@hellerdraper.com
- M. David Bryant dbryant@dykema.com, csmith@dykema.com
- Candice Marie Carson Candice.Carson@butlersnow.com
- Annmarie Antoniette Chiarello achiarello@winstead.com
- Shawn M. Christianson schristianson@buchalter.com, cmcintire@buchalter.com
- James Robertson Clarke robbie.clarke@bondsellis.com
- Matthew A. Clemente mclemente@sidley.com, matthew-clemente-8764@ecf.pacerpro.com;efilingnotice@sidley.com;ebromagen@sidley.com;alyssa.russell@sidley.com;dtwomey@sidley.com
- Megan F. Clontz mclontz@spencerfane.com, lvargas@spencerfane.com
- Andrew Clubok andrew.clubok@lw.com
- Leslie A. Collins lcollins@hellerdraper.com
- David Grant Crooks dcrooks@foxrothschild.com, etaylor@foxrothschild.com, jsagui@foxrothschild.com, plabov@foxrothschild.com, jmanfrey@foxrothschild.com

{00375210-8}

- Gregory V. Demo gdemo@pszjlaw.com, jo'neill@pszjlaw.com;ljones@pszjlaw.com;jfried@pszjlaw.com;ikharasch@pszjlaw.com;jmorris@pszjlaw.com;jpommerantz@pszjlaw.com;hwinograd@pszjlaw.com;kyee@pszjlaw.com;lsc@pszjlaw.com
- Casey William Doherty casey.doherty@paulhastings.com
- Douglas S. Draper ddraper@hellerdraper.com, dhepting@hellerdraper.com;vgamble@hellerdraper.com
- Lauren Kessler Drawhorn lauren.drawhorn@wickphillips.com, samantha.tandy@wickphillips.com
- Vickie L. Driver Vickie.Driver@crowedunlevy.com, crissie.stephenson@crowedunlevy.com;seth.sloan@crowedunlevy.com;elisa.weaver@crowedunlevy.com;ecf@crowedunlevy.com
- Jonathan T. Edwards jonathan.edwards@alston.com
- Jason Alexander Enright jenright@winstead.com
- Robert Joel Feinstein rfeinstein@pszjlaw.com
- Matthew Gold courts@argopartners.net
- Bojan Guzina bguzina@sidley.com
- Thomas G. Haskins thaskins@btlaw.com
- Melissa S. Hayward MHayward@HaywardFirm.com, mholmes@HaywardFirm.com
- Michael Scott Held mhheld@jw.com, lcrumble@jw.com
- Gregory Getty Hesse ghesse@HuntonAK.com, amckenzie@HuntonAK.com;tcanada@HuntonAK.com;creeves@HuntonAK.com
- Juliana Hoffman jhoffman@sidley.com, txefilingnotice@sidley.com;julianna-hoffman-8287@ecf.pacerpro.com
- A. Lee Hogewood lee.hogewood@klgates.com, haley.fields@klgates.com;matthew.houston@klgates.com;marybeth.pearson@klgates.com;litigation.docketing@klgates.com;Emily.mather@klgates.com;Artoush.varshosaz@klgates.com
- Warren Horn whorn@hellerdraper.com, dhepting@hellerdraper.com;vgamble@hellerdraper.com
- John J. Kane jkane@krcl.com, ecf@krcl.com;jkane@ecf.courtdrive.com
- Jason Patrick Kathman jkathman@spencerfane.com, gpronske@spencerfane.com;mclontz@spencerfane.com;lvargas@spencerfane.com
- Edwin Paul Keiffer pkeiffer@romclaw.com, bwallace@romclaw.com
- Jeffrey Kurtzman kurtzman@kurtzmansteady.com
- Phillip L. Lamberson plamberson@winstead.com
- Lisa L. Lambert lisa.l.lambert@usdoj.gov
- Paul M. Lopez bankruptcy@abernathy-law.com
- Faheem A. Mahmooth mahmooth.faheem@pbgc.gov, efile@pbgc.gov
- Ryan E. Manns ryan.manns@nortonrosefulbright.com
- Thomas M. Melsheimer tmelsheimer@winston.com, tom-melsheimer-7823@ecf.pacerpro.com
- Paige Holden Montgomery pmontgomery@sidley.com, txefilingnotice@sidley.com;paige-montgomery-7756@ecf.pacerpro.com;crognés@sidley.com;ebromagen@sidley.com;efilingnotice@sidley.com



- J. Seth Moore smoore@ctstlaw.com, jsteele@ctstlaw.com
- John A. Morris jmorris@pszjlaw.com
- Edmon L. Morton emorton@ycst.com
- Holland N. O'Neil honeil@foley.com,  
jcharrison@foley.com;acordero@foley.com;holly-holland-oneil-3540@ecf.pacerpro.com
- Rakhee V. Patel rpatel@winstead.com,  
dgalindo@winstead.com;achiarello@winstead.com
- Charles Martin Persons cpersons@sidley.com
- Mark A. Platt mplatt@fbtlaw.com, aortiz@fbtlaw.com
- Jeffrey Nathan Pomerantz jpomerantz@pszjlaw.com
- Kimberly A. Posin kim.posin@lw.com, colleen.rico@lw.com
- Jeff P. Prostok jprostok@forsheyprostok.com,  
lbreedlove@forsheyprostok.com;calendar@forsheyprostok.com;calendar\_0573@ecf.court  
tdrive.com;jprostok@ecf.courtdrive.com
- Linda D. Reece lreece@pbfcm.com
- Penny Packard Reid preid@sidley.com, txefilingnotice@sidley.com;penny-reid-  
4098@ecf.pacerpro.com;ncade@sidley.com
- Suzanne K. Rosen srosen@forsheyprostok.com,  
lbreedlove@forsheyprostok.com;calendar@forsheyprostok.com;srosen@ecf.courtdrive.c  
om;calendar\_0573@ecf.courtdrive.com
- Davor Rukavina drukavina@munsch.com
- Amanda Melanie Rush asrush@jonesday.com
- Alyssa Russell alyssa.russell@sidley.com
- Douglas J. Schneller douglas.schneller@rimonlaw.com
- Brian Patrick Shaw shaw@roggedunnngroup.com,  
cashion@roggedunnngroup.com;jones@roggedunnngroup.com
- Michelle E. Shriro mshriro@singerlevick.com,  
scotton@singerlevick.com;tguillory@singerlevick.com
- Nicole Skolnekovich nskolnekovich@hunton.com,  
plozano@huntonak.com;astowe@huntonak.com;creeves@huntonak.com
- Jared M. Slade jared.slade@alston.com
- Frances Anne Smith frances.smith@judithwross.com,  
michael.coulombe@judithwross.com
- Eric A. Soderlund eric.soderlund@judithwross.com
- Martin A. Sosland martin.sosland@butlersnow.com,  
ecf.notices@butlersnow.com,velvet.johnson@butlersnow.com
- Laurie A. Spindler Laurie.Spindler@lgbs.com, Dora.Casiano-  
Perez@lgbs.com;dallas.bankruptcy@lgbs.com
- Jonathan D. Sundheimer jsundhimer@btlaw.com
- Kesha Tanabe kesha@tanabelaw.com
- Chad D. Timmons bankruptcy@abernathy-law.com
- Dennis M. Twomey dtwomey@sidley.com
- Basil A. Umari BUmari@dykema.com, pelliott@dykema.com
- United States Trustee ustpreion06.da.ecf@usdoj.gov
- Artoush Varshosaz artoush.varshosaz@klgates.com, Julie.garrett@klgates.com
- Julian Preston Vasek jvasek@munsch.com

{00375210-8}

- Donna K. Webb donna.webb@usdoj.gov,  
brian.stoltz@usdoj.gov;CaseView.ECF@usdoj.gov;brooke.lewis@usdoj.gov
- Jaclyn C. Weissgerber bankfilings@ycst.com, jweissgerber@ycst.com
- Elizabeth Weller dallas.bankruptcy@publicans.com, dora.casiano-  
perez@lgbs.com;Melissa.palo@lgbs.com
- Daniel P. Winikka danw@lfdslaw.com,  
craigs@lfdslaw.com,dawnw@lfdslaw.com,ivys@lfdslaw.com
- Hayley R. Winograd hwinograd@pszjlaw.com
- Megan Young-John myoung-john@porterhedges.com

I also caused same to be served on March 5, 2021, by Docusource via U.S. First Class Mail, postage prepaid upon the following parties:

Paul N. Adkins  
11 Mount Emily Road #07-27  
Singapore, 228493

American Express National Bank  
c/o Becket and Lee LLP  
PO Box 3001  
Malvern, PA 19355-0701

James T. Bentley  
Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, NY 10022

Jeffrey E. Bjork  
LATHAM & WATKINS LLP  
355 South Grand Avenue, Ste. 100  
Los Angeles, CA 90071

Jessica Boelter  
SIDLEY AUSTIN LLP  
787 Seventh Avenue  
New York, NY 10019

Matthew G. Bouslog  
GIBSON, DUNN & CRUTCHER LLP  
3161 Michelson Drive  
Irvine, CA 92612

William P. Bowden  
Ashby & Geddes, P.A.  
500 Delaware Avenue, 8th Floor  
P.O. Box 1150

{00375210-8}

Wilmington, DE 19899

Candace C. Carlyon  
CARLYON CICA CHTD.  
265 e. Warm Springs Road., Ste 107  
Las Vegas, NV 89119

Joseph L. Christensen  
McCullom D'Emilio Smith Uebler LLC  
2751 Centerville Road, Suite 401  
Wilmington, DE 19808

Louis J. Cisz  
Nixon Peabody LLP  
One Embarcadero Center, 32nd Fl  
San Francisco, CA 94111

Kevin M. Coen  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
1201 North Market Street, Suite 1600  
1000 North King Street  
Wilmington, DE 19801

Debra A. Dandeneau  
Baker & McKenzie LLP  
425 5th Ave.  
New York, NY 10018

Deloitte Tax LLP  
1111 Bagby Street, Ste. 4500  
Houston, TX 77002

Mark. L. Desgrosseilliers  
Chipman, Brown, Cicero & Cole, LLP  
Hercules Plaza  
1313 North Market Street, Suite 5400  
Wilmington, DE 19801

Development Specialists, Inc.  
333 South Grand Ave., Ste. 4070  
Los Angeles, CA 90071

Fair Harbor Capital, LLC  
Ansonia Finance Station  
PO Box 237037  
New York, NY 10023

{00375210-8}

Bojan Guzina  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, IL 60603

Emily M. Hahn  
Abernathy, Roeder, Boyd & Hullett, P.C.  
1700 Redbud Blvd. Ste. 300  
McKinney, TX 75069

Hain Capital Group, LLC  
301 Route 17, 6th Floor  
Rutherford, NJ 07070

Marc B. Hankin  
Jenner & Block LLP  
919 Third Avenue  
New York, NY 10022-3098

Michelle Hartman  
Baker & McKenzie LLP  
1900 N. Pearl, Ste. 1500  
Dallas, TX 75201

Hayward & Associates PLLC  
10501 N. Central Expwy., Ste 106  
Dallas, TX 75231

William A. Hazeltine  
Sullivan Hazeltine Allinson LLC  
901 North Market Street  
Suite 1300  
Wilmington, DE 19801

Kuan Huang  
Latham & Watkins LLP  
855 Third Avenue  
New York, NY 10022

Ira D Kharasch  
10100 Santa Monica Boulevard  
13th Floor  
Los Angeles, CA 90067

{00375210-8}

Marshall R. King  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
Suite 1400  
New York, NY 10066

Alan J. Kornfeld  
Pachulski Stang Ziehl & Jones LLPL  
10100 Santa Monica Blvd., 13 Fl  
Los Angeles, CA 90067

Kurtzman Carson Consultants LLC  
Attn: Drake Foster  
222 N. Pacific Coast Highway, 3rd Floor  
El Segundo, CA 90245

Kurtzman Carson Consultants, LLC  
222 N. Pacific Coast Highway, Ste. 300  
El Segundo, CA 90245

M. Natasha Labovitz  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022

Richard B. Levin  
Jenner & Block LLP  
919 Third Avenue  
New York, NY 10022-3098

Maxim B Litvak  
Pachulski Stang Ziehl & Jones LLP  
150 California Street  
15th Floor  
San Francisco, CA 94111

John E. Lucian  
Blank Rome LLP  
1201 N. Market Street, Suite 800  
1000 North King Street  
Wilmington, DE 19801

Lauren Macksoud  
1221 Avenue of the Americas  
New York, NY 10020-1089

{00375210-8}

Mark M. Maloney  
King & Spalding LLP  
191 Peachtree St.  
Suite 4900  
Atlanta, GA 30303-1763

Mark M. Maloney  
King & Spalding LLP  
1180 Peachtree Steet, NE  
Atlanta, GA 30309

Terri L. Mascherin  
Jenner & Block LLP  
353 N. Clark Street  
Chicago, IL 60654-3456

Patrick C. Maxcy  
DENTONS US LLP  
233 South Wacker Drive, Suite 5900  
Chicago, IL 60606-6361

R. Stephen McNeill  
POTTER ANDERSON & CORROON LLP  
1313 North Market Street, 6th Fl  
Wilmington, DE 19801

Mercer (US) Inc.  
155 N. Wacker Drive, Ste. 1500  
Chicago, IL 60606

Michael J. Merchant  
RICHARDS, LAYTON & FINGER, P.A.  
one Rodney Square  
920 North King Street  
Wilmington, DE 19801

Curtis S. Miller  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
1201 North Market Street, Suite 1600  
1000 North King Street  
Wilmington, DE 19801

Josef W. Mintz  
Blank Rome LLP  
1201 Market Street, Suite 800  
1000 North King Street  
Wilmington, DE 19801

Joseph T. Moldovan  
MORRISON COHEN LLP  
909 Third Avenue  
New York, NY 10022

Alan A. Moskowitz  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
New York, NY 10066

Michael R. Nestor  
YOUNG CONAWAY STARGATT & TAYLOR, LL  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801

James E. O'Neill  
Pachulski Stang Ziehl & Jones LLP  
919 North Market Street, 17th Fl.  
Wilmington, DE 19801

Tracy M. O'Steen  
CARLYON CICA CHTD.  
265 E. Warm Springs Road., Ste 107  
Las Vegas, NV 89119

Jeffrey N. Pomerantz  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067

Kathleen Preston  
Winston & Strawn LLP  
800 Capitol Street, Ste. 2400  
Houston, TX 77002

Michael A. Rosenthal - DO NOT USE  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
New York, NY 10066

{00375210-8}



Jeremy W. Ryan  
POTTER ANDERSON & CORROON LLP  
1313 North Market Street, 6th Fl  
Wilmington, DE 19801

James P. Seery  
795 Columbus Ave., 12A  
New York, NY 10025

Sally T. Siconolfi  
MORRISON COHEN LLP  
909 Third Avenue  
New York, NY 10022

Sarah E. Silveira  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, DE 19801

D. Ryan Slaugh  
POTTER ANDERSON & CORROON LLP  
1313 North Market Street, 6th Fl  
Wilmington, DE 19801

Tracy K. Stratford  
Jones Day  
North Point  
901 Lakeside Ave.  
Cleveland, OH 44114

Daniel E. Stroik  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022

Sarah A. Tomkowiak  
Latham & Watkins LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, DC 20004-1304

{00375210-8}

Stephen G. Topetzes  
K&L Gates LLP  
1601 King St., N.W.  
Washington, DC 20006

Thomas A. Uebler  
McCullom D'Emilio Smith Uebler LLC  
2751 Centerville Road, Suite 401  
Wilmington, DE 19808

Michael L. Vild  
CROSS & SIMON, LLC  
1105 N. Market Street, Suite 901  
1000 North King Street  
Wilmington, DE 19801

Elissa A. Wagner  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067-4003

Erica S. Weisgerber  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022

Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, MA 02109

James A. Wright  
K&L Gates LLP  
State Street Financial Center  
One Lincoln St.  
Boston, MA 02111

Sean M. Young Conway Stargatt & Taylor, LLP  
Young Conway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801

/s/Douglas S. Draper.  
Douglas S. Draper, La. Bar No. 5073

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

\_\_\_\_\_  
No. 17-10663  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

June 17, 2019

Lyle W. Cayce  
Clerk

SECURITIES AND EXCHANGE COMMISSION

Plaintiff

v.

STANFORD INTERNATIONAL BANK, LIMITED

Defendant

v.

JOSEPH BECKER; TERENCE BEVEN; WANDA BEVIS;  
THOMAS EDDIE BOWDEN; TROY L. LILLIE, JR., et al

Movants - Appellants

DOUG MCDANIEL; SCOTT NOTOWICH;  
EDDIE ROLLINS; CORDELL HAYMON; et al,

Objecting Parties - Appellants

v.

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;  
ARCH SPECIALTY INSURANCE COMPANY;  
LEXINGTON INSURANCE COMPANY,

Interested Parties - Appellees

RALPH S. JANVEY,

Appellee

\*\*\*\*\*

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;

App. 5345  
000430

No. 17-10663

ARCH SPECIALTY INSURANCE COMPANY,

Plaintiffs - Appellees

v.

RALPH S. JANVEY, In his Capacity as Court Appointed Receiver for  
Stanford International Bank Limited, Stanford Group Company, Stanford  
Capital Managment L.L.C., Stanford Financial Group, and Stanford  
Financial Group Bldg,

Defendant - Appellee

v.

CORDELL HAYMON,

Intervenor - Appellant

\*\*\*\*\*

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;  
ARCH SPECIALTY INSURANCE COMPANY;  
LEXINGTON INSURANCE COMPANY,

Plaintiffs - Appellees

v.

CORDELL HAYMON,

Objecting Party - Appellant

v.

RALPH S. JANVEY,

Intervenor - Appellee

\*\*\*\*\*

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON;  
ARCH SPECIALTY INSURANCE COMPANY;  
LEXINGTON INSURANCE COMPANY,

Plaintiffs - Appellees

v.

No. 17-10663

RALPH S. JANVEY,

Intervenor Defendant - Appellee

v.

CORDELL HAYMON,

Objecting Party - Appellant

\*\*\*\*\*

CORDELL HAYMON,

Third Party Plaintiff - Appellant

v.

CERTAIN UNDERWRITERS OF LLOYD'S OF LONDON, Claims asserted  
by Claude F. Reynaud, Jr.

Third Party Defendant - Appellee

v.

RALPH S. JANVEY,

Appellee

---

Appeals from the United States District Court  
for the Northern District of Texas

---

Before JONES, CLEMENT, and SOUTHWICK, Circuit Judges.

EDITH H. JONES, Circuit Judge:

These appeals challenge the district court's approval of a global settlement between Ralph Janvey, the Receiver for Stanford International Bank and related entities, and various insurance company Underwriters, who issued policies providing coverage for fidelity breaches, professional indemnity, directors and officers protection, and excess losses. The settlement yielded \$65

No. 17-10663

million for the Receiver's claims against the insurance policy proceeds, but it wipes out, through "bar orders," claims by coinsureds to the policy proceeds and their extracontractual claims against the Underwriters even if such claims would not reduce or affect the policies' coverage limits. Among the parties whose claims were barred are Appellants comprising (a) two groups of former Stanford managers and employees; (b) Cordell Haymon, a Stanford entity director who settled with the Receiver for \$2 million; and (c) a group of Louisiana retiree-investors.

A constellation of issues surrounding the global settlement is encapsulated in the question whether the district court abused its discretion in approving the settlement and bar orders. Based on the nature of *in rem* jurisdiction and the limitations on the court's and Receiver's equitable power, we conclude the district court lacked authority to approve the Receiver's settlement to the extent it (a) nullified the coinsureds' claims to the policy proceeds without an alternative compensation scheme; (b) released claims the Estate did not possess; and (c) barred suits that could not result in judgments against proceeds of the Underwriters' policies or other receivership assets. Accordingly, we VACATE the district court's order approving the settlement and bar orders and REMAND for further proceedings consistent with this opinion.

## BACKGROUND

The massive Stanford Financial Ponzi scheme defrauded more than 18,000 investors who collectively lost over \$5 billion. As part of a securities fraud lawsuit brought by the SEC, the district court appointed the Receiver "to immediately take and have complete and exclusive control" of the receivership estate and "any assets traceable" to it. The court granted the Receiver "the full power of an equity receiver under common law," including the right to assert claims against third parties and "persons or entities who received assets or

No. 17-10663

records traceable to the Receivership Estate.” *SEC v. Stanford Int’l Bank, Ltd.*, 776 F. Supp. 2d 323, 326 (N.D. Tex. 2011). The district court also held that the court possessed exclusive jurisdiction over a group of insurance policies and their proceeds, at issue in this case, and ruled that, other than a lawsuit involving the Stanford criminal defendants, “[n]o persons or entities may bring further claims related to the [Proceeds] in any forum other than” the district court. Neither of these latter two orders was timely appealed.

The policies issued to the Stanford entities covered, in different arrangements, losses and defense costs for the entities and their officers, directors and certain employees. At issue are the following policies: a Directors’ and Officers’ Liability and Company Indemnity Policy (“D&O”); a Financial Institutions Crime and Professional Indemnity Policy, including (a) first-party fidelity coverage for employee theft (“Fidelity Bond”) and “[l]oss resulting directly from dishonest, malicious or fraudulent acts committed by an Employee,” and (b) third-party coverage for professional indemnity (“PI Policy”); and an Excess Blended “Wrap” Policy (“Excess Policy”). The policy limits are as follows:

	<b>Stanford Bank Entities</b>	<b>Stanford Brokerage Entities</b>
<b>D&amp;O Policy</b>	\$5 million	\$5 million
<b>PI Policy</b>	\$5 million per Claim \$10 million aggregate	\$5 million per Claim \$10 million aggregate
<b>Fidelity Bond</b>	\$5 million per Loss \$10 million aggregate	\$5 million per Loss \$10 million aggregate
<b>Excess Policy</b>	\$45 million each Claim or Loss/\$90 million aggregate	



No. 17-10663

The maximum amount of remaining coverage is disputed. According to the district court, the Underwriters have paid some \$30 million in claims under the policies for insureds' defense costs. Underwriters contend that only \$46 million remains available because the losses resulted from a single event – the Ponzi scheme. The Receiver argues that the conduct implicates the aggregate loss limits up to \$101 million of remaining coverage. The questions of coverage ultimately depend on the identity of the insureds under each policy and the nature of the claims, and these issues are hotly contested. The Stanford corporate entities are insured under all of the policies, but Stanford directors, officers, and employees are coinsured only under the D&O, PI, and Excess policies.<sup>1</sup> Each policy is subject to multiple definitions and exclusions. After the Receiver made numerous claims for coverage under the policies (the “Direct Claims”) that were met with Underwriters' denial based on policy exclusions, several lawsuits ensued.

The Receiver also pursued the policy proceeds indirectly by filing lawsuits (the “Indirect Claims”) against hundreds of former Stanford directors, officers, and employees, alleging fraudulent transfers and unjust enrichment and/or breach of fiduciary duty. The Receiver obtained a \$2 billion judgment against one former Stanford International Bank director and a \$57 million judgment against a former Bank treasurer, both of whom were potentially covered under the policies. The Receiver continues to litigate similar claims against the coinsured Appellants who were Stanford managers and employees. *See, e.g., Stanford International Bank, Ltd., et al., v. James R. Alguire, et al.*, No. 3:09-CV-0724-N (N.D. Tex., filed Dec. 18, 2019).

---

<sup>1</sup> There is no dispute that the Appellants here are coinsured under the noted policies, but *not* coinsured under the Fidelity bond. The chief dispute is about the effect of certain limitations and exclusions within the policies.

No. 17-10663

After eight years of sparring, the Receiver and Underwriters, together with the court-appointed Examiner on behalf of Stanford investors, mediated their disputes for several months in 2015. Mediation initially resulted in a Settlement Proposal under which the Underwriters agreed to pay the Receiver \$65 million, and in return the Receiver would “fully release any and all insureds under the relevant policies.” The purpose of the complete release was to shield the Underwriters from any policy obligations to defend or indemnify former Stanford personnel, including the employee Appellants, in the Receiver’s Indirect Claim lawsuits. The parties almost immediately disagreed about the content of the settlement, however, and the Underwriters filed an Expedited Motion to Enforce the Settlement Agreement. The district court denied the motion and instructed the parties to continue negotiating. On June 27, 2016, the Receiver and Underwriters notified the court that they had entered into a new settlement agreement, which the Examiner supported.

Under this new settlement, the Underwriters again agreed to pay \$65 million into the receivership estate, but the settlement required orders barring all actions against Underwriters relating to the policies or the Stanford Entities. Paragraph 35 of the settlement provides Underwriters the unqualified right to withdraw from the settlement if the court refuses to issue the bar orders. The bar orders were necessary because, unlike the terms of the first proposed settlement, the Receiver is required to release only the Estate’s claims against 16 directors and officers (rather than all insureds), as well as the judgments already obtained against certain directors and officers.<sup>2</sup> All other former Stanford employees, officers and directors, including Appellants,

---

<sup>2</sup> Oddly, the settlement releases claims only against those directors and officers who were among the most culpable for the Ponzi scheme. And it releases Underwriters from any obligation in connection with the aforementioned judgments for \$2 billion and \$57 million. This oddity should have been considered when assessing the fairness of the settlement.

No. 17-10663

remain subject to ongoing or potential litigation by the Receiver once the litigation stay against them is lifted. Some Appellants assert that their individual costs of defending the Receiver's ongoing actions already exceed \$10,000. But the bar orders prevent them from suing the Underwriters for their costs of defense and indemnity under the insurance policies, even though they are coinsured, or for extra-contractual or statutory claims.

The Receiver moved for approval of the settlement and entry of the bar orders. The district court directed notice to all interested parties, and received objections from several third parties, including Appellants. The court heard arguments of counsel regarding the settlement, but it refused to allow parties to offer evidence or live testimony or engage in cross-examination. After the hearing, parties were permitted to file additional declarations or affidavits.

The district court approved the settlement and bar orders, denied all objections, and approved the payment of \$14 million of attorney fees to Receiver's counsel. Separate Final Judgments and Bar Orders were entered in each action pending before it relating to the Stanford Entities and in Appellant Haymon's and Appellant Alvarado's separate lawsuits against the Underwriters. The district court rejected all post-trial motions.

A more complete discussion of the court's findings will follow, but in general, the court found that the settlement resulted from "vigorous, good faith, arm's-length, mediated negotiations" and concluded that the settlement was "in all respects, fair, reasonable, and adequate, and in the best interests of all Persons claiming an interest in, having authority over, or asserting a claim against Underwriters, Underwriters' Insureds, the Stanford Entities, the Receiver, or the Receivership Estate." The court further found that the settlement and bar orders were "fair, just, and equitable," and it rejected the Appellants' due process claims based on their exclusion from settlement talks and the lack of an evidentiary hearing. While the court recognized that the

No. 17-10663

bar orders discriminate between a few Stanford officers and the Appellants, it reasoned that “on balance the unfairness alleged by the Objectors is either mitigated by other circumstances or simply outweighed by the benefit of the settlement in terms of fairness, equity, reasonableness, and the best interests of the receivership.”

The Appellants fall into three categories. The McDaniel Appellants and “Alvarado”<sup>3</sup> Appellants are former Stanford managers or employees from offices around the country (“Employees”) who seek contractual coverage under the insurance policies and press extra-contractual claims against the Underwriters, including for bad faith and statutory violations of the Texas Insurance Code. Appellant Cordell Haymon (“Haymon”) was a member of Stanford Trust Company’s Board of Directors who settled the Receiver’s claims against him for \$2 million before the instant global settlement was reached, and in return received the express right to pursue Underwriters for policy coverage and extra-contractual claims. Finally, the Louisiana Retirees/Becker Appellants (“Retirees”) are former Stanford investors who sued Stanford brokers covered by the insurance policies and seek to recover from the Underwriters directly pursuant to the Louisiana Direct Action Statute, La. Rev. Stat. 22:1269.

Each group of Appellants raises different challenges to the court’s approval of the settlement and bar orders. They appeal from the district court’s order denying their objections to the proposed settlement, the Final Bar Order,

---

<sup>3</sup> While Alvarado was originally a party to this appeal, he withdrew his individual appeal on April 19, 2018. The other employees to that action remain as appellants and will be denominated, for the sake of convenience, Alvarado Appellants.

No. 17-10663

and the Order Approving Attorneys' Fees<sup>4</sup> for the Receiver's counsel. The Stanford Employees additionally appeal the Order denying their new trial motion, and Haymon appeals from the Order denying his motion for reconsideration. After explaining the principles that govern the court's management of the Receivership, we will analyze each set of Appellants' objections.

### STANDARD OF REVIEW

A district court's entry of a bar order, like other actions in supervising an equity receivership, is reviewed for abuse of discretion. *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982); *Newby v. Enron Corp.*, 542 F.3d 463, 468 (5th Cir. 2008). A district court's determination of the fairness of a settlement in an equity receivership proceeding is reviewed for an abuse of discretion. *Sterling v. Stewart*, 158 F.3d 1199, 1202 (11th Cir. 1998) ("Determining the fairness of the settlement [in an equity receivership] is left to the sound discretion of the trial court and we will not overturn the court's decision absent a clear showing of abuse of that discretion."). There is no abuse of discretion where factual findings are not clearly erroneous and rulings are without legal error. *Marlin v. Moody Nat. Bank, N.A.*, 533 F.3d 374, 377 (5th Cir. 2008). A district court's denial of a Rule 59 motion for a new trial or to alter or amend a judgment also is reviewed for an abuse of discretion. *St. Paul Mercury Ins. Co. v. Fair Grounds Corp.*, 123 F.3d 336, 339 (5th Cir. 1997). This Court reviews *de novo* a district court's application of exceptions to the Anti-Injunction Act as a question of law. *Moore v. State Farm Fire & Cas. Co.*, 556 F.3d 264, 269 (5th Cir. 2009).

---

<sup>4</sup> The amount and propriety of the Receiver's very high fee request is not substantively briefed by any party and is therefore waived, except to the extent that on remand the fee ought to be reconsidered in light of this opinion.

No. 17-10663

## DISCUSSION

### I. General Receivership Principles

A district court has broad authority to place assets into receivership “to preserve and protect the property pending its final disposition.” *Gordon v. Washington*, 295 U.S. 30, 37, 55 S. Ct. 584 (1935); *see also Gilchrist v. Gen. Elec. Capital Corp.*, 262 F.3d 295, 302 (4th Cir. 2001) (“the district court has within its equity power the authority to appoint receivers and to administer receiverships”) (citing Fed. R. Civ. P. 66). The primary purpose of the equitable receivership is the marshaling of the estate’s assets for the benefit of aggrieved investors and other creditors of the receivership entities. *See SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). Receivers appointed by a federal court are directed to “manage and operate” the receivership estate “according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.” 28 U.S.C. § 959(b).

In general, the Receiver has wide powers to acquire, organize and distribute the property of the receivership. A properly appointed receiver is “vested with complete jurisdiction and control of all [receivership] property with the right to take possession thereof.” 28 U.S.C. § 754. The Receiver is obliged to allocate receivership assets among the competing claimants according to their respective rights and, in this case, under the laws of Texas, where the Stanford Financial Group was headquartered. The district court ruled, in a 2009 order that was not appealed, that the insurance policies and proceeds are property of the estate subject to the court’s exclusive *in rem* jurisdiction.

Once assets have been placed in receivership, “[i]t is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.” *Safety Fin.*,



No. 17-10663

674 F.2d at 372–73 (citing *SEC v. Lincoln Thrift Assoc.*, 577 F.2d 600, 606 (9th Cir. 1978)). This discretion derives not only from the statutory grant of power, but also the court’s equitable power to fashion appropriate remedies as “ancillary relief” measures. See *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). Courts have accordingly exercised their discretion to issue bar orders to prevent parties from initiating or continuing lawsuits that would dissipate receivership assets or otherwise interfere with the collection and distribution of the assets. See *SEC v. Stanford Int’l Bank Ltd.*, 424 F. App’x 338, 340 (5th Cir. 2011) (“It is axiomatic that a district court has broad authority to issue blanket stays of litigation to preserve the property placed in receivership pursuant to SEC actions.”). Receivership courts, like bankruptcy courts, may also exercise discretion to approve settlements of disputed claims to receivership assets, provided that the settlements are “fair and equitable and in the best interests of the estate.” *Ritchie Capital Mgmt., L.L.C. v. Kelley*, 785 F.3d 273, 278 (8th Cir. 2015) (citing *Tri-State Fin., LLC v. Lovald*, 525 F.3d 649, 654 (8th Cir. 2008)).

Neither a receiver’s nor a receivership court’s power is unlimited, however. See *Whitcomb v. Chavis*, 403 U.S. 124, 161, 91 S. Ct. 1858, 1878 (1971) (“The remedial powers of an equity court must be adequate to the task, but they are not unlimited.”). Courts often look to the related context of bankruptcy when deciding cases involving receivership estates. The district court here acknowledged that the purpose of bankruptcy receiverships and equity receiverships is “essentially the same—to marshal assets, preserve value, equally distribute to creditors, and, either reorganize, if possible, or orderly liquidate.” *Janvey v. Alquire*, No. 3:09-cv-0724, 2014 WL 12654910, at \*17 (N.D. Tex. July 30, 2014); see also *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 (7th Cir. 2010) (“The goal in both securities-fraud receiverships and liquidation bankruptcy is identical—the fair distribution of the liquidated



No. 17-10663

assets”). That their purpose is the same “makes sense” and reflects their shared legal heritage, since “federal equity receiverships were the predecessor to Chapter 7 liquidations and Chapter 11 reorganizations.” *Alquire*, 2014 WL 12654910, at \*17 (citing *Duparquet Huot & Moneuse Co. v. Evans*, 297 U.S. 216, 221, 56 S. Ct. 412, 414 (1936)). The district court also recognized that “[i]n this particular case, the purpose and objectives of the receivership, as delineated in the Receivership Order, closely reflect the general purpose shared by the Bankruptcy Code and federal equity receiverships,” and it concluded that “[u]ltimately, this particular receivership is the essential equivalent of a Chapter 7 bankruptcy.” *Id.* at \*18.

Unfortunately, two interrelated limitations on the Stanford receivership were downplayed by the district court in its approval of the settlement and bar orders. Both derive from the broader principle that the receiver collects and distributes only assets of the entity in receivership. The first applies to the Receiver’s standing: “[l]ike a trustee in bankruptcy or for that matter the plaintiff in a derivative suit, an equity receiver may sue *only to redress injuries to the entity in receivership*, corresponding to the debtor in bankruptcy and the corporation of which the plaintiffs are shareholders in the derivative suit.” *Scholes v. Lehmann*, 56 F.3d 750, 753 (7th Cir. 1995) (emphasis added) (citing, *inter alia*, *Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416, 92 S. Ct. 1678 (1972)). The *Scholes* case involved an SEC receivership, but *Caplin*, on which it relied, was a Supreme Court decision in a Chapter X reorganization case. This court endorsed the *Scholes* limitation as applied to this receivership in *Janvey v. Democratic Senatorial Campaign Comm., Inc.* (“DSCC”), 712 F.3d 185, 190–93 (5th Cir. 2013). And following *Caplin*, a sister circuit held, “a trustee, who lacks standing to assert the claims of creditors, equally lacks standing to settle them.” *DSQ Prop. Co., Ltd. v. DeLorean*, 891 F.2d 128, 131 (6th Cir. 1989); *see also Wuliger v. Mfr’s. Life Ins. Co.*, 567 F.3d 787, 794 (6th

No. 17-10663

Cir. 2009) (“Because the receivership entities all would have lacked standing, and because of the rule that receivers’ rights are limited to those of the receivership entities, the Receiver also lacked standing [to sue for misrepresentations by brokers to defrauded investors].”).

The second limitation, arising from the district court’s *in rem* jurisdiction, is that the court may not exercise unbridled authority over assets belonging to third parties to which the receivership estate has no claim. Put another way, in the course of administering this receivership, this district court previously rejected a broad reading of 28 U.S.C. § 754 that suggested the court’s *in rem* jurisdiction over the property would necessarily reach every *claim* relating to that property. *See Rishmague v. Winter*, No. 3:11-cv-2024-N, 2014 WL 11633690, at \*2 (N.D. Tex. Sept. 9, 2014).

Thus, this court and others have held that a bankruptcy court may not authorize a debtor to enter into a settlement with liability insurers that enjoins independent third-party claims against the insurers. *See, e.g., Matter of Zale Corp.*, 62 F.3d 746 (5th Cir. 1995) (refusing to countenance a bankruptcy court’s authority to enforce a settlement prohibiting third-party bad faith insurance claims because the claims were not property of the bankruptcy estate). Similarly, “if [the coinsureds’] portion of the [insurance] Proceeds is truly *not* property of the Estate, then the bankruptcy court has no authority to enjoin suits against the [coinsureds].” *In re Vitek*, 51 F.3d 530, 536 (5th Cir. 1995); *see also In re SportStuff, Inc.*, 430 B.R. 170, 175 (B.A.P. 8th Cir. 2010) (bankruptcy court lacked jurisdiction or authority to impair or extinguish independent contractual rights of vendors that were additional insureds under the debtor’s policies). As these cases illustrate, bankruptcy courts lack “jurisdiction” to enjoin such claims.

The prohibition on enjoining unrelated, third-party claims without the third parties’ consent does not depend on the Bankruptcy Code, but is a maxim

No. 17-10663

of law not abrogated by the district court’s equitable power to fashion ancillary relief measures. Contrary to the Receiver’s assertion, the fact that the bankruptcy statute, 28 U.S.C. § 1334(b), limits jurisdiction to proceedings “arising in or related to” bankruptcy cases does not diminish the application of *Zale* or *Vitek* to equity receiverships. As noted, bankruptcy and equity receiverships share common legal roots.<sup>5</sup> See *In re Davis*, 730 F.2d 176, 183–84 (5th Cir. 1984) (the Bankruptcy Code arms bankruptcy courts with broad powers analogous to a court in equity). Moreover, to justify its decision denying bankruptcy court jurisdiction over third-party claims, the court in *Zale* quoted the Supreme Court in a civil rights class action case: “[o]f course, parties who choose to resolve litigation through settlement may not dispose of the claims of a third party, and *a fortiori* may not impose duties or obligations on a third party, without that party’s agreement. A court’s approval of a consent decree between some of the parties therefore cannot dispose of the valid claims of nonconsenting intervenors . . . .” *Zale*, 62 F.3d at 757 n.26 (citing *Local No. 93 v. City of Cleveland*, 478 U.S. 501, 529, 106 S. Ct. 3063, 3079, (1986)).<sup>6</sup> All of

---

<sup>5</sup> Modern bankruptcy reorganization law originated with Section 77B of the Bankruptcy Act of 1934, the purpose of which was to codify best practices in what had formerly been known as equity receiverships. See *Duparquet Huot & Moneuse Co. v. Evans*, 297 U.S. 216, 222–24, 56 S. Ct. 412, 415–17 (1936). Section 77B(a), in turn, stated that the bankruptcy court’s powers are those “which a Federal court would have had it appointed a receiver in equity of the property of the debtor . . . .” *Id.* at 221, 56 S. Ct. at 415.

<sup>6</sup> *Local No. 93* is merely one example of the Supreme Court’s rejection of the use of consent decrees to extinguish the claims of non-consenting third-parties, for “[a] voluntary settlement in the form of a consent decree between one [party] and [another party] cannot possibly ‘settle,’ voluntarily or otherwise, the conflicting claims of another group of [parties] who do not join in the agreement. This is true even if the second group of [parties] is a party to the litigation.” *Martin v. Wilks*, 490 U.S. 755, 755–68, 109 S. Ct. 2180, 2181–88 (1989). Indeed, “[a]ll agree” that “[i]t is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.” *Id.* (citing *Hansberry v. Lee*, 311 U.S. 32, 40, 61 S. Ct. 115, 117 (1940)).

No. 17-10663

this makes clear that it is not the subject matter or statutory limitations driving this limitation, and federal district courts have no greater authority in equity receiverships to ignore these bedrock propositions, because a “court in equity may not do that which the law forbids.” *United States v. Coastal Ref. & Mktg., Inc.*, 911 F.2d 1036, 1043 (5th Cir. 1990).

Rather than reckon with the limits on the Receiver’s standing and the court’s equitable power, the district court here cited an unpublished Fifth Circuit case, *SEC v. Kaleta*, No. 4:09-cv-3674, 2012 WL 401069, at \*4 (S.D. Tex. Feb. 7, 2012), *aff’d.*, 530 F. App’x. 360 (5th Cir. 2013), to support both the settlement and bar orders. Importantly, *Kaleta* is an unpublished, non-precedential decision of this court. Not only that, but reading it as the district court and Appellees here advocate would mean investing the Receiver with unbridled discretion to terminate the third-party claims against a settling party that are unconnected to the *res* establishing jurisdiction. That is unprecedented. But *Kaleta* is in any event distinguishable and not inconsistent with the above-stated principles. In *Kaleta*, the bar order prevented defrauded investors from suing parties closely affiliated with the entity in receivership after the parties had agreed to make good on their guarantees to the receiver. Moreover, the settling parties would have been codefendants with receivership entities, leading to the possibility of their asserting indemnity or contribution from the estate. The court was forestalling a race to judgment that would have diminished the recovery of all creditors against receivership assets. That bar order protected the assets of the receivership estate, whereas the bar orders before us extend beyond receivership assets.

The Receiver also contends that the district court may permanently enjoin the claims of non-consenting third parties based on general statements about ancillary powers found in SEC cases such as *Wencke* and *Safety*

No. 17-10663

*Financial Services*. We disagree. These cases stand only for the proposition that, in some circumstances, federal courts may use injunctive measures, such as stays, “where necessary to protect the federal receivership.” See *Wencke*, 622 F.2d at 1370; *Safety Fin. Serv.*, 674 F.2d at 372 n.5 (distinguishing *Wencke*, which “involved the much broader question of a federal court’s power to enjoin nonparty state actions *against receivership assets*.”) (emphasis added). In fact, the court in *Wencke* recognized that its holding was limited to the propriety of staying third-party “proceedings *against a court-imposed receivership*.” *Wencke*, 622 F.2d at 1371 (emphasis added). Correctly read, these cases explain that *in rem* jurisdiction over the receivership estate imbues the district court with broad discretion to shape equitable remedies necessary to protect the estate.<sup>7</sup> They do not support that a district court’s *in rem* jurisdiction over the estate may serve as a basis to permanently bar and extinguish independent, non-derivative third-party claims that do not affect the *res* of the receivership estate.

The Appellees emphasize the recent decision *SEC v. DeYoung*, 850 F.3d 1172 (10th Cir. 2017), as supporting their argument that an equity court’s permanent bar order against third parties is appropriate when tied to a settlement that secures receivership assets. Like many of their arguments, however, this assertion proves too much. *DeYoung* is a narrow and deliberately fact-specific opinion. See *DeYoung*, 850 F.3d at 1182–83. The court approved a bar order preventing three defrauded IRA Account holders (out of over 5,500 victims) from pursuing claims against the depository bank in which the accounts had been illegally commingled. Notably, however, the court demonstrated that (1) the claims of the barred investors precisely mirrored

---

<sup>7</sup> See also *SEC v. Stanford Int’l Bank, Ltd.*, 424 F. App’x. 338, 340 (5th Cir. 2011) (“It is axiomatic that a district court has broad authority to issue blanket stays of litigation to preserve the property placed in receivership pursuant to SEC actions.”) (emphasis added).

No. 17-10663

claims that had been asserted and settled by the receiver; (2) averted a duplicative lawsuit whereby the bank could have asserted its contract right to indemnity from the receivership assets; and (3) provided the account holders with a claim against the receivership estate. The court simply channeled redundant claims into the receivership while preventing diminution of receivership assets.

Returning to the broad issue in this case, whether the district court abused its discretion in approving the settlement and bar orders, there are two subparts to the question. The first is whether the district court's equitable power to fashion ancillary relief could be used to bar claims by insureds to proceeds of the Underwriters' policies, which are property within the receivership estate. The second is whether the court's equitable power may be used to bar third-party claims, like tort or statutory claims, against the Underwriters but unconnected to the property of the Receivership. The answers to these questions vary according to the Appellants' claims. Texas law, unless otherwise noted, applies by virtue of 28 U.S.C. § 959(b).

## **II. Party Contentions**

### **a. Appellants Alvarado and McDaniel**

The McDaniel and Alvarado Appellants are all former Stanford managers or employees who are being sued by the Receiver for clawbacks of their compensation via the Receiver's Indirect Claims on the Underwriters' policies. Appellants seek coverage under the insurance policies, which Underwriters have denied, to defend against these lawsuits and indemnify their losses. Appellants object to the settlement and bar orders on numerous grounds. From a practical standpoint, the settlement will exhaust the Underwriters' policy proceeds, leaving these Appellants wholly uninsured against the Receiver's lawsuits. The bar orders, moreover, prevent them from pursuing against the Underwriters not only breach of contract claims for



No. 17-10663

violating the duties to defend and indemnify, but also statutory and tort claims that, if successful, would not be paid from policy proceeds and would not reduce Receivership assets.

The district court's rejection of Appellants' objections rested generally on its conclusion that the settlement and bar orders are fair, equitable, reasonable and in the best interests of the receivership estate. As has been noted, the court cited only the *Kaleta* case, affirmed by a non-precedential decision of this court, in support of its conclusions. The court's reasoning invoked the perceived necessity of a settlement, together with the bar orders, to resolve fairly and efficiently the competing claims of the Receiver and Underwriters about policy coverage and assure the maximum recovery for Stanford's defrauded investors. Without the bar orders, the court stated, Underwriters would not settle. The court pointedly refused to decide whether policy exclusions apply to the Appellants' coverage claims. Even if such exclusions barred coverage, the court added, then the Receiver might also be barred by the same exclusions and all potential benefit of the settlement would be lost. In sum, the Appellants would lose out no matter what: their claims could be barred by exclusions, held uninsurable, or the Receiver, having the right to settle, would exhaust the proceeds first.<sup>8</sup> The balance of benefits to the receivership estate against Appellants' admitted losses weighed in favor of the court's approving the settlement and bar orders.

---

<sup>8</sup> Implicit in the district court's reference to the Receiver's right to settle and exhaust all the policy proceeds is apparently its reliance on Texas law, which allows an insurer to settle with fewer than all of its co-insureds when the policy proceeds are insufficient to satisfy all of the claims. See *G.A. Stowers Furniture Co. v. Am. Indem. Co.*, 15 S.W.2d 544 (Tex. 1929); *Pride Transp. v. Cont'l Cas. Co.*, 511 F. App'x 347, 351 (5th Cir. 2013); *Travelers Indem. Co. v. Citgo Petroleum Corp.*, 166 F.3d 761, 765–68 (5th Cir. 1999); see also *Tex. Farmers Ins. Co. v. Soriano*, 881 S.W.2d 312, 315 (Tex. 1994). The court, however, never referenced these cases.



No. 17-10663

In the course of explaining its decision, however, the court made some errors. First, its broad statement that the settlement would fail without the bar orders did not account for the fact that the parties had mediated a prior settlement that required no bar orders against these Appellants because the Receiver had agreed to release all of its claims against them. “Global peace” there was achieved not by bar orders, but by the Receiver’s agreeing to drop the Indirect Claim suits. The final settlement required the broad bar orders only because the Receiver, for whatever reason, insisted that it must continue to pursue hundreds of clawback actions.<sup>9</sup> The court’s broad statement also neglected to note that, despite the Receiver’s overall insistence to the contrary, the Receiver nonetheless released its claims against sixteen former Stanford officers and employees in the final settlement.

Second, the court, perhaps inadvertently, did not address the fact that Appellants were foreclosed from sharing in the assets recovered by the Receiver by filing claims against the estate.

Third, the court failed to distinguish between the Appellants’ two separate types of claims – contractual claims for defense and indemnity payable (if successful) from policy proceeds in competition with investors’ claims to the Receivership assets; and independent, non-derivative, third-party claims for tort and statutory violations, which would be satisfied (if successful) out of Underwriters’ assets. In this connection, the court also undervalued the Appellants’ claims for indemnity by disregarding *Pendergest-Holt*. In that case, this court held that the D&O policies should provide up-front reimbursement of defense costs in Stanford insureds’ criminal cases

---

<sup>9</sup> Indeed, when the Underwriters moved the district court to enforce the terms of the mediated settlement, their motion queried the benefits to be reaped, other than in the Receiver’s legal fees, from these time-consuming suits against relatively poor former employees targeted by the Receiver.

No. 17-10663

pending a separate judicial proceeding to resolve the coverage question. *Pendergest-Holt v. Certain Und. at Lloyd's of London*, 600 F.3d 562, 572–74 (5th Cir. 2010). Although carefully hedged, this decision offered Appellants the prospect of possible, temporary relief for their mounting defense costs and was not “wholly inapplicable” to the decision concerning the settlement and bar orders. But in any event, the court did not analyze the ramifications of Appellants’ distinct claims against Receivership assets and claims wholly independent of receivership assets.

*i. Contractual Claims for Defense and Indemnity*

Reviewing first the settlement and bar of Appellants’ contractual claims against the policy proceeds that are property of the receivership estate, we find that the court abused its discretion by extinguishing Appellants’ claims to the policy proceeds, while making no provision for them to access the proceeds through the Receiver’s claims process. This undermines the fairness of the settlement.

As the district court observed, some settlement with the Underwriters was prudent because of the sheer magnitude of claims far beyond the policies’ coverage, and because the scope of coverage, dependent on multiple, insured-specific factual and legal questions, is unclear. What is clear in Texas law, as conceded by Appellants, is that an insurer may settle with fewer than all of its co-insureds when the policy proceeds are insufficient to satisfy all of the claims. *See G.A. Stowers Furniture Co. v. American Indem. Co.*, 15 S.W.2d 544 (Tex. 1929); *Pride Transp. v. Continental Cas. Co.*, 511 F. App’x 347, 351 (5th Circuit 2013); *Travelers Indem. Co. v. Citgo Petroleum Corp.*, 166 F.3d 761, 765–68 (5th Cir. 1999); *see also Farmers Insurance Co. v. Soriano*, 881 S.W.2d 312, 315

No. 17-10663

(Tex. 1994).<sup>10</sup> Although the district court did not cite these cases, its ruling squares with them and supports its cost/benefit calculation for the Receiver/Underwriters' settlement to the detriment of Appellants' contractual claims.

But not only did the settlement expressly foreclose the Appellants from sharing in the insurance policy proceeds of which they are coinsureds, the Appellants are not even allowed to file claims against the Receivership estate. Unlike the Stanford investors and the Receiver's attorneys, who can pursue restitution through the Receiver's claims process, Appellants have no access to the claims process. The Settlement Agreement specifically restricts payment of the Proceeds to the Receivers' attorneys and the Stanford investors and specifically excludes Stanford employees and management, including Appellants. For these Appellants, should the Receiver continue to pursue them, their claims against the Underwriters offer the only avenue of recovery. This alone serves to distinguish this case from *Kaletka*, which approved the settlement because, inter alia, the settlement agreement "expressly permits" those affected by the bar order "to pursue their claims by 'participat[ing] in the claims process for the Receiver's ultimate plan of distribution for the Receivership Estate.'" See *Kaletka*, 530 F. App'x at 362–63 (alteration in original). Barring Appellants' claims to coverage under their insurance policies by claiming the proceeds of these policies as property of the Receivership, and then barring Appellants' from accessing even a portion of these proceeds through the Receivership claim process, undermines the fairness of the settlement.

---

<sup>10</sup> *Soriano* may not squarely apply to the extent that the settlement does not, on its face, exhaust the policy limits. But this uncertainty in the law meant that settlement between the Receiver and the Underwriters was fair game.

No. 17-10663

The district court and Receiver lacked authority to dispossess claimants of their legal rights to share in receivership assets “for the sake of the greater good.” The court’s duty, as previously described, is to assure that all claimants against the Receivership have a reasonable opportunity to share in the estate’s assets. Given the numerous exclusions to policy coverage,<sup>11</sup> the Appellants’ entitlement to proceeds may appear weak, but the court disclaimed deciding coverage issues, and the Appellants have identified several reasons, in addition to *Pendergest-Holt*, why their contractual claims might prevail on final adjudication.<sup>12</sup>

Rather than extinguish the Appellants’ contractual claims, the court could have authorized them to be filed against the Receivership in tandem with the Stanford investors’ claims. Such “channeling orders” are often employed to afford alternative satisfaction to competing claimants to receivership assets while limiting their rights of legal recourse against the assets. *See, e.g., DeYoung*, 850 F.3d at 1182; *see also Kaleta*, 530 F. App’x at 360 (approving claims filing in receivership for barred litigants). In any event, the court may have intended to channel the Appellants’ claims here but simply overlooked their omission from the extant procedures.<sup>13</sup>

---

<sup>11</sup> The myriad of contested policy exclusions include the insured versus insured, money laundering, fraud, intentional corporate or business policy, and prior knowledge exclusions.

<sup>12</sup> Appellants explain that a significant number of their group have no personal liability, and, inferentially, should not be subject to policy exclusions, because they did not sell Stanford CDs to investors. Further, because the Receiver’s claims against the Appellants are not derivative, any recovery from the proceeds would not at all reduce or offset the Appellants’ liability for fraudulent transfers. Finally, Appellants assert viable defenses to the clawback actions based, in part, on Texas law in this Receivership. *See Janvey v. Golf Channel, Inc.*, 487 S.W.3d 581, 582 (Tex. 2016) (recognizing defense to fraudulent transfer of reasonably equivalent value received).

<sup>13</sup> The Receiver and Underwriters contend that in lieu of other modes of compensation through the receivership, these Appellants have received “benefits,” however small, from the settlement because the insurance proceeds that have gone into the receivership estate offset

No. 17-10663

*ii. Extracontractual Claims for Tort and Statutory Violations*

By ignoring the distinction between Appellants' contractual and extracontractual claims against Underwriters, the district court erred legally and abused its discretion in approving the bar orders.<sup>14</sup> These claims, including common law bad faith breach of duty and claims under the Texas Insurance Code, lie directly against the Underwriters and do not involve proceeds from the insurance policies or other receivership assets.<sup>15</sup> These damage claims against the Underwriters exist independently; they do not arise from derivative liability nor do they seek contribution or indemnity from the estate.<sup>16</sup> As the preceding discussion explains in detail, receivership courts have no authority to dismiss claims that are unrelated to the receivership estate. That the district court was "looking only to the fairness of the settlement as between the debtor and the settling claimant [and ignoring third-party rights] contravenes a basic notion of fairness." *Zale*, 62 F.3d at 754

---

their potential liability in the Receiver's and other suits. The district court made no such finding, and we see no basis in the record for it.

<sup>14</sup> The Receiver and Underwriters would pretermit any such distinction by contending that unless the Appellants had valid contractual claims for insurance from the Underwriters' policies, they could not bring extracontractual claims. This may well be accurate. The district court, however, refused to rule on the viability of Appellants' contractual claims, and we need not undertake that task here. The basis of settlement for all concerned is to avoid tedious litigation of insurance coverage claims.

<sup>15</sup> This principle has been described above in the related context of bankruptcy. *See Matter of Zale Corp.*, 62 F.3d 746, 756–57 (5th Cir. 1995); *Matter of Vitek, Inc.*, 51 F.3d 530, 538 (5th Cir. 1995); *In re Sportstuff, Inc.*, 430 B.R. 170, 178–79 (B.A.P. 8th Cir. 2010); *see also Matter of Buccaneer Res., LLC*, 912 F.3d 291, 293–97 (5th Cir. 2019) (explicating the difference between derivative and non-derivative injuries and holding that a tortious interference claim by a former company president against the outside lenders is non-derivative and separate from the bankruptcy estate).

<sup>16</sup> *See SEC v. DeYoung*, 850 F.3d 1172; *In re Heritage Bond Litig.*, 546 F.3d 667, 680 (9th Cir. 2008) (discussing settlement of a securities class action and distinguishing between claims for codefendant contribution and independent claims against settling defendants; former could be dismissed by bar order, but latter claims could not be).

No. 17-10663

(alteration in original) (citing *United States v. AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir.)).

As discussed above, the Receiver lacked standing to settle independent, non-derivative, non-contractual claims of these Appellants against the Underwriters. *See DSCC*, 712 F.3d at 190, 193 (receiver “has standing to assert only the claims of the entities in receivership, not the claims of the entities’ investor-creditors [coinsureds] . . .”). Of course, the Receiver and Underwriters were, as Appellants’ counsel colorfully described, all too happy to compromise at the expense of Appellants’ rights. The court purported to justify this result by claiming that “the bar orders are not settling claims, they are enjoining them.” No matter the euphemism, a permanent bar order is a death knell intended to extinguish the claims, which are a property interest, however valued, of the Appellants.

Moreover, in approving the settlement and bar orders against these Appellants, the district court overlooked problems inherent in the settling parties’ positions. The Underwriters’ position was in conflict with the Appellants: by means of the bar orders, the Underwriters limited their exposure to further costly and time-consuming litigation over Appellants’ non-derivative extracontractual claims against them. The Receiver was enabled by the settlement and bar orders to place Appellants in a vise: preserving his ability to sue Appellants for clawbacks even as the agreement stripped Appellants’ access to any recompense from the Underwriters.<sup>17</sup> These

---

<sup>17</sup> The mediated settlement, in contrast, averted these conflicts of interest with the Receiver’s release of claims against Appellants offsetting the Underwriters’ potential extracontractual liability.



No. 17-10663

problems cast grave doubt on the fairness and equity of the settlement and bar orders reached without Appellants' participation.<sup>18</sup>

In sum, although we sympathize with the impetus to settle difficult and atomized issues of insurance coverage rather than dissipate receivership assets in litigation, the settlement and bar orders violated fundamental limits on the authority of the court and Receiver. The court and Receiver could not abrogate contractual claims of these Appellants to proceeds of Underwriters' policies without affording them an alternative compensation scheme similar, if not identical, to the claims process for Stanford investors. The court could not authorize the Receiver and Underwriters to compromise their differences while extinguishing the Appellants' extracontractual claims against Underwriters. Equity must follow the law, which here constrains the court's and Receiver's authority to protecting the assets of the receivership and claims directly affecting those assets.<sup>19</sup>

**b. Appellant Cordell Haymon**

Like the Alvarado and McDaniel Appellants, Appellant Cordell Haymon, a member of Stanford Trust Company's board of Directors, was targeted by the

---

<sup>18</sup> When compared with *DeYoung*, 850 F.3d at 1182–83, the unsustainability of the settlement and bar orders here is manifest. Unlike that case, the extracontractual claims of these Appellants do not parallel those of the Receiver, Underwriters possess no contribution/indemnity claim against the receivership estate, and Appellants have been provided no channel to assert claims in the receivership.

<sup>19</sup> We reject Appellants' due process claims against the settlement and bar orders. They contend that because they "had an interest in" the outcome of the settlement, and the Bar Order "fully and finally adjudicates Appellants' independent state law contract and tort claims," due process required at least the ability to introduce evidence at the hearing. McDaniel presses other constitutional claims. But Appellants were provided notice of the settlement hearing, were able to fully brief their position and provide affidavits, and they have offered nothing more on appeal. Although excluded from the settlement negotiations, they have shown no legal requirement that they be allowed to participate in a settlement resolving claims for reimbursement against the limited policy proceeds. The applicable Texas law allows insurers to settle with fewer than all of the insureds in such circumstances. Appellants' due process arguments fail, and McDaniel's other claims are meritless.



No. 17-10663

Receiver and sought coverage of his defense costs under the insurance policies. After the Underwriters denied his claim for coverage, he settled the Receiver's fiduciary duty breach suit for \$2 million. Haymon asserts that he relied on the language of his settlement agreement, which specifically authorized the continuation of his suit against the Underwriters. Only a few months later, however, the final proposed settlement undid his expectations of recovery from the Underwriters. Haymon requested to intervene in the initial coverage dispute between Underwriters and the Receiver, and he filed objections to the proposed settlement. He argues now that the district court erred in barring all of his contractual and extracontractual tort and statutory claims against the Underwriters.

To the extent that Haymon's claims mirror those of Alvarado and McDaniel, the same results follow. The district court acted within its authority to bar Haymon's claim for contractual defense and indemnity under the insurance policies, but some alternate compensation mode from the receivership estate is required, and the court could not bar his extracontractual claims against the Underwriters. However, the ultimate evaluation of Haymon's claims may differ from that of the other Appellants for two reasons, which the district court should assess on remand. First, because his insurance coverage claim was liquidated before the final settlement (\$2 million potential indemnity and \$1.5 million defense costs) it was ripe for judicial determination under *Pendergest-Holt*.<sup>20</sup> Second, Haymon received a bar order, perhaps valuable to him, against any further litigation concerning his involvement with Stanford entities.

---

<sup>20</sup> Finally, as noted in regard to the other Appellants, Haymon was afforded the opportunity, and availed himself of the ability to press his constitutional objections to the settlement and bar orders. There was no failure of due process and his other vaguely identified constitutional objections are meritless.

No. 17-10663

**c. Appellant Louisiana Retirees**

Unlike the foregoing Appellants, the Louisiana Retirees are not coinsureds under the insurance policies, and they are not being pursued in Indirect Claim actions by the Receiver. Retirees have assiduously pursued securities law claims against certain Stanford brokers and the Underwriters, as insurers for those brokers, under the Louisiana Direct Action Statute, La. R.S. 22:1269.

First, the parties dispute the meaning of the bar order and the extent to which it bars the Retirees' claims. The Receiver argues that the bar order applies only to claims against the Underwriters and the Underwriters' *Released Parties*, defined as the officers, agents, etc. of Underwriters, and expressly excluding the officers, directors, or employees of Stanford Entities. Retirees argue that it enjoins them from pursuing the Stanford Claims, defined as "any action, lawsuit or claims brought by any Stanford Investor against Underwriters [or] . . . *Underwriter's Insureds*." In turn, Underwriters' Insureds are defined as "any person that shall be an officer and director of any Stanford Entities . . . [or] any employee of any Stanford Entities." On remand, it would be appropriate for the district court to determine and clarify the meaning of the bar order as to the Retirees, keeping in mind that the district court may not enjoin any claims by Retirees against the brokers that do not implicate the policy proceeds.

Second, the Retirees' claims under the Louisiana direct action statute unequivocally implicate the policy proceeds and therefore assets of the receivership. The statute specifies that an action can be brought "within the terms and limits of the policy by the injured person." La. Rev. Stat. 22:1269(A), (C), (D). It "does not create an independent cause of action against the insurer[;] it merely grants a procedural right of action against an insurer where the plaintiff has a substantive cause of action against the insured." *Soileau v.*

No. 17-10663

*Smith True Value & Rental*, 144 So. 3d 771, 780 (La. 2013). As such, the Receiver could settle with the Underwriters notwithstanding the direct action claim just as he could settle regardless of the Employee Appellants' contractual claims to policy proceeds. Further, as former investors in the Stanford entities, the Retirees were afforded a means of filing claims apart from the direct action suit, and many have availed themselves of that opportunity. Consequently, the Retirees' direct action suit against the Underwriters amounts to a redundant claim on receivership assets.

Nevertheless, the Retirees assert several arguments that have no bearing on the permissibility of the settlement and bar order as to them. They contend first that the settlement and bar order conflict with the Supreme Court's decision in *Chadbourne & Parke LLP v. Troice*, 134 S. Ct. 1058 (2014), which they characterize as "acknowledg[ing] the Louisiana Retirees' rights to bring their state law securities claims in Louisiana state court." But *Troice* held only that the Securities Litigation Uniform Standards Act did not preempt the Louisiana Appellants' state court claims. The Court's ruling did not bear on the merits of or procedure for the Retirees' state law case.

Second, they contend that *DSCC*, 712 F.3d at 185, forbids giving the receiver the right to "control the settlement of a claim it does not own." That is certainly correct according to our previous discussion, but here, the Receiver had standing to pursue *its own* claims as coinsured under the Underwriters' policies, such claims perfected the Receiver's interest in a valuable asset, and Texas law provided the right to settle them even at the expense of the Retirees' direct action claims.

The Retirees argue that the district court should have first determined the disputed legal questions about the magnitude of, and legal rights to, the policy proceeds before approving the settlement and bar orders under *In re Louisiana World Exposition, Inc.*, 832 F.2d 1391 (5th Cir. 1987). This

No. 17-10663

argument simply misreads that case. The court in *Louisiana World* explicitly distinguished the facts before it from cases involving coinsureds with equal claims to the policy proceeds. Moreover, at least one disputed policy – the Fidelity Bond – covers only the Receivership entities.<sup>21</sup> It was not an abuse of discretion for the district court to hold that equity favored avoiding costly litigation and dissipation of receivership assets by allowing the Receiver, a coinsured with equal claim to the policy proceeds, to settle with the Underwriters. Avoiding protracted legal examination of the policy exclusions, which could just as easily bar Retirees and others from the policy proceeds, was precisely the point of the settlement.

Fourth, Retirees assert that the Anti-Injunction Act, 28 U.S.C. § 2283 (“AIA”), prevented the court from issuing its bar orders. This argument has no merit. Under the AIA, “any injunction against state court proceedings otherwise proper under general equitable principles must be based on one of the specific statutory exceptions to [the Anti-Injunction Act] if it is to be upheld.” *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng’rs*, 398 U.S. 281, 287, 90 S. Ct. 1739, 1743 (1970). The specific exceptions are express authorization by an Act of Congress, where necessary in aid of the court’s jurisdiction, or to protect or effectuate the court’s judgments. *Id.* at 288, 90 S. Ct. at 1743–44. The AIA does not prohibit the settlement and bar order because, pertinent to the Retirees, they cover only those claims implicating the insurance policy proceeds and so were necessary in aid of the district court’s jurisdiction over those proceeds. The district court has exclusive *in rem* jurisdiction over the policy proceeds and permanent bar orders have been approved as parts of settlements to secure receivership assets. *See, e.g., SEC*

---

<sup>21</sup> As with the other policies, the Underwriters and Receiver dispute the scope of coverage and exclusions of the Fidelity Bond, and whether the Receiver may access the proceeds, but there is no argument that the Retirees may access these proceeds.

No. 17-10663

*v. Parish*, No. 2:07-CV-00919-DCN, 2010 WL 8347143 (D.S.C. Feb. 10, 2010) (“[T]he bar order is necessary to preserve and aid this court’s jurisdiction over the receivership estate, such that the Anti-Injunction Act would not prohibit the bar order even if there were pending state court actions, which there are not.”).

For these reasons, the settlement and bar orders did not interfere with or improperly extinguish the Retirees’ rights.

### CONCLUSION

For the foregoing reasons, we **VACATE** the district court’s orders approving the settlement and bar orders and **REMAND** for further proceedings consistent with this opinion.<sup>22</sup>

---

<sup>22</sup> Vacatur and remand will probably necessitate the court’s reconsideration of the attorneys’ fee award to the Receiver’s counsel.

## **EXHIBIT 12**

D. Michael Lynn – State Bar ID 12736500  
 John Y. Bonds, III – State Bar ID 02589100  
 Clay M. Taylor – State Bar ID 24033261  
 Bryan C. Assink – State Bar ID 24089009  
**BONDS ELLIS EPPICH SCHAFFER JONES LLP**  
 420 Throckmorton Street, Suite 1000  
 Fort Worth, Texas 76102  
 (817) 405-6900 – Telephone  
 (817) 405-6902 – Facsimile  
[Michael.lynn@bondsellis.com](mailto:Michael.lynn@bondsellis.com)  
[john@bondsellis.com](mailto:john@bondsellis.com)  
[clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)  
[bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)

**COUNSEL FOR JAMES DONDERO**

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

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

---

**JOINDER IN MOTION FOR STAY PENDING APPEAL AND ADDITIONAL  
 GROUNDS FOR THE ISSUANCE OF A STAY PENDING APPEAL**

James Dondero (“Dondero”) herby files his Joinder to Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.’s Motion for Stay Pending Appeal of the Confirmation Order, and Brief In Support Thereof (the “Advisor Motion”), and also submits his Additional Grounds for the Issuance of a Stay Pending Appeal.<sup>1</sup>

**Joinder**

1. First, Dondero joins and incorporates by reference each of the points, facts, legal analysis and standards made by the Movants in the Advisor Motion.

---

<sup>1</sup> Defined terms not defined herein have the same terms ascribed to them in the Advisor Motion.





**Additional Facts Relevant to this Joinder**

2. During the course of this bankruptcy case, and after Dondero was removed from his role at the Debtor, the Debtor or its subsidiaries, under the direction of the Debtor's CEO James Seery, sold three substantial assets. Those three assets sales were generically referred to as the Life Settlements sale, the Omnimax sale and the Trussway or SSP sale (collectively the "Sales").

3. In each of the Sales, the sale of the assets that occurred was not actually carried on the balance sheet of the Debtor itself, but instead on the balance sheet of a subsidiary or a subsidiary of a subsidiary. Each Sale was significant and in excess of \$2,000,000.

4. The Debtor did not provide notice of the Sales to creditors or parties-in-interest.

5. The Debtor further maintains that notice of the Sales was not required. For the reasons stated below, the Debtor is mistaken.

**Additional Support for Issuance of a Stay Pending Appeal**

6. As additional grounds and argument as why a stay should issue, as stated in Dondero's Objection to the Plan and as argued at the confirmation hearing on the same, the Debtor failed to meet its burden proving that the best interests of the creditors test had been met by showing that creditors and other parties in the waterfall (such as equity) would receive as much as they would have in a hypothetical chapter 7 case. This objection was, in part, based on the Debtor's repeated refusal, even while in bankruptcy, to afford creditors and parties-in-interest, such as Dondero, notice and opportunity to participate in sales of the Debtor's assets. One of the numerous reasons for the requirements under the Bankruptcy Code and Rules that notice of such sales be provided is so that any creditor, or any other interested party, could participate in the sales process and thereby ensure that the estate (and other stakeholders) can reasonably anticipate that

the highest and best sales price(s) for any asset(s) being sold was indeed reached for the sale of that asset. Absent a stay pending appeal, Dondero and other parties-in-interest would lose the protections offered by the notice procedures for the sale of assets provided for under 11 U.S.C. Section 363 and Federal Rule of Bankruptcy Procedure 2002.

7. The Debtor maintains that while it did not give notice to Dondero of prior sales in bankruptcy, that it did not have to. Dondero reasonably assumes that the Debtor may continue such practice even if a stay was granted. As a result, the imposition of the stay is not material to the Debtor and does no harm to it.

8. Alternatively, if the Debtor now acknowledges that under the Bankruptcy Code and Rules notice should have been provided and that any subsequent similar sale would need to be noticed out in accordance with Section 363 and Rule 2002, then the additional burden to do so is not material to the Debtor, better insures that creditors and parties-in-interest are both informed and their interests are protected, and informs both this Court and the court hearing the appeal of this matter additional evidence of why this underlying appeal should be granted.

9. First, the argument used to justify the prior lack of compliance with the Code and the Rules of “the assets that were being sold were assets of a subsidiary entity and therefore not assets of the estate,” and therefore not implicating the notice provisions of Section 363 and Rule 2002, is specious and self-serving. At times in this case, the Debtor has maintained that the subsidiaries are subject to ultimate control of and by this Court and proceeding, but at other times it chooses to assert their independence from the obligations that come commensurate with that assertion.

10. All the Sales done in this bankruptcy were significant sales, not conducted within the ordinary course of business of the Debtor, and necessarily positively or negatively impacted

the recoveries that creditors and parties-in-interest will ultimately realize in this case. In short, the Debtor knew exactly what it was doing, violated the Code and the Rules, but proceeded with the Sales despite these infirmities.

11. Moreover, the argument misses the point. If a stay were granted, and if the Debtor continued to operate in such a manner avoiding what Dondero maintains are fundamental and applicable protections of both bankruptcy statute and rule, and the appeal was subsequently granted in whole or in part on such grounds, and also on the third-party releases and exculpation grounds, then the parties responsible for such violations of the Bankruptcy Code and Rules could be held responsible for such acts and the creditors and parties-in-interest could seek recompense. Absent a stay pending appeal, the public interests are harmed by allowing the Debtor to continue to skirt its duties about providing due notice of sales of the Debtor's assets under a plan that may be subsequently overturned if the appeal is granted. The imposition of a stay would not alter the Debtor's ability to actually sell assets, but would at least make it either provide notice of such sales, or, if it chooses not to, make the Debtor responsible for the consequences of its actions if that decision is an erroneous one. This is precisely why a stay should be granted to keep irreparable harm from being done to creditors and parties-in-interest such as Dondero.

12. Therefore, the issuance of stay pending appeal affords: (i) at least some marginal protections to the creditors and parties-in-interest that the Bankruptcy Code provisions should be adhered to regarding sales of assets; and (ii) if it is ultimately found that such lack of notice is and was indeed proper, then the issuance of a stay does no practical harm to the Debtor who can continue its practices of not providing such notice.

**Request for Relief**

Dondero requests that the Court enter an Order:

- (i) Staying the effectiveness of the Confirmation Order pending appeal; and
- (ii) granting such other relief as is just and proper.

Signed: March 4, 2021.

BONDS ELLIS EPPICH SCHAFFER JONES LLP

By: /s/ Clay M. Taylor  
D. Michael Lynn – State Bar ID 12736500  
John Y. Bonds, III – State Bar ID 02589100  
Clay M. Taylor – State Bar ID 24033261  
Bryan C. Assink – State Bar ID 24089009  
Telephone: (817) 405-6900  
Facsimile: (817) 405-6902  
Email: [clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)

ATTORNEYS FOR JAMES DONDERO

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this on March 4, 2021, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on counsel for the Appellee.

By: /s/ Clay M. Taylor  
Clay M. Taylor

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 4**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1*  
*000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON



<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>				<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>				<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

Vol. 8

001349

001352

001359

001361

001369

001381

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018				
	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024				
	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036				
	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051				
Thru Vol 14				
Vol. 15	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
002916				
Thru Vol. 18				
Vol. 19	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
003783				
Thru Vol. 22				

001. 22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

## **EXHIBIT 13**





CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 16, 2021

  
United States Bankruptcy Judge

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

\_\_\_\_\_)  
In re: ) Chapter 11  
)  
HIGHLAND CAPITAL MANAGEMENT, L.P. ) Case No. 19-34054 (SGJ11)  
)  
Debtor. )  
)  
\_\_\_\_\_)

**ORDER CERTIFYING APPEALS OF THE CONFIRMATION ORDER  
FOR DIRECT APPEAL TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

CAME ON FOR CONSIDERATION the *Joint Motion for Certification of Appeals of Confirmation Order for Direct Appeal to the Fifth Circuit* (the "Motion"), filed jointly by Highland Capital Management, L.P., Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund, James Dondero, Get Good Trust, and The Dugaboy Investment Trust (collectively, the "Parties").





By the Motion, the Parties jointly request a certification for a direct appeal to the Fifth Circuit of the following appeals (collectively, the “Appeals”) of the Court’s *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [docket no. 1943] (the “Confirmation Order”):

- (i) the notice of appeal filed by Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. on March 1, 2021 at docket no. 1957;
- (ii) the notice of appeal filed by Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., and NexPoint Strategic Opportunities Fund on March 3, 2021 at docket no. 1966;
- (iii) the notice of appeal filed by James Dondero on March 4, 2021 at docket no. 1970; and
- (iv) the notice of appeal filed by Get Good Trust and The Dugaboy Investment Trust on March 4, 2021 at docket no. 1972.

Having considered the Motion, concluding that the Court has core jurisdiction over the Motion, finding that no further notice or hearing on the Motion is required as all parties affected thereby are the Parties to the Motion, and, based on the Parties joint certification and request as provided for in 28 U.S.C. § 158(d)(2)(B), and based also on the Court’s agreement with the factual predicates underlying the Parties’ certification and request, it is hereby:

ORDERED that the Appeals of the Confirmation Order are certified for direct appeal to the Fifth Circuit because a direct appeal may materially advance the progress of the case or proceeding in which the appeal is taken, within the meaning and operation of 28 U.S.C. § 158(d)(2)(A)(iii).

**### END OF ORDER ###**

## **EXHIBIT 14**



CLERK, U.S. BANKRUPTCY COURT  
 NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
 THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 22, 2021

*Wayne H. C. George*  
 United States Bankruptcy Judge

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

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-SGJ-11
	§	
Debtor.	§	
	§	

**ORDER ON MOTIONS FOR STAY PENDING APPEAL**

This matter having come before the Court on the *Emergency Motion of the Advisors for Stay Pending Appeal of the Confirmation Order, and Brief in Support Thereof* [Docket No. 1955] (the “Advisors Motion”); *Motion for Stay Pending Appeal of the Court’s Order Confirming the Debtor’s Fifth Amended Plan* [Docket No. 1967] (the “Funds Motion”); *Joinder to Motions for Stay Pending Appeal of the Court’s Order Confirming the Debtor’s Fifth Amended Plan* [Docket No. 1971] (the “Trusts Motion”); and *Joinder in Motion for Stay Pending Appeal and Additional Grounds for the*

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



*Issuance of a Stay Pending Appeal* [Docket No. 1973] (the “Dondero Motion,” and together with the Advisors Motion, the Funds Motion, and the Trusts Motion, the (“Motions”), and this Court having considered (i) the Motions; (ii) *Debtor’s Omnibus Response to Motions for Stay Pending Appeal of the Confirmation Order* [Docket No. 2022] (the “Debtor’s Response”);<sup>2</sup> (iii) *Omnibus Objection of the Official Committee of Unsecured Creditors’ Objection to Motions for Stay Pending Appeal of the Confirmation Order and Joinder in Debtor’s Omnibus Objection to Motions for Stay* [Docket No. 2023] (the “UCC Response,” and together with the Motions and the Debtor’s Response, the “Briefs”); (iv) the evidence admitted into evidence during the hearing held on March 19, 2021 (the “Hearing”); and (v) the arguments made during the Hearing; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the notice of the Motions and opportunity for a hearing on the Motions were appropriate and that no other notice need be provided; and upon all of the proceedings had before this Court, the legal and factual bases set forth in the Briefs, and the evidence submitted at the Hearing; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on the Motions, it is hereby **ORDERED** that:

1. The Motions are **DENIED**.
2. The Court will hold a hearing on March 24, 2021, at 9:30 a.m. Central Time (the “Bond Hearing”) on whether the Appellants are entitled to a stay pending appeal of the Confirmation Order, as a matter of right, under applicable law upon the posting of an adequate monetary bond. If the Court determines that applicable law provides Appellants with a stay

---

<sup>2</sup> Capitalized terms used but not herein defined shall have the meanings ascribed to such terms in the Debtor’s Response.

pending appeal of the Confirmation Order as a matter of right upon the posting of an adequate monetary bond, then this Court will hear evidence at the Bond Hearing regarding the appropriate amount of such bond.

3. Parties may submit briefs on the question of whether Appellants are entitled to a stay pending appeal of the Confirmation Order as a matter of right upon the posting of an adequate monetary bond, and if so, the appropriate amount of such bond, by no later than 3:00 p.m. Central Time on March 23, 2021.

4. The Effective Date of the Plan will not occur prior to March 31, 2021.

5. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

### END OF ORDER ###

## EXHIBIT 15



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 24, 2021

  
United States Bankruptcy Judge

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

---

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-SGJ-11
	§	
Debtor.	§	
	§	

---

**SUPPLEMENTAL ORDER ON MOTIONS FOR STAY PENDING APPEAL**

This matter having come before the Court on the *Emergency Motion of the Advisors for Stay Pending Appeal of the Confirmation Order, and Brief in Support Thereof* [Docket No. 1955] (the "Advisors Motion"); *Motion for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan* [Docket No. 1967] (the "Funds Motion"); *Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan* [Docket No. 1971] (the "Trusts Motion"); and *Joinder in Motion for Stay Pending Appeal and Additional Grounds for the*

---

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





*Issuance of a Stay Pending Appeal* [Docket No. 1973] (the “Dondero Motion,” and together with the Advisors Motion, the Funds Motion, and the Trusts Motion, the (“Motions”), and this Court having considered (i) this Court’s *Order on Motions for Stay Pending Appeal* [Docket No. 2084] (the “Prior Order”); (ii) the Motions and the letter of Davor Rukavina to this Court dated March 23, 2021 regarding In re Highland Capital Management, L.P., 19-34054-SGJ-11: Motions/Joinders for Stay Pending Appeal of Confirmation Order [Docket No. 2086] (the “Letter”); (iii) *Debtor’s Omnibus Response to Motions for Stay Pending Appeal of the Confirmation Order* [Docket No. 2022] (the “Debtor’s Response”) and the *Debtor’s Supplemental Brief in Opposition to Motions for Stay Pending Appeal of the Confirmation Order* [Docket No. 2087] (the “Debtor’s Supplemental Brief”);<sup>2</sup> (iv) *Omnibus Objection of the Official Committee of Unsecured Creditors’ Objection to Motions for Stay Pending Appeal of the Confirmation Order and Joinder in Debtor’s Omnibus Objection to Motions for Stay* [Docket No. 2023] (the “UCC’s Response”) and the *Supplemental Statement of the Official Committee of Unsecured Creditors’ Regarding Motions for Stay Pending Appeal of the Confirmation Order* [Docket No. 2089] (the “UCC’s Statement,” and together with the Motions, the Debtor’s Response, the Debtor’s Supplemental Brief and the UCC’s Response, the “Briefs”);<sup>3</sup> (v) the evidence admitted into evidence during the hearing held on March 19, 2021 (the “March 19 Hearing”); and (vi) the arguments made during the March 19 Hearing; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the notice of the Motions and opportunity for a hearing

---

<sup>2</sup> Capitalized terms used but not herein defined shall have the meanings ascribed to such terms in the Debtor’s Response.

<sup>3</sup> The Debtor’s Supplemental Brief and the UCC’s Statement together are the “Supplemental Briefs.”

on the Motions were appropriate and that no other notice need be provided; and upon all of the proceedings had before this Court, the legal and factual bases set forth in the Briefs, and the evidence submitted at the March 19 Hearing; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on the Motions, it is hereby **FOUND** and **ORDERED** that:

1. At the March 19 Hearing, the Court heard the Motions for a discretionary stay pending appeal, pursuant to Fed.R.Bankr.P. 8007. The Court determined that the Appellants (which only made oral argument and presented only some documentary evidence) did not meet their burden of proof on the four-factor test articulated in case law to obtain a discretionary stay pending appeal. The Prior Order memorialized the Court's ruling denying the requested stay pending appeal. Since there was some discussion raised by certain of the Appellants and the Debtor regarding an appropriate amount for a monetary bond that Appellants might be required to post in connection with a stay pending appeal, the Court raised the question whether applicable law required the Court to grant a stay pending appeal (i.e., a mandatory stay) if Appellants posted a sufficient bond. The Court considered Fed.R.Bankr.P. 7062 (incorporating Fed.R.Civ.P. 62). Fed.R.Bankr.P. 7062 does not automatically apply in contested matters, see Fed.R.Bankr.P. 9014, but rather applies in adversary proceedings. However, a bankruptcy court might conceivably apply it in a contested matter. The Court gave the parties an opportunity to brief this issue and gave the Appellants the opportunity to put on evidence as to what would be an appropriate bond amount, if Fed.R.Bankr.P. 7062 should be applied. In the Prior Order, the Court set a briefing deadline of March 23, 2021 at 3:00 p.m. and an evidentiary hearing for March 24, 2021 at 9:30 a.m. (the "Supplemental Hearing"). Shortly before the briefing deadline, Appellants informed the Court by the Letter that they did not believe the Court could issue a mandatory stay pending appeal of the

Confirmation Order, and, rather, the Court is limited to issuing a discretionary stay pursuant to Fed.R.Bankr.P. 8007. Appellants announced that they did not intend to proceed at the Supplemental Hearing and asked the Court to cancel it.

2. Meanwhile, the Debtors and UCC submitted their Supplemental Briefs arguing that the Court, indeed, does not have the ability to issue a mandatory stay pending appeal, pursuant to Fed.R.Bankr.P. 7062 and Fed.R.Civ.P. 62, upon the posting of a bond, in the context of a confirmation order. Rather, Fed.R.Bankr.P. 7062 is available in connection with monetary judgments only. Only Fed.R.Bankr.P. 8007 (and the traditional four-factor test articulated in case law) applies with regard to the potential stay of a confirmation order. The Court finds this Supplemental Briefs to be compelling.

3. Based on the arguments presented, and the Letter, the Court determines that Fed.R.Bankr.P. 7062 and Fed.R.Bankr.P. 62 are not applicable in connection with the appeal of the Confirmation Order.

4. Accordingly, and as requested by Appellants, the Supplemental Hearing on the bond issue is cancelled.

5. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

### END OF ORDER ###

## **EXHIBIT 16**

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

In re:

HIGHLAND CAPITAL MANAGEMENT,  
L.P.,

Debtor.

Bankruptcy Case No. 19-34054

THE DUGABOY INVESTMENT TRUST  
AND GET GOOD TRUST  
Appellants,

v.

HIGHLAND CAPITAL MANAGEMENT,  
L.P.,

Appellee.

Civ. Act. No. 3:21-cv-00550-L

**MOTION FOR STAY PENDING APPEAL**

TO THE HONORABLE JUDGE SAM A. LINDSAY, U.S. DISTRICT JUDGE:

**NOW COMES** the Appellants, The Dugaboy Investment Trust and Get Good Trust (the “Movants”), in the above styled and numbered appeal from the bankruptcy case (the “Bankruptcy Case”) captioned, *In re: Highland Capital Management, L.P.*, case number 19-34054, as filed by Highland Capital Management, L.P. (the “Debtor”), and hereby file this *Motion for Stay Pending Appeal* (the “Motion”). In support of the Motion, the Movants, respectfully aver as follows:

Pursuant to this Motion and Fed. R. Bankr. P. 8007, the Movants request that the Court issue a stay of that certain *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Dkt.



No. 1943] (the “Confirmation Order”<sup>1</sup>), pending the outcome of this appeal through the Fifth Circuit. Contemporaneously herewith, the Movants are filing their *Brief in Support of Motion for Stay Pending Appeal* (the “Brief”). Such a stay is justified for the reasons set forth in the Brief, all of which is incorporated herein by reference.

Notices of Appeal from the Confirmation Order have been filed by the Movants (DKT 1972 and 2014), Highland Capital Management Fund Advisors L.P. and NexPoint Advisors L.P (“Advisors”) (DKT 1957), Highland Income Fund, NexPoint Strategic Opportunities Fund Highland Global Fund and NexPoint Capital, Inc (“Funds”) (DKT 1966) and James Dondero (DKT 1970). The appeal of the Confirmation Order filed by Funds and Advisors has been allotted to Judge David C. Godbey<sup>2</sup>. The appeal of the Confirmation Order filed by Movants and Dondero have been allotted to this Court<sup>3</sup>.

Motions for Stay of the Confirmation Order have been filed by Funds and Advisors (DKTS 1967 and 1955) Movants and Dondero filed joinders to the Motions to Stay the Confirmation Order (DKTS 1971 and 1973).

The Bankruptcy Court conducted a hearing on March 19, 2021; and the Bankruptcy Court denied the Motions for Stay Pending Appeal by order entered on March 23, 2021 (DKT 2084 and 2095).

A Motion for Stay Pending Appeal has been filed by Advisors in this Court. (See USDC-NDTX Case No. 3:21-cv-00538-N).

---

<sup>1</sup> Appx. 1.

<sup>2</sup> Highland Capital Management Fund Advisors L.P. and NexPoint Advisors L.P (“Advisors”) – USDC NDTX Case No. 3:21-cv-00538-N

Highland Income Fund, NexPoint Strategic Opportunities Fund Highland Global Fund and NexPoint Capital, Inc (“Funds”) – USDC NDTX Case No. 3:21-cv-00539-N.

<sup>3</sup> James Dondero USDC NDTX Case No. 3:21-cv-00546-L.

The Debtor, Funds Advisors, Movants and Dondero request for a direct appeal to the 5<sup>th</sup> Circuit of the Confirmation Order was granted by *Order Certifying Appeals of the Confirmation Order for Direct Appeal to the United States Court of Appeals for the Fifth Circuit* (DKT 2034). For the reasons set forth in the Brief filed by the Movant in Support of this Motion, Movant requests that this Court issue a Stay Pending Appeal of the Confirmation Order.

WHEREFORE, PREMISES CONSIDERED, the Movants request that the Court enter an Order:

1. Staying the effectiveness of the Confirmation Order pending the conclusion of the appeal thereof through the Fifth Circuit; and
2. Granting such other relief as is just and proper.

RESPECTFULLY SUBMITTED this the 6<sup>th</sup> day of April 2021.

/s/ Douglas S. Draper  
Douglas S. Draper, (*pro hac vice admittance requested*)  
Heller, Draper & Horn, L.L.C.  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
Phone: 504-299-3300/Fax: 504-299-3399  
e-mail: [ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 6<sup>th</sup> day of April, 2021, true and correct copies of this document, with any exhibits attached thereto, were served on the recipients listed below via email, and correct copies of this document, with any exhibits attached thereto, were served on the recipients listed below via first class U.S. mail, postage prepaid:

Jeffrey N Pomerantz  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd  
13th Floor  
Los Angeles, CA 90067  
Email: jpomerantz@pszjlaw.com

John A Morris  
Pachulski Stang Ziehl & Jones LLP  
780 Third Avenue, 34th Floor  
New York, NY 10017-2024  
Email: jmorris@pszjlaw.com

Zachery Z. Annable  
Hayward PLLC  
10501 N. Central Expressway  
Suite 106  
Dallas, TX 75231  
Email: zannable@haywardfirm.com

/s/ Douglas S. Draper  
Douglas S. Draper

## **EXHIBIT 17**

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

In re:

HIGHLAND CAPITAL MANAGEMENT,  
L.P.,

Debtor.

Bankruptcy Case No. 19-34054

HIGHLAND CAPITAL MANAGEMENT  
FUND ADVISORS, L.P. and NEXPOINT  
ADVISORS, L.P.,

Appellants,

v.

HIGHLAND CAPITAL MANAGEMENT,  
L.P.,

Appellee.

Civ. Act. No. 3:21-cv-00538-N

**APPELLANTS' MOTION FOR STAY PENDING APPEAL**

TO THE HONORABLE DAVID C. GODBEY, U.S. DISTRICT JUDGE:

COME NOW Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (the "Movants" or "Appellants"), creditors and parties-in-interest in the above styled and numbered bankruptcy case (the "Bankruptcy Case") of Highland Capital Management, L.P. (the "Debtor"), and file this their *Motion for Stay Pending Appeal* (the "Motion"), respectfully stating as follows:

Contemporaneously herewith, the Appellants are filing their *Brief in Support of Appellants' Motion for Stay Pending Appeal* (the "Brief") and their *Appendix in Support of Appellants' Motion for Stay Pending Appeal* (the "Appendix"). Pursuant to this Motion and Fed. R. Bankr. P. 8007, the Appellants request that the Court issue a stay of that certain *Order (i)*



*Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Bankr. Dkt. No. 1943] (the “Confirmation Order”<sup>1</sup>), pending the outcome of this appeal through the Fifth Circuit. Such a stay is justified for the reasons set forth in the Brief, based on the evidence set forth in the Appendix, all of which is incorporated herein by reference.

Pursuant to Fed. R. Bankr. P. 8007(b)(2)(B), the Appellants state that (A) this Motion was originally made in the Bankruptcy Court on February 28, 2021 [Bankr. Dkt. No. 1955]; (B) the Bankruptcy Court conducted a hearing on March 19, 2021; and (C) the Bankruptcy Court denied the Motion for the reasons given in the transcript of said hearing that is included in the Appendix.<sup>2</sup>

WHEREFORE, PREMISES CONSIDERED, the Appellants request that the Court enter an Order:

1. Staying the effectiveness of the Confirmation Order pending the conclusion of the appeal thereof through the Fifth Circuit; and
2. Granting such other relief as is just and proper.

---

<sup>1</sup> Appx. 1.

<sup>2</sup> Appx. 1199 (beginning on line 13).

RESPECTFULLY SUBMITTED this the 1st day of April, 2021.

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Davor Rukavina  
Davor Rukavina, Esq.  
Texas Bar No. 24030781  
Julian P. Vasek, Esq.  
Texas Bar No. 24070790  
500 N. Akard Street, Ste. 3800  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
E-mail: drukavina@munsch.com

**COUNSEL FOR HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P., AND  
NEXPOINT ADVISORS, L.P.**

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that, pursuant to Fed. R. Bankr. P. 8007, this Motion was originally filed in the Bankruptcy Court. The Debtor/Appellee opposed the relief requested herein in the Bankruptcy Court, and, after conference regarding the same, the Debtor/Appellee will continue to oppose such relief in this Court.

/s/ Davor Rukavina  
Davor Rukavina

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 1st day of April, 2021, true and correct copies of this document, with any exhibits attached thereto, were served on the recipients listed below via email, and on April 2, 2021, true and correct copies of this document, with any exhibits attached thereto, were served on the recipients listed below via first class U.S. mail, postage prepaid:

Jeffrey N Pomerantz  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd  
13th Floor  
Los Angeles, CA 90067  
Email: jpomerantz@pszjlaw.com

John A Morris  
Pachulski Stang Ziehl & Jones LLP  
780 Third Avenue, 34th Floor  
New York, NY 10017-2024  
Email: jmorris@pszjlaw.com

Zachery Z. Annable  
Hayward PLLC  
10501 N. Central Expressway  
Suite 106  
Dallas, TX 75231  
Email: zannable@haywardfirm.com

/s/ Davor Rukavina  
Davor Rukavina

## **EXHIBIT 18**



---

**CASE NO.** \_\_\_\_\_

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

**NEXPOINT ADVISORS, L.P. and HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P.,**

**APPELLANTS**

**v.**

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

**APPELLEE**

---

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION  
BANKRUPTCY CASE No. 19-34054 (SGJ11)

APPEAL PENDING AS CIVIL ACTION No. 3:21-cv-00538-N IN THE UNITED  
STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

---

**PETITION FOR PERMISSION TO APPEAL  
(DIRECT APPEAL FROM BANKRUPTCY COURT, 28 U.S.C. § 158(d))**

---

MUNSCH HARDT KOPF & HARR, P.C.

Davor Rukavina  
Texas Bar No. 24030781  
500 North Akard Street  
Suite 3800  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
Email: drukavina@munsch.com

ATTORNEYS FOR THE APPELLANTS

## CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities, as described in the fourth sentence of Rule 28.2.1, have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

**1. Appellants:**

**NexPoint Advisors, L.P.**

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

Counsel for the Appellants:

MUNSCH HARDT KOPF & HARR, P.C.

Davor Rukavina

500 North Akard Street, Suite 3800

Dallas, Texas 75201-6659

Telephone: (214) 855-7500

Facsimile: (214) 855-7584

**2. Appellee:**

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

Counsel for Appellee:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz

John A. Morris

10100 Santa Monica Blvd., 13th Floor

Los Angeles, CA 90067

Telephone: (310) 277-6910

Facsimile: (310) 201-0760

-- and --

HAYWARD PLLC

Melissa S. Hayward

Zachery Z. Annable

10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

3. **Appellants in Separate Appeals (likely to be consolidated)**

**James Dondero**

Counsel:

BONDS ELLIS EPPICH SCHAFFER JONES LLP

D. Michael Lynn

John Y. Bonds, III

Clay M. Taylor

Bryan C. Assink

420 Throckmorton Street, Suite 1000

Fort Worth, Texas 76102

(817) 405-6900 – Telephone

(817) 405-6902 – Facsimile

**Highland Income Fund**

**NexPoint Strategic Opportunities Fund**

**Highland Global Allocation Fund**

**NexPoint Capital, Inc.**

Counsel:

K&L GATES LLP

Artoush Varshosaz

1717 Main Street, Suite 2800

Dallas, TX 75201

Tel: (214) 939-5659

A. Lee Hogewood, III

4350 Lassiter at North Hills Ave.

Suite 300

Raleigh, NC 27609

Tel: (919) 743-7306

**Get Good Trust**

**The Dugaboy Investment Trust**

Counsel:

HELLER, DRAPER & HORN, L.L.C.

Douglas S. Draper

Leslie A. Collins  
Greta M. Brouphy  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
Telephone: (504) 299-3300  
Fax: (504) 299-3399

/s/ Davor Rukavina  
Davor Rukavina, Esq.  
Counsel for the Appellants

**PETITION FOR PERMISSION TO APPEAL  
(DIRECT APPEAL FROM BANKRUPTCY COURT 28 U.S.C. § 158(d))**

NexPoint Advisors, L.P. and Highland Capital Management, L.P. (the “Movants” or the “Appellants”), respectfully request that the Court grant them permission to appeal the Confirmation Order (defined below) directly to this Court from the Bankruptcy Court, pursuant to Federal Rule of Appellate Procedure 5 and 28 U.S.C. § 158(d)(2)(A).

**I. PROCEDURAL BACKGROUND**

**A. THE CONFIRMATION ORDER**

This is an appeal of an order of the Bankruptcy Court confirming a Chapter 11 plan on “cramdown” over the objection of the Appellants and various others.

On February 22, 2021, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) entered that certain *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified); and (ii) Granting Related Relief* (the “Confirmation Order”), by which the Bankruptcy Court confirmed the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [docket no. 1808], as further modified (the “Plan”), filed by Highland Capital Management, L.P. (the “Debtor”).

A true and correct copy of the Confirmation Order, which includes the Plan as an original part thereof, is attached hereto as Exhibit “A.” Attached hereto as Exhibit “B” is a true and correct copy of the Bankruptcy Court’s oral February 8, 2021 ruling by which it confirmed the Plan and gave its oral findings of fact and conclusions of law.

The Debtor filed its voluntary Chapter 11 bankruptcy case (the “Bankruptcy Case”) on October 16, 2019 (the “Petition Date”), thereby creating its bankruptcy estate (the “Estate”). The Debtor is a registered investment advisor under the Investment Advisers Act of 1940. The Debtor is a multi-billion dollar global investment advisor and manager of various funds. *See* Confirmation Order at p. 6. Among other assets that the Debtor manages is more than \$1 billion invested by third parties in collateral loan obligation investment vehicles (the “CLOs”). *See id.*

The CLOs own the underlying assets, usually securities, and the Debtor manages those assets for the CLOs, including by making decisions as to when to sell CLO assets, pursuant to a series of portfolio management agreements between the Debtor and the CLOs (the “Management Agreements”). *See id.* Under the Plan, the Debtor assumed the Management Agreements under section 365 of the Bankruptcy Code. *See id.* at pp. 47-48; 68-69.

The Plan, labeled a “reorganization” plan, is actually a wind down and liquidation plan. The Plan bifurcates the Estate into two entities: (i) a claimant

trust is created for the benefit of creditors (and, as discussed below, potentially for the benefit of equity interest holders), which trust is vested with most assets of the Estate, including causes of action, *see id.* at pp. 5-6; and (ii) the Debtor is reorganized and retains various business assets, including its management rights of the CLOs. *See id.* The claimant trust will own the reorganized Debtor. *See id.* The reorganized Debtor will liquidate and wind-down its assets in approximately two (2) years. *See id.* at p. 47.

The Appellants have several interests directly implicated by the Plan. First, the Appellants themselves are registered advisors, who advise many publicly traded funds and other investment vehicles, some of which funds own interests in the CLOs or otherwise have their assets managed by the Debtor. As discussed below, the Plan enjoins the Appellants from advising or causing their clients to terminate the Debtor's CLO Management Agreements or to otherwise impede or interfere with the Debtor's reorganization. The Plan subjects the Appellants to the "gatekeeper injunction" requiring that they first obtain an order from the Bankruptcy Court before taking various actions against the reorganized Debtor, finding that any claim or cause of action they may wish to pursue is "colorable," including any such claim or cause of action that arises post-confirmation. And, as the holder of various Class 8 unsecured claims by way of transfer from the Debtor's former employees (once the Appellants hired those employees) and large



(approximately \$14 million) administrative claims, the Plan obviously impacts the Appellants' economic interests.<sup>1</sup> To protect these legitimate interests and to avoid being bound by permanent injunctions, the Appellants, among others, objected to the Plan, which objections the Bankruptcy Court overruled.

Creditors vote on a Chapter 11 plan by class. *See* 11 U.S.C. § 1126(c). To carry a class, a majority of creditors in that class who vote must vote for the plan and they must hold a supermajority of the claims in that class. *See id.* Importantly, Class 8, a class of unsecured creditors, rejected the Plan. *See* Confirmation Order at p. 42. The Plan does not pay Class 8 in full over time, but instead a projected 71% return. *See id.* at p. 41. This triggered the Absolute Priority Rule, codified in 11 U.S.C. § 1129(b)(2)(B). The Absolute Priority Rule provides that, because Class 8 rejected the Plan and is not paid in full, the holders of interests in junior classes (here, equity interests) cannot “receive or retain under the plan on account of such junior claim or interest any property.” 11 U.S.C. § 1129(b)(2)(B)(ii).

The Appellants argued that the Plan violated the Absolute Priority Rule because the Plan gave holders of equity interests contingent interests in the

---

<sup>1</sup> The Debtor contests both the Class 8 unsecured claims and the administrative claims and maintains that the Appellants have no standing to contest the Plan or Confirmation Order. The allowance of those claims has not been determined as of this filing and is unlikely to be determined prior to this Court's adjudication of this Petition. The Bankruptcy Court has confirmed the Appellants' standing to contest the Plan and Confirmation Order. *See* Exhibit “B” at 20:15-16.

Creditors Trust, to be paid only if unsecured creditors are first paid in full. The Appellants argued that these contingent interests were “property” being “receive[d] or retain[ed]” under the Plan in direct violation of the Absolute Priority Rule. The Bankruptcy Court rejected this argument, relying on a bankruptcy court opinion holding that the Absolute Priority Rule is not violated when the holder of the contingent interest under the Plan does not receive any recovery unless and until higher priority creditors are paid in full first. *See* Confirmation Order at p. 45. This Court has not addressed this issue in any prior opinion.

The other important aspect of the Plan for appellate purposes is its various provisions exculpating various persons and its permanent injunctions. The Plan contains a broad exculpation provision exculpating the Debtor, its professionals, its general partner, and that partner’s board members, among others, from any claims for negligence. *See* Exhibit “A” at Plan pp. 47-48. This exculpation extends not only to case administration matters, but also to ordinary business matters and also to post-confirmation matters related to the implementation of the Plan. *See id.* Separately, the Plan contains broad permanent injunctions, prohibiting the Appellants from, among other things, “taking any actions to interfere with the implementation or consummation of the Plan.” *See id.* at p. 50. The Plan contains a permanent “gatekeeper injunction” prohibiting the Appellants from commencing or pursuing any claim or cause of action against various protected persons unless

the Bankruptcy Court first determines, after notice and a hearing, that such claim or cause of action is “colorable.” *See id.* at pp. 50-51.

The Appellants objected to the exculpation provisions of the Plan because those provisions effectuate prohibited third releases (*i.e.* claims by a non-debtor against a non-debtor) in violation of this Court’s precedent in *In re Pacific Lumber Co.*, 584 F.3d 229, 253 (5th Cir. 2009). *Pacific Lumber* permitted the exculpation of the members of a creditor’s committee for actions taken in the bankruptcy case, but it prohibited the exculpation of other persons or professionals. *See id.* at 253. Here, the Plan exculpates the Debtor and its professionals, as well as the Debtor’s general partner and its board members, meaning that, if the Appellants have claims against any of the exculpated parties, those claims are judicially extinguished. The Plan extends exculpation not just to case administration decisions, but also to ordinary business actions and decisions. Most unprecedentedly, the Plan also extends exculpation for post-confirmation matters, when the Debtor is out of bankruptcy and there is no more Estate. The Bankruptcy Court concluded that *Pacific Lumber* did not foreclose these exculpations and that this Court would revisit *Pacific Lumber*. *See* Confirmation Order at pp. 52-53.

With respect to the gatekeeper injunction, the Appellants objected to any such injunction for post-confirmation matters because the Bankruptcy Court will have no post-confirmation jurisdiction to determine whether a claim or cause of

action is “colorable” and because the imposition of any gatekeeper injunction for post-confirmation matters is not authorized by the Bankruptcy Code or any other law. The Estate ceases to exist upon confirmation and the Bankruptcy Court’s jurisdiction for post-confirmation matters is strictly limited. *See In re Craig’s Stores of Tex. Inc.*, 266 F.3d 388, 390 (5th Cir. 2001). Should the Appellants wish to pursue an action arising after confirmation, and the Bankruptcy Court finds that the claim is not “colorable,” that means that a court without jurisdiction will have forever decided and prohibited the bringing of the claim. With respect to exercising rights under the Management Agreements after confirmation, the Appellants argued that, once the Debtor assumed those agreements, the Debtor must comply with all terms of the agreements, such as the ability of the contract counterparty to remove the Debtor as manager under those agreements.

The Bankruptcy Court rejected these arguments, finding that the Debtor and others needed special protections from alleged vexatious litigation in the form of the “gatekeeper” injunction and other Plan injunction provisions, without which the Debtor would not be able to obtain post-confirmation D&O insurance. *See Confirmation Order at pp. 57-59.*

**B. THE APPEALS**

The Advisors timely filed their notice of appeal of the Confirmation Order to the United States District Court for the Northern District of Texas (the “District”

Court”), where their appeal is pending as Civil Action No. 3:21-cv-00538-N (the “Appeal”). A true and correct copy of their Notice of Appeal is attached hereto as Exhibit “C,” and a true and correct copy of their Statement of Issues on Appeal is attached hereto as Exhibit “D.”

The Debtor did not timely file a cross-appeal.

The Appellants requested a discretionary stay pending appeal of the Confirmation Order from the Bankruptcy Court, which motion the Bankruptcy Court denied. The Appellants are in the process of seeking a stay pending appeal of the Confirmation Order from the District Court.

To apprise the Court of very similar, if not identical, issues and proceedings, the following appellants (collectively, the “Other Appellants”) filed their separate notices of appeal, thereby initiating the following appeals (collectively, with the Appeal, the “Appeals”) before the District Court:

- (i) Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., and NexPoint Strategic Opportunities Fund, Civil Action No. 3:21-cv-00539-N;
- (ii) James Dondero, Civil Action No. 3:21-cv-00546-L; and
- (iii) Get Good Trust and The Dugaboy Investment Trust, Civil Action No. 3:21-cv-00550-L.

The Appellants and the Other Appellants have considered filing a joint petition for direct review but, because the Appeals have not been consolidated yet and due to the procedural uncertainty of such a course, the Appellants have determined instead to file this separate Petition and apprise the Court of these issues, such that the Court may take whatever action it finds most appropriate and efficient.

**C. THE ISSUES ON APPEAL**

The issues that the Appellants have raised on their Appeal (which may or may not be the same as the issues of the Other Appellants) are generally the following:

1. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order under the Absolute Priority Rule codified by 11 U.S.C. § 1129(b)(2)(B)(ii) because the Plan provides that the holders of equity interests, in the form of limited partnership interests in the Debtor, retain or receive any property under the Plan even though Class 8 under the Plan, a class of unsecured creditors not paid in full under the Plan, rejected the Plan?
2. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the exculpation provisions of the Plan, contained in Article IX of the Plan, effectuated

third party releases (*i.e.* releasing a claim of a non-debtor against a non-debtor) prohibited by the Bankruptcy Court and over which the Bankruptcy Court had no jurisdiction, in direct violation of this Court's precedent (*see, e.g., In re Pacific Lumber Co.*, 584 F.3d 229, 253 (5th Cir. 2009) and in violation of due process rights.

3. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the permanent injunction contained in Article IX of the Plan, which prohibits "taking any actions to interfere with the implementation or consummation of the Plan," is overly broad and impermissibly vague, and because the injunction prohibits the Appellants from advising various funds that they advise and manage, or causing said funds, to remove the Debtor as CLO portfolio manager over various CLOs that the Debtor manages pursuant to executory contracts assumed by the Plan, even though the assumption of an executory contract subjects the Debtor to all provisions of the contract on a go-forward basis as a matter of law.
4. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the "gatekeeper" injunction contained in Article IX of the Plan, which requires leave of the Bankruptcy Court upon a showing of a



“colorable” claim or cause of action, is not permitted by the Bankruptcy Code and effectively effectuates prohibited third party releases, is something that the Bankruptcy Court will have no postconfirmation jurisdiction to do, and as something that violates due process. Secondly, with respect to any justification of the injunction based on an allegation that the Appellants or the Other Appellants are vexatious litigants, whether there was any or sufficient evidence in the record to justify any such extraordinary injunction.

5. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the Debtor failed to satisfy the 11 U.S.C. § 1129(a)(2) element for confirmation requiring the Debtor to have complied with all applicable provisions of the Bankruptcy Code, which the Debtor admittedly failed to do because it utterly failed to comply with Bankruptcy Rule 2015.3.

**D. THE CERTIFICATION ORDER**

The Appellants, the Debtor, and the Other Appellants jointly moved the Bankruptcy Court to certify the Appeals for a direct appeal to this Court pursuant to 28 U.S.C. § 158(d)(2)(A). On March 16, 2021, the Bankruptcy Court entered its *Order Certifying Appeals of the Confirmation Order for Direct Appeal to the*

*United States Court of Appeals for the Fifth Circuit* (the “Certification Order”), a true and correct copy of which is attached hereto as Exhibit “E.”

By the Certification Order, the Bankruptcy Court certified the Appeals for direct appeal “because a direct appeal may materially advance the progress of the case or proceeding in which the appeal is taken, within the meaning and operation of 28 U.S.C. § 158(d)(2)(A)(iii).

The Appellants expect the Other Appellants to file similar petitions for direct appeal based on the same Certification Order. If this Court grants all of the petitions, the Appellants expect that the Appeals will be consolidated before this Court.

## **II. RELIEF REQUESTED**

The Appellants respectfully petition this Court to grant permission for the Appeal to be heard directly by this Court, bypassing the District Court, as provided for by 28 U.S.C. § 158(d)(2). That section:

was enacted to provide for direct review of bankruptcy court judgments, orders, or decrees by the applicable court of appeals in cases where the bankruptcy court or the district court certify that there is no controlling decision from the Supreme Court or circuit court, the case involves a matter of public importance, there are conflicting precedents, or an immediate appeal may materially advance the progress of the bankruptcy proceeding.

*In re OCA, Inc.*, 552 F.3d 413, 418 (5th Cir. 2008) (citing 28 U.S.C. § 158(d)(2)(A)(i)-(iii)).

“The two primary goals behind this provision are (i) to provide quicker and less costly means of resolving significant issues that are inevitably bound for the court of appeals, and (ii) to facilitate the development of more binding precedents in bankruptcy law.” *In re Qimonda AG*, 470 B.R. 374, 382-83 (E.D.Va. 2012) (citing H.R. Rep. No. 109-31(7) at 148 (2005), as reprinted in 2005 U.S.L.L.A.N. 88, 206).

In the event that the Bankruptcy Court or the District Court makes the certification under 28 U.S.C. § 158(d)(2), this Court has jurisdiction if it authorizes the direct appeal. *Id.* As set forth in the Certification Order, the Bankruptcy Court determined that the Appeal meets the requirements for direct appeal because an immediate appeal may materially advance the progress of the case or the proceeding in which the Appeal is taken.

### **III. DISCUSSION**

The ultimate issue in this Appeal is whether the Bankruptcy Court properly confirmed the Plan under the requirements of the Bankruptcy Code and this Court’s precedent, with particular emphasis on whether the Plan violates the Absolute Priority Rule and this Court’s *Pacific Lumber* precedent.

The governing statute provides as follows:

The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved,

acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

28 U.S.C. 158(d)(2)(A).

Permission to appeal directly to this Court should be granted for two reasons. First, as agreed to by the Debtor and the Other Appellants, and as certified by the Bankruptcy Court, a direct appeal may materially advance the progress of the case or proceeding in which the Appeal is pending, within the meaning of section 158(d)(2)(A)(iii). Second, the underlying judgment involves a question of law as to which there is no controlling precedent from this Court or from the Supreme Court, and the judgment involves a matter of public importance, within the meaning of section 158(d)(2)(A)(i).

With respect to materially advancing the progress of the case, all parties have stated that they intend to appeal any ruling of the District Court, thus ensuring that this Court will consider this Appeal anyway. The Bankruptcy Court certified the Appeal on this basis. Insofar as this Court will almost certainly be presented with the same Appeal anyway, the Appellants submit that it is in everyone’s best interests to proceed with a direct appeal, as the parties will save significant fees and costs, upwards of one year of delay for finality will be avoided,<sup>2</sup> and the District Court will be spared being called upon to adjudicate an appeal that will be further appealed to this Court anyway.

The second ground for a direct appeal—no controlling authority and issues of public importance—is equally as important concerning this Court’s discretion in authorizing a direct appeal. This is because there is no controlling authority from this Court or the Supreme Court permitting a “work around” the Absolute Priority Rule by providing contingent trust interests to equity holders and merely providing that those interests cannot recover unless and until unsecured creditors are first paid in full. This is fundamentally a question of law on which neither this Court nor the Supreme Court has issued controlling authority.

---

<sup>2</sup> Of importance to all creditors and parties-in-interest affected by the Plan, and especially by its payment and injunction provisions.

This question is also one of “public importance.” If the Absolute Priority Rule can be overcome with the Plan’s “work around,” then it is very likely that many Chapter 11 plans, affecting thousands or tens of thousands of creditors and parties-in-interest, will include a similar “work around.” In the view of the Appellants, this will substantially weaken the Absolute Priority Rule and, therefore, one of the main protections the Bankruptcy Code affords unsecured creditors, while debtors will argue that equitable mootness will prevent subsequent appellate review of confirmed and implemented plans.<sup>3</sup> A more prompt review by this Court of the issue, and any resulting precedent, will greatly aid those who administer bankruptcy cases and the Bankruptcy Courts asked to decide this issue.

#### IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, the Appellants respectfully request that the Court, pursuant to 28 U.S.C. § 158(d), permit the Appeal to proceed directly in this Court.

---

<sup>3</sup> The doctrine of equitable mootness may prevent appellate review of a substantially consummated plan in certain situations. Hence all the more need for a stay pending appeal of the Confirmation Order and for a prompt appellate review of the Confirmation Order.

RESPECTFULLY SUBMITTED this 30th day of March, 2021.

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Davor Rukavina

Davor Rukavina, Esq.

Texas Bar No. 24030781

500 North Akard Street, Suite 3800

Dallas, Texas 75201-6659

Telephone: (214) 855-7500

Facsimile: (214) 855-7584

Email: [drukavina@munsch.com](mailto:drukavina@munsch.com)

**ATTORNEYS FOR THE APPELLANTS**



### CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this the 30th day of March, 2021, he caused true and correct copies of this document, with all exhibits attached hereto, to be served by e-mail on the following parties through their respective counsel of record:

Appellee:

Highland Capital Management, L.P.:  
Jeffrey Pomerantz ([jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com))  
John A. Morris ([jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com))

Other Appellees:

Jim Dondero:  
John Bonds ([john@bondsellis.com](mailto:john@bondsellis.com))  
Clay Taylor ([clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com))

Highland Income Fund  
NexPoint Strategic Opportunities Fund  
Highland Global Allocation Fund  
NexPoint Capital, Inc.:  
A. Lee Hogewood, III ([A.Lee.HogewoodIII@klgates.com](mailto:A.Lee.HogewoodIII@klgates.com))

Get Good Trust  
The Dugaboy Investment Trust:  
Douglas Draper ([ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com))

/s/ Davor Rukavina  
Davor Rukavina, Esq.

### CERTIFICATION OF WORD COUNT

The undersigned hereby certifies that this Petition complies with Rule 5(c) because it contains 4,578 words, excepting those portions that may be excepted.

/s/ Davor Rukavina  
Davor Rukavina, Esq.

Case: 21-90011 Document: 00515803515 Page: 23 Date Filed: 03/31/2021

# EXHIBIT A



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

  
United States Bankruptcy Judge

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

In re:

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

Debtor.

) Chapter 11

) Case No. 19-34054-sgj11

**ORDER (I) CONFIRMING THE FIFTH AMENDED  
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court<sup>2</sup> having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

*Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

*Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

*Certificate of Service* dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed<sup>3</sup> pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;<sup>4</sup> (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

<sup>4</sup> The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.



## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor’s Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an “asset monetization plan” because it involves the orderly wind-down of the Debtor’s estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor’s economic stakeholders. The Claimant Trustee is responsible





bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor’s Operational History.** The Debtor’s primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor’s current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was “run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits.” The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor’s Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jefferies, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.<sup>5</sup> As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,<sup>6</sup> and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

---

<sup>5</sup> This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

<sup>6</sup> See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).



13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.<sup>7</sup> The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

---

<sup>7</sup> See *Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

**17. Questionability of Good Faith as to Outstanding Confirmation**

**Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor’s 2008 return, which the Debtor believes arise from Get Good’s equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor’s alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the “Highland Advisors and Funds.” See Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post’s credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors’ request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently



testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor’s Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC (“KCC”), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other



Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor’s employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor’s Claim or such holder’s *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal “opt out” mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is



Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.



45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

**46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

**47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, un rebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).**

Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).**

The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the



acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be



assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.<sup>8</sup> Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

---

<sup>8</sup> See Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor’s release of the Debtor’s and Estate’s claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a “disguised” release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor’s conditional release of claims against employees, as identified in the Plan, and the Plan’s conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, *Collier on Bankruptcy*, ¶ 1103.05[4][b] (15<sup>th</sup> Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor’s enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors’ committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber’s* policy of exculpating creditors’ committees and their members from “being sued by persons unhappy with the committee’s performance during the case or unhappy with the outcome of the case” is applicable to the Independent Directors in this Chapter 11 Case.<sup>9</sup>

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that “costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization.” *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero’s pot plan does not get approved, that Mr. Dondero will “burn the place down.” The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

---

<sup>9</sup> The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan’s release, discharge and release provisions (the “Injunction Provision”). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor’s assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor’s assets and those assets could be monetized for less money to the detriment of the Debtor’s creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a “third-party release.” The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms “implementation” and “consummation” are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the “Gatekeeper Provision”). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is



colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court’s time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor’s settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court’s order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero’s affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the “Dondero Post-Petition Litigation”).

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery’s credible testimony, that if Mr. Dondero’s plan proposal was not accepted, he would “burn down the place.” The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery’s testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5<sup>th</sup> Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5<sup>th</sup> Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5<sup>th</sup> Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots<sup>10</sup> – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

---

<sup>10</sup> As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**A. Confirmation of the Plan.** The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the



Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.<sup>11</sup>

**B. Findings of Fact and Conclusions of Law.** The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

**C. Objections.** Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

**D. Plan Supplements and Plan Modifications.** The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

---

<sup>11</sup> The Plan is attached hereto as Exhibit A.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**E. Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

**F. Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

**G. Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

**H. Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

**I. Preservation of Causes of Action.** Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**J. Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

**K. Cancellation of Equity Interests and Issuance of New Partnership**

**Interests.** On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

**L. Transfer of Assets to Claimant Trust.** On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

**M. Transfer of Estate Claims to Litigation Sub-Trust.** On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

**N. Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

**O. Objections to Claims.** The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

**P. Assumption of Contracts and Leases.** Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the



Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

**Q. Rejection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

**R. Assumption of Issuer Executory Contracts.** On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “**Issuer Executory Contracts**”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers<sup>12</sup> a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples” and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

**S. Release of Issuer Claims.** Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

---

<sup>12</sup> The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

**T. Release of Debtor Claims against Issuer Released Parties.** Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

**U. Authorization to Consummate.** The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

**V. Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

**W. Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

**X. Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**Y. Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

*provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

**Z. Releases by the Debtor.** On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under



any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

**AA. Injunction.** Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**BB. Duration of Injunction and Stays.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

**CC. Continuance of January 9 Order and July 16 Order.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, entered by the Bankruptcy Court on January 9, 2020* [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

**DD. No Governmental Releases.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

**EE. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**FF. Cancellation of Notes, Certificates and Instruments.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

**GG. Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

**HH. Post-Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

**II. Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**JJ. Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

**KK. Notice of Effective Date.** As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

**LL. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

**MM. Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.



**NN. References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

**OO. Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

**PP. Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

**QQ. Resolution of Objection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

**RR. Resolution of Objections of Scott Ellington and Isaac Leventon.**

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

**SS. No Release of Claims Against Senior Employee Claimants.** For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

**TT. Resolution of Objection of Internal Revenue Service.** Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

**UU. IRS Proof of Claim.** Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

**VV. CLO Holdco, Ltd. Settlement** Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

**WW. Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

**XX. Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**YY. Dissolution of the Committee.** On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

**ZZ. Miscellaneous.** After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that





**Exhibit A**

**Fifth Amended Plan (as Modified)**

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

---

In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	
	)	

---

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

---

<b>PACHULSKI STANG ZIEHL &amp; JONES LLP</b> Jeffrey N. Pomerantz (CA Bar No. 143717) Ira D. Kharasch (CA Bar No. 109084) Gregory V. Demo (NY Bar No. 5371992) 10100 Santa Monica Boulevard, 13th Floor Los Angeles, CA 90067 Telephone: (310) 277-6910 Facsimile: (310) 201-0760 Email: jpomerantz@pszjlaw.com ikharasch@pszjlaw.com gdemo@pszjlaw.com	<b>HAYWARD &amp; ASSOCIATES PLLC</b> Melissa S. Hayward (TX Bar No. 24044908) Zachery Z. Annable (TX Bar No. 24053075) 10501 N. Central Expy, Ste. 106 Dallas, TX 75231 Telephone: (972) 755-7100 Facsimile: (972) 755-7110 Email: MHayward@HaywardFirm.com ZAnnable@HaywardFirm.com:
---	---

Counsel for the Debtor and Debtor-in-Possession

---

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

ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS .....	1
A. Rules of Interpretation, Computation of Time and Governing Law.....	1
B. Defined Terms .....	2
ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS.....	16
A. Administrative Expense Claims.....	16
B. Professional Fee Claims.....	17
C. Priority Tax Claims.....	17
ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS .....	18
A. Summary .....	18
B. Summary of Classification and Treatment of Classified Claims and Equity Interests .....	18
C. Elimination of Vacant Classes .....	19
D. Impaired/Voting Classes .....	19
E. Unimpaired/Non-Voting Classes .....	19
F. Impaired/Non-Voting Classes.....	19
G. Cramdown.....	19
H. Classification and Treatment of Claims and Equity Interests.....	19
I. Special Provision Governing Unimpaired Claims.....	24
J. Subordinated Claims.....	24
ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN .....	24
A. Summary .....	24
B. The Claimant Trust .....	25
1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.....	25
2. Claimant Trust Oversight Committee.....	26

	<u>Page</u>
3. Purpose of the Claimant Trust.....	27
4. Purpose of the Litigation Sub-Trust.....	27
5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.....	27
6. Compensation and Duties of Trustees.....	29
7. Cooperation of Debtor and Reorganized Debtor.....	29
8. United States Federal Income Tax Treatment of the Claimant Trust.....	29
9. Tax Reporting.....	30
10. Claimant Trust Assets.....	30
11. Claimant Trust Expenses.....	31
12. Trust Distributions to Claimant Trust Beneficiaries.....	31
13. Cash Investments.....	31
14. Dissolution of the Claimant Trust and Litigation Sub-Trust.....	31
C. The Reorganized Debtor.....	32
1. Corporate Existence.....	32
2. Cancellation of Equity Interests and Release.....	32
3. Issuance of New Partnership Interests.....	32
4. Management of the Reorganized Debtor.....	33
5. Vesting of Assets in the Reorganized Debtor.....	33
6. Purpose of the Reorganized Debtor.....	33
7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets.....	33
D. Company Action.....	34
E. Release of Liens, Claims and Equity Interests.....	35
F. Cancellation of Notes, Certificates and Instruments.....	35

	<u>Page</u>
G. Cancellation of Existing Instruments Governing Security Interests.....	35
H. Control Provisions .....	35
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	36
 ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	 37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	38
 ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	 39
A. Dates of Distributions .....	39
B. Distribution Agent .....	39
C. Cash Distributions.....	40
D. Disputed Claims Reserve.....	40
E. Distributions from the Disputed Claims Reserve .....	40
F. Rounding of Payments.....	40
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	41
I. General Distribution Procedures.....	41
J. Address for Delivery of Distributions.....	41
K. Undeliverable Distributions and Unclaimed Property.....	41
L. Withholding Taxes.....	42

	<u>Page</u>
M. Setoffs .....	42
N. Surrender of Cancelled Instruments or Securities .....	42
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	43
A. Filing of Proofs of Claim .....	43
B. Disputed Claims.....	43
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	43
D. Allowance of Claims and Equity Interests.....	44
1. Allowance of Claims.....	44
2. Estimation .....	44
3. Disallowance of Claims .....	44
ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	45
A. Conditions Precedent to the Effective Date .....	45
B. Waiver of Conditions .....	46
C. Dissolution of the Committee .....	46
ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	47
A. General.....	47
B. Discharge of Claims.....	47
C. Exculpation .....	47
D. Releases by the Debtor.....	48
E. Preservation of Rights of Action.....	49
1. Maintenance of Causes of Action .....	49
2. Preservation of All Causes of Action Not Expressly Settled or Released .....	49



	<u>Page</u>
F. Injunction .....	50
G. Duration of Injunctions and Stays.....	51
H. Continuance of January 9 Order .....	51
ARTICLE X. BINDING NATURE OF PLAN .....	51
ARTICLE XI. RETENTION OF JURISDICTION.....	52
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	54
A. Payment of Statutory Fees and Filing of Reports .....	54
B. Modification of Plan .....	54
C. Revocation of Plan.....	54
D. Obligations Not Changed.....	55
E. Entire Agreement.....	55
F. Closing of Chapter 11 Case .....	55
G. Successors and Assigns.....	55
H. Reservation of Rights.....	55
I. Further Assurances.....	56
J. Severability .....	56
K. Service of Documents.....	56
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	57
M. Governing Law .....	58
N. Tax Reporting and Compliance .....	58
O. Exhibits and Schedules .....	58
P. Controlling Document .....	58

---

## DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### **ARTICLE I.** **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

#### **A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests



unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.



42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,



and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder



of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote



**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.



4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

### **ARTICLE IV.** **MEANS FOR IMPLEMENTATION OF THIS PLAN**

#### **A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### **1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.**

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.



The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:



- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

### **C. The Reorganized Debtor**

#### **1. Corporate Existence**

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

#### **2. Cancellation of Equity Interests and Release**

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

#### **3. Issuance of New Partnership Interests**

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.



4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

#### **D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.



**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.



The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.



Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**

**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.**  
**EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

#### **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on



the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

#### **D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation



Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### **1. Maintenance of Causes of Action**

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### **2. Preservation of All Causes of Action Not Expressly Settled or Released**

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

#### **F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court**

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;



- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

#### **B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

#### **C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the



Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

#### **I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

#### **J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

#### **K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

##### **If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700

Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

Case: 2109011 Document: 50582315 Entered on FLTS 03/31/2021  
Page 161

**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**



19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.



36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 5**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1*  
*000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>			<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>			<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>



Vol. 8

001349

001352

001359

001361

001369

001381

Thru Vol. 10

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>



				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018				
	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024				
	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036				
	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051				
Thru Vol 14				
Vol. 15	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
002916				
Thru Vol. 18				
Vol. 19	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
003783				
Thru Vol. 22				

001. 22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

Case: 21-90011 Document: 00515803515 Page: 185 Date Filed: 03/31/2021

# EXHIBIT B

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

In Re: ) **Case No. 19-34054-sgj-11**  
) Chapter 11  
)  
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P., ) Monday, February 8, 2021  
) 9:00 a.m. Docket  
Debtor. )  
) BENCH RULING ON CONFIRMATION  
) HEARING [1808] AND AGREED  
) MOTION TO ASSUME [1624]  
)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor: Jeffrey Nathan Pomerantz  
PACHULSKI STANG ZIEHL & JONES, LLP  
10100 Santa Monica Blvd.,  
13th Floor  
Los Angeles, CA 90067-4003  
(310) 277-6910

For the Official Committee of Unsecured Creditors: Matthew A. Clemente  
SIDLEY AUSTIN, LLP  
One South Dearborn Street  
Chicago, IL 60603  
(312) 853-7539

For James Dondero: D. Michael Lynn  
John Y. Bonds, III  
Bryan C. Assink  
BONDS ELLIS EPPICH SCHAFFER  
JONES, LLP  
420 Throckmorton Street,  
Suite 1000  
Fort Worth, TX 76102  
(817) 405-6900

For Get Good Trust and Dugaboy Investment Trust: Douglas S. Draper  
HELLER, DRAPER & HORN, LLC  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
(504) 299-3300

EXHIBIT B

Case: 21-90011 Document: 00515803515 Page: 187 Date Filed: 03/31/2021

1 APPEARANCES, cont'd.:

2 For Certain Funds and  
3 Advisors:

Davor Rukavina  
MUNSCH, HARDT, KOPF & HARR  
500 N. Akard Street, Suite 3800  
Dallas, TX 75201-6659  
(214) 855-7587

5 For Certain Funds and  
6 Advisors:

A. Lee Hogewood, III  
K&L GATES, LLP  
4350 Lassiter at North Hills  
Avenue, Suite 300  
Raleigh, NC 27609  
(919) 743-7306

9 Recorded by:

Michael F. Edmond, Sr.  
UNITED STATES BANKRUPTCY COURT  
1100 Commerce Street, 12th Floor  
Dallas, TX 75242  
(214) 753-2062

12 Transcribed by:

Kathy Rehling  
311 Paradise Cove  
Shady Shores, TX 76208  
(972) 786-3063

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

Case: 21-90011 Document: 00515803515 Page: 188 Date Filed: 03/31/2021

3

1 DALLAS, TEXAS - FEBRUARY 8, 2021 - 9:08 A.M.

2 THE COURT: Please be seated.

3 (Beeping.)

4 THE COURT: Someone needs to turn off their whatever.

5 All right. Good morning. This is Judge Jernigan, and we

6 have scheduled today a bench ruling regarding the Debtor's

7 plan that we had a confirmation trial on last week. This is

8 Highland Capital Management, LP, Case No. 19-34054.

9 Let me first make sure we've got Debtor's counsel on the  
10 line. Do we have --

11 MR. POMERANTZ: Yes.

12 THE COURT: -- Mr. Pomerantz?

13 MR. POMERANTZ: Yes, Your Honor. Good morning, Your  
14 Honor. Jeff Pomerantz; Pachulski Stang Ziehl & Jones; on  
15 behalf of the Debtor.

16 THE COURT: Okay. Good morning. Do we have the  
17 Creditors' Committee on the phone?

18 MR. CLEMENTE: Good morning, Your Honor. Matthew  
19 Clemente of Sidley Austin on behalf of the Creditors'  
20 Committee.

21 THE COURT: Good morning. All right. We had various  
22 Objectors. Do we have Mr. Dondero's counsel on the phone?

23 MR. LYNN: Yes, Your Honor. Michael Lynn, together  
24 with John Bonds and Bryan Assink, for Jim Dondero.

25 THE COURT: Good morning. For the Trusts, the



Case: 21-90011 Document: 00515803515 Page: 189 Date Filed: 03/31/2021

4

1 Dugaboy and Get Good Trusts, do we have Mr. Draper?

2 MR. DRAPER: Yes. Douglas Draper is on the line,  
3 Your Honor.

4 THE COURT: Good morning. Now, for what I'll call  
5 the Funds and Advisor Objectors, do we have Mr. Rukavina and  
6 your crew on the line?

7 MR. RUKAVINA: Davor Rukavina. And Lee Hogewood is  
8 also on the line.

9 THE COURT: All right. Good morning to you. All  
10 right. And we had objections pending from the U.S. Trustee as  
11 well. Do we have the U.S. Trustee on the line?

12 (No response.)

13 THE COURT: All right. If you're appearing, you're  
14 on mute. We're not hearing you.

15 All right. Well, we have lots of other folks. I don't  
16 mean to be neglectful of them, but we're going to get on with  
17 the ruling this morning. This is going to take a while. This  
18 is a complex matter, so it should take a while.

19 All right. Before the Court, of course, for consideration  
20 is the Debtor's Fifth Amended Plan, first filed on November  
21 24, 2020, as later modified on or around January 22, 2021,  
22 with more amendments filed on or around February 1, 2021. The  
23 Court will hereinafter refer to this as the "Plan."

24 The parties refer to the Plan as a monetization plan  
25 because it involves the gradual wind-down of the Debtor's

1 assets and certain of its funds over time, with the  
2 Reorganized Debtor continuing to manage certain other funds  
3 for a while, under strict governance and monitoring, and a  
4 Claimants Trust will receive the proceeds of that process,  
5 with the creditors receiving an interest in that trust. There  
6 is also anticipated to be Litigation Sub-Trust established for  
7 the purpose of pursuing certain avoidance or other causes of  
8 action for the benefit of creditors.

9 The recovery for general unsecured creditors is estimated  
10 now at 71 percent.

11 The Plan was accepted by 99.8 percent of the dollar amount  
12 of voting creditors in Class 8, the general unsecured class,  
13 but as to numerosity, a majority of the class of general  
14 unsecured creditors did not vote in favor of the plan.  
15 Specifically, 27 claimants voted no and 17 claimants voted  
16 yes. All but one of the rejecting ballots were cast by  
17 employees who, according to the Debtor, are unlikely to have  
18 allowed claims because they are asserted for bonuses or other  
19 compensation that will not become due.

20 Meanwhile, in a convenience class, Class 7, of general  
21 unsecured claims under one million dollars, one hundred  
22 percent of the 16 claimants who chose to vote in that class  
23 chose to accept the Plan.

24 Because of the rejecting votes in Class 8, and because of  
25 certain objections to the Plan, the Court heard two full days

1 of evidence, considering testimony from five witnesses and  
2 thousands of pages of documentary evidence, in considering  
3 whether to confirm the Plan pursuant to Sections 1129(a) and  
4 (b) of the Bankruptcy Code.

5 The Court finds and concludes that the Plan meets all of  
6 the relevant requirements of Sections 1123, 1124, and 1129 of  
7 the Code, and other applicable provisions of the Bankruptcy  
8 Code, but is issuing this detailed ruling to address certain  
9 pending objections to the Plan, including but not limited to  
10 objections regarding certain Exculpations, Releases, Plan  
11 Injunctions, and Gatekeeping Provisions of the Plan.

12 The Court reserves the right to amend or supplement this  
13 oral ruling in more detailed findings of fact, conclusions of  
14 law, and an Order.

15 First, by way of introduction, this case is not your  
16 garden-variety Chapter 11 case. Highland Capital Management,  
17 LP is a multibillion dollar global investment advisor,  
18 registered with the SEC pursuant to the Investment Advisers  
19 Act of 1940. It was founded in 1993 by James Dondero and Mark  
20 Okada. Mr. Okada resigned from his role with Highland prior  
21 to the bankruptcy case being filed. Mr. Dondero was in  
22 control of the Debtor as of the day it filed bankruptcy, but  
23 agreed to relinquish control of it on or about January 9,  
24 2020, pursuant to an agreement reached with the Official  
25 Unsecured Creditors' Committee, which will be described later.

1 Although Mr. Dondero remained on as an unpaid employee and  
2 portfolio manager with the Debtor after January 9, 2020, his  
3 employment with the Debtor terminated on October 9, 2020. Mr.  
4 Dondero continues to work for and essentially control numerous  
5 nondebtor companies in the Highland complex of companies.

6 The Debtor is headquartered in Dallas, Texas. As of the  
7 October 2019 petition date, the Debtor employed approximately  
8 76 employees.

9 Pursuant to various contractual arrangements, the Debtor  
10 provides money management and advisory services for billions  
11 of dollars of assets, including CLOs and other investments.  
12 Some of these assets are managed pursuant to shared services  
13 agreements with a variety of affiliated entities, including  
14 other affiliated registered investment advisors. In fact,  
15 there are approximately 2,000 entities in the Byzantine  
16 complex of companies under the Highland umbrella.

17 None of these affiliates of Highland filed for Chapter 11  
18 protection. Most, but not all, of these entities are not  
19 subsidiaries, direct or indirect, of Highland. And certain  
20 parties in the case preferred not to use the term "affiliates"  
21 when referring to them. Thus, the Court will frequently refer  
22 loosely to the so-called, in air quotes, "Highland complex of  
23 companies" when referring to the Highland enterprise. That's  
24 a term many of the lawyers in the case use.

25 Many of the companies are offshore entities, organized in

1 such faraway jurisdictions as the Cayman Islands and Guernsey.

2 The Debtor is privately owned 99.5 percent by an entity  
3 called Hunter Mountain Investment Trust; 0.1866 percent by the  
4 Dugaboy Investment Trust, a trust created to manage the assets  
5 of Mr. Dondero and his family; 0.0627 percent by Mark Okada,  
6 personally and through family trusts; and 0.25 percent by  
7 Strand Advisors, Inc., the general partner.

8 The Debtor's primary means of generating revenue has  
9 historically been from fees collected for the management and  
10 advisory services provided to funds that it manages, plus fees  
11 generated for services provided to its affiliates.

12 For additional liquidity, the Debtor, prior to the  
13 petition date, would sell liquid securities in the ordinary  
14 course, primarily through a brokerage account at Jefferies,  
15 LLC. The Debtor would also, from time to time, sell assets at  
16 nondebtor subsidiaries and distribute those proceeds to the  
17 Debtor in the ordinary course of business.

18 The Debtor's current CEO, James Seery, credibly testified  
19 that the Debtor was "run at a deficient for a long time and  
20 then would sell assets or defer employee compensation to cover  
21 its deficits." This Court cannot help but wonder if that was  
22 necessitated because of enormous litigation fees and expenses  
23 that Highland was constantly incurring due to its culture of  
24 litigation, as further addressed hereafter.

25 Highland and this case are not garden-variety for so many

1 reasons. One is the creditor constituency. Highland did not  
2 file bankruptcy because of some of the typical reasons a large  
3 company files Chapter 11. For example, it did not have a  
4 large asset-based secured lender with whom it was in default.  
5 It only had relatively insignificant secured indebtedness  
6 owing to Jefferies, with whom it had a brokerage account, and  
7 one other entity called Frontier State Bank.

8 Highland did not have problems with trade vendors or  
9 landlords. It did not suffer any type of catastrophic  
10 business calamity. In fact, it filed Chapter 11 six months  
11 before the COVID-19 pandemic was declared. The Debtor filed  
12 Chapter 11 due to a myriad of massive unrelated business  
13 litigation claims that it was facing, many of which had  
14 finally become liquidated or were about to become liquidated  
15 after a decade or more of contentious litigation in multiple  
16 fora all over the world.

17 The Unsecured Creditors' Committee in this case has  
18 referred to the Debtor under its former chief executive, Mr.  
19 Dondero, as a serial litigator. This Court agrees with that  
20 description. By way of example, the members of the Creditors'  
21 Committee and their history of litigation with the Debtor and  
22 others in the Highland complex are as follows:

23 First, the Redeemer Committee of the Highland Crusader  
24 Fund, which I'll call the Redeemer Committee. This Creditors'  
25 Committee member obtained an arbitration award against the

1 Debtor of more than \$190 million, inclusive of interest,  
2 approximately five months before the petition date from a  
3 panel of the American Arbitration Association. It was on the  
4 verge of having that award confirmed by the Delaware Chancery  
5 Court immediately prior to the petition date, after years of  
6 disputes that started in late 2008 and included legal  
7 proceedings in Bermuda. This creditor's claim was settled  
8 during the bankruptcy case in the amount of approximately  
9 \$137.7 million. The Court is omitting various details and  
10 aspects of that settlement.

11 The second Creditors' Committee member, Acis Capital  
12 Management, LP, which was formerly in the Highland complex of  
13 companies but was not affiliated with Highland as of the  
14 petition date. This UCC member and its now-owner, Josh Terry,  
15 were involved in litigation with Highland dating back to 2016.  
16 Acis was forced into an involuntary bankruptcy in the  
17 Bankruptcy Court for the Northern District of Texas, Dallas  
18 Division, by Josh Terry, who was a former Highland portfolio  
19 manager, in 2018 after Josh Terry obtained an approximately \$8  
20 million arbitration award and judgment against Acis that was  
21 issued by a state court in Dallas County, Texas. Josh Terry  
22 was ultimately awarded the equity ownership of Acis by the  
23 Dallas Bankruptcy Court in the Acis bankruptcy case.

24 Acis subsequently asserted a multimillion dollar claim  
25 against Highland in the Dallas Bankruptcy Court for Highland's



1 alleged denuding of Acis in fraud of its creditors, primarily  
2 Josh Terry.

3 The litigation involving Acis and Mr. Terry dates back to  
4 mid-2016, and has continued on, with numerous appeals of  
5 bankruptcy court orders, including one appeal still pending at  
6 the United States Court of Appeals for the Fifth Circuit.

7 There was also litigation involving Josh Terry and Acis in  
8 the Royal Court of the Island of Guernsey and in a court in  
9 New York.

10 The Acis claim was settled during this bankruptcy case in  
11 court-ordered mediation for approximately \$23 million. Other  
12 aspects and details of this settlement are being omitted.

13 Now, the third Creditors' Committee member, UBS  
14 Securities. It's a creditor who filed a proof of claim in the  
15 amount of \$1,039,000,000 in the Highland case. Yes, over one  
16 billion dollars. The UBS claim was based on the amount of a  
17 judgment that UBS received from a New York state court in 2020  
18 after a multi-week bench trial which had occurred many months  
19 earlier on a breach of contract claim against other entities  
20 in the Highland complex. UBS alleged that the Debtor should  
21 be liable for the judgment. The UBS litigation related to  
22 activities that occurred in 2008. The litigation involving  
23 UBS and Highland and its affiliates was pending for more than  
24 a decade, there having been numerous interlocutory appeals  
25 during its history.

1 The Debtor and UBS recently announced a settlement of the  
2 UBS claim, which came a few months after court-ordered  
3 mediation. The settlement is in the amount of \$50 million as  
4 a general unsecured claim, \$25 million as a subordinated  
5 claim, and \$18 million of cash coming from a nondebtor entity  
6 in the Highland complex known as Multistrat. Other aspects of  
7 this settlement are being omitted.

8 The fourth and last Creditors' Committee member is Meta-e  
9 Discovery. It is a vendor who happened to supply litigation  
10 and discovery-related services to the Debtor over the years.  
11 It had unpaid invoices on the petition date of more than  
12 \$779,000.

13 It is fair to say that the members of the Creditors'  
14 Committee in this case all have wills of steel. They fought  
15 hard before and during the bankruptcy case. The members of  
16 the Creditors' Committee are highly sophisticated and have had  
17 highly sophisticated professionals representing them. They  
18 have represented their constituency in this case as  
19 fiduciaries extremely well.

20 In addition to these Creditors Committee members, who were  
21 all embroiled in years of litigation with Highland and its  
22 affiliates in various ways, the Debtor has been in litigation  
23 with Patrick Daugherty, a former limited partner and employee  
24 of Highland, for many years in both Delaware and Texas state  
25 courts. Patrick Daugherty filed a proof of claim for "at

1 least \$37.4 million" relating to alleged breached employment-  
2 related agreements and for the tort of defamation arising from  
3 a 2017 press release posted by the Debtor.

4 The Debtor and Patrick Daugherty recently announced a  
5 settlement of the Patrick Daugherty claim in the amount of  
6 \$750,000 cash on the effective date, an \$8.25 million general  
7 unsecured claim, and a \$2.75 million subordinated claim.  
8 Other aspects and details of this settlement are being  
9 omitted.

10 Additionally, an entity known as HarbourVest, who invested  
11 more than \$70 million with an entity in the Highland complex,  
12 asserted a \$300 million proof of claim against Highland,  
13 alleging, among other things, fraud and RICO violations. The  
14 HarbourVest claim was settled during the bankruptcy case for a  
15 \$45 million general unsecured claim and a \$35 million junior  
16 claim.

17 Other than these claims just described, most of the other  
18 claims in this case are claims asserted against the Debtor by  
19 other entities in the Highland complex, most of which entities  
20 the Court finds to be controlled by Mr. Dondero; claims of  
21 employees who believe that they are entitled to large bonuses  
22 or other types of deferred compensation; and claims of  
23 numerous law firms that did work for Highland and were unpaid  
24 for amounts due to them on the petition date.

25 Yet another reason this is not your garden-variety Chapter

1 11 case is its postpetition corporate governance structure.  
2 Highland filed bankruptcy October 16, 2019. Contentiousness  
3 with the Creditors' Committee began immediately, with first  
4 the Committee's request for a change of venue from Delaware to  
5 Dallas, and then a desire by the Committee and the U.S.  
6 Trustee for a Chapter 11 or 7 trustee to be appointed due to  
7 concerns over and distrust of Mr. Dondero and his numerous  
8 conflicts of interest and alleged mismanagement or worse.

9 After many weeks of the threat of a trustee lingering, the  
10 Debtor and the Creditors' Committee negotiated and the Court  
11 approved a corporate governance settlement on January 9, 2020  
12 that resulted in Mr. Dondero no longer being an officer or  
13 director of the Debtor or of its general partner, Strand.

14 As part of the court-approved settlement, three eminently-  
15 qualified Independent Directors were chosen by the Creditors'  
16 Committee and engaged to lead Highland through its Chapter 11  
17 case. They were James Seery, John Dubel, and Retired  
18 Bankruptcy Judge Russell Nelms. They were technically the  
19 Independent Directors of Strand, the general partner of the  
20 Debtor. Mr. Dondero had previously been the sole director of  
21 Strand, and thus the sole person in ultimate control of the  
22 Debtor.

23 The three independent board members' resumes are in  
24 evidence. James Seery eventually was named CEO of the Debtor.  
25 Suffice it to say that this changed the entire trajectory of

1 the case. This saved the Debtor from a trustee. The Court  
2 trusted the new directors. The Creditors' Committee trusted  
3 them. They were the right solution at the right time.

4 Because of the unique character of the Debtor's business,  
5 the Court believed this solution was far better than a  
6 conventional Chapter 7 or 11 trustee. Mr. Seery, in  
7 particular, knew and had vast experience at prominent firms  
8 with high-yield and distressed investing similar to the  
9 Debtor's business. Mr. Dubel had 40 years of experience  
10 restructuring large, complex businesses and serving on their  
11 boards of directors in this context. And Retired Judge Nelms  
12 had not only vast bankruptcy experience but seemed  
13 particularly well-suited to help the Debtor maneuver through  
14 conflicts and ethical quandaries.

15 By way of comparison, in the Chapter 11 case of Acis, the  
16 former affiliate of Highland that this Court presided over two  
17 or three years ago, which company was much smaller in size and  
18 scope than Highland, managing only five or six CLOs, a Chapter  
19 11 trustee was elected by the creditors that was not on the  
20 normal rotation panel for trustees in this district, but  
21 rather was a nationally-known bankruptcy attorney with more  
22 than 45 years of large Chapter 11 case experience. This  
23 Chapter 11 trustee performed valiantly, but was sued by  
24 entities in the Highland complex shortly after he was  
25 appointed, which this Court had to address. The Acis trustee

1 could not get Highland and its affiliates to agree to any  
2 actions taken in the case, and he finally obtained  
3 confirmation of a plan over Highland and its affiliates'  
4 objections in his fourth attempted plan, which confirmation  
5 then was promptly appealed by Highland and its affiliates.

6 Suffice it to say it was not easy to get such highly-  
7 qualified persons to serve as independent board members and  
8 CEO of this Debtor. They were stepping into a morass of  
9 problems. Naturally, they were worried about getting sued, no  
10 matter how defensible their efforts might be, given the  
11 litigation culture that enveloped Highland historically. It  
12 seemed as though everything always ended in litigation at  
13 Highland.

14 The Court heard credible testimony that none of them would  
15 have taken on the role of Independent Director without a good  
16 D&O insurance policy protecting them, without indemnification  
17 from Strand, guaranteed by the Debtor; without exculpation for  
18 mere negligence claims; and without a gatekeeper provision,  
19 such that the Independent Directors could not be sued without  
20 the bankruptcy court, as a gatekeeper, giving a potential  
21 plaintiff permission to sue.

22 With regard to the gatekeeper provision, this was  
23 precisely analogous to what bankruptcy trustees have pursuant  
24 to the so-called "Barton Doctrine," which was first  
25 articulated in an old U.S. Supreme Court case.

1 The Bankruptcy Court approved all of these protections in  
2 a January 9, 2020 order. No one appealed that order. And Mr.  
3 Dondero signed the settlement agreement that was approved by  
4 that order.

5 An interesting fact about the D&O policy came out in  
6 credible testimony at the confirmation hearing. Mr. Dubel and  
7 an insurance broker from Aon, named Marc Tauber, both credibly  
8 testified that the gatekeeper provision was needed because of  
9 the so-called, and I quote, "Dondero Exclusion" in the  
10 insurance marketplace.

11 Specifically, the D&O insurers in the marketplace did not  
12 want to cover litigation claims that might be brought against  
13 the Independent Directors by Mr. Dondero because the  
14 marketplace of D&O insurers are aware of Mr. Dondero's  
15 litigiousness. The insurers would not have issued a D&O  
16 policy to the Independent Directors without either the  
17 gatekeeping provision or a "Dondero Exclusion" being in the  
18 policy.

19 Thus, the gatekeeper provision was part of the January 9,  
20 2020 settlement. There was a sound business justification for  
21 it. It was reasonable and necessary. It was consistent with  
22 the Barton Doctrine in an extremely analogous situation --  
23 *i.e.*, the independent board members were analogous to a three-  
24 headed trustee in this case, if you will. Mr. Dondero signed  
25 off on it. And, again, no one ever appealed the order



1 approving it.

2 The Court finds that, like the Creditors' Committee, the  
3 independent board members here have been resilient and  
4 unwavering in their efforts to get the enormous problems in  
5 this case solved. They seem to have at all times negotiated  
6 hard and with good faith. As noted previously, they changed  
7 the entire trajectory of this case.

8 Still another reason why this was not your garden-variety  
9 case was the mediation effort. In summer of 2020, roughly  
10 nine months into the Chapter 11 case, this Court ordered  
11 mediation among the Debtor, Acis, UBS, the Redeemer Committee,  
12 and Mr. Dondero. The Court selected co-mediators, since this  
13 seemed like such a Herculean task, especially during COVID-19,  
14 where people could not all be in the same room. Those co-  
15 mediators were Retired Bankruptcy Judge Allan Gropper from the  
16 Southern District of New York, who had a distinguished career  
17 presiding over complex Chapter 11 cases, and Ms. Sylvia Mayer,  
18 who likewise has had a distinguished career, first as a  
19 partner in a preeminent law firm working on complex Chapter 11  
20 cases, and subsequently as a mediator and arbitrator in  
21 Houston, Texas.

22 As noted earlier, the Acis claim was settled during the  
23 mediation, which seemed nothing short of a miracle to this  
24 Court, and the UBS claim was settled many months later, and  
25 this Court believes the groundwork for that ultimate

1 settlement was laid, or at least helped, through the  
2 mediation. And as earlier noted, other enormous claims have  
3 been settled during this case, including that of the Redeemer  
4 Committee, who, again, had asserted approximately or close to  
5 a \$200 million claim; HarbourVest, who asserted a \$300 million  
6 claim; and Patrick Daugherty, who asserted close to a \$40  
7 million claim.

8 This Court cannot stress strongly enough that the  
9 resolution of these enormous claims and the acceptance of all  
10 of these creditors of the Plan that is now before the Court  
11 seems nothing short of a miracle. It was more than a year in  
12 the making.

13 Finally, a word about the current remaining Objectors to  
14 the Plan before the Court. Once again, the Court will use the  
15 phrase "not garden-variety." Originally, there were over one  
16 dozen objections filed to this Plan. The Debtor has made  
17 various amendments or modifications to the Plan to address  
18 some of these objections. The Court finds that none of these  
19 modifications require further solicitation, pursuant to  
20 Sections 1125, 1126, 1127 of the Code, or Bankruptcy Rule  
21 3019, because, among other things, they do not materially  
22 adversely change the treatment of the claims of any creditor  
23 or interest holder who has not accepted in writing the  
24 modifications.

25 Among other things, there were changes to the projections

1 that the Debtor filed shortly before the confirmation hearing  
2 that, among other things, show the estimated distribution to  
3 creditors and compare plan treatment to a likely disbursement  
4 in a Chapter 7.

5 These do not constitute a materially adverse change to the  
6 treatment of any creditors or interest holders. They merely  
7 update likely distributions based on claims that have now been  
8 settled, and they've otherwise incorporated more recent  
9 financial data. This happens often before confirmation  
10 hearings. The Court finds that it did not mislead or  
11 prejudice any creditors or interest holders, and certainly  
12 there was no need to resolicit the Plan.

13 The only Objectors to the Plan left at this time were Mr.  
14 Dondero and entities that the Court finds are controlled by  
15 him. The standing of these entities to object to the Plan  
16 exists, but the remoteness of their economic interest is  
17 noteworthy, and the Court questions the good faith of the  
18 Objectors. In fact, the Court has good reason to believe that  
19 these parties are not objecting to protect economic interests  
20 they have in the Debtor, but to be disruptors.

21 Mr. Dondero wants his company back. This is  
22 understandable. But it's not a good faith basis to lob  
23 objections to the Plan. The Court has slowed down  
24 confirmation multiple times on the current Plan and urged the  
25 parties to talk to Mr. Dondero. The parties represent that

1 they have, and the Court believes that they have.

2 Now, to be specific about the remoteness of the objectors'  
3 interests, the Court will address them each separately.

4 First, Mr. Dondero has a pending objection. Mr. Dondero's  
5 only economic interest with regard to the Debtor at this point  
6 is an unliquidated indemnification claim. And based on  
7 everything this Court has heard, his indemnification claim  
8 will be highly questionable at this juncture.

9 Second, a joint objection has been filed by the Dugaboy  
10 Trust and the Get Good Trust. As for the Dugaboy Trust, it  
11 was created to manage the assets of Mr. Dondero and his  
12 family, and it owns a 0.1866 percent limited partnership  
13 interest in the Debtor. The Court is not clear what economic  
14 interest the Get Good Trust has, but it likewise seems to be  
15 related to Mr. Dondero, and it has been represented to the  
16 Court numerous times that the trustee is Mr. Dondero's college  
17 roommate.

18 Another group of Objectors that has joined together in one  
19 objection is what the Court will refer to as the Highland and  
20 NexPoint Advisors and Funds. The Court understands they  
21 assert disputed administrative expense claims against the  
22 estate. While the evidence presented was that they have  
23 independent board members that run these companies, the Court  
24 was not convinced of their independence from Mr. Dondero.  
25 None of the so-called independent board members of these

1 entities have ever testified before the Court. Moreover, they  
2 have all been engaged with the Highland complex for many  
3 years.

4 The witness who testified on these Objectors' behalves at  
5 confirmation, Mr. Jason Post, their chief compliance officer,  
6 resigned from Highland after more than twelve years in October  
7 2020, at the same time that Mr. Dondero resigned or was  
8 terminated by Highland. And a prior witness recently for  
9 these entities whose testimony was made part of the record at  
10 the confirmation hearing essentially testified that Mr.  
11 Dondero controlled these entities.

12 Finally, various NexBank entities objected to the Plan.  
13 The Court does not believe they have liquidated claims. Mr.  
14 Dondero appears to be in control of these entities as well.

15 To be clear, the Court has allowed all of these objectors  
16 to fully present arguments and evidence in opposition to  
17 confirmation, even though their economic interests in the  
18 Debtor appear to be extremely remote and the Court questions  
19 their good faith. Specifically on that latter point, the  
20 Court considers them all to be marching pursuant to the orders  
21 of Mr. Dondero.

22 In the recent past, Mr. Dondero has been subject to a TRO  
23 and preliminary injunction by the Bankruptcy Court for  
24 interfering with the current CEO's management of the Debtor in  
25 specific ways that were supported by evidence. Around the

1 time that this all came to light and the Court began setting  
2 hearings on the alleged interference, Mr. Dondero's company  
3 phone supplied to him by Highland, which he had been asked to  
4 turn in, mysteriously went missing. The Court merely mentions  
5 this in this context as one of many reasons that the Court has  
6 to question the good faith of Mr. Dondero and his affiliated  
7 objectors.

8 The only other pending objection besides these objections  
9 of the Dondero and Dondero-controlled entities is an objection  
10 of the United States Trustee pertaining to the release,  
11 exculpation, and injunction provisions in the Plan.

12 In juxtaposition to these pending objections, the Court  
13 notes that the Debtor has resolved earlier-filed objections to  
14 the Plan filed by the IRS, Patrick Daugherty, CLO Holdco,  
15 Ltd., numerous local taxing authorities, and certain current  
16 and former senior-level employees of the Debtor.

17 With that rather detailed factual background addressed,  
18 because certainly context matters here, the Court now  
19 addresses what it considers the only serious objections raised  
20 in connection with confirmation. Specifically, the Plan  
21 contain certain releases, exculpation, plan injunctions, and a  
22 gatekeeper provision which are obviously not fully consensual,  
23 since there are objections. Certainly, these provisions are  
24 mostly consensual when you consider that parties with hundreds  
25 of millions of dollars' worth of legitimate claims have not

1 objected to them.

2 First, a word about plan releases generally, since the  
3 Objectors at times seem to gloss over, in this Court's view,  
4 relevant distinctions, and seem to refer to the plan releases  
5 in this Plan and the exculpations and the plan injunctions all  
6 as impermissible third-party releases, when, in fact, they are  
7 not, *per se*.

8 It has, without a doubt, become quite commonplace in  
9 complex Chapter 11 bankruptcy cases to have three categories  
10 of releases in plans. These three types are as follows.

11 First, Debtor Releases. A debtor release involves a  
12 release by the debtor and its bankruptcy estate of claims  
13 against nondebtor third-parties. For example, a release may  
14 be granted in favor of creditors, directors, officers,  
15 employees, professionals who participated in the bankruptcy  
16 process. This is the least-controversial type of release  
17 because the debtor is extinguishing its own claims, which are  
18 property of the estate, that a debtor has authority to utilize  
19 or not, pursuant to Sections 541 and 363 of the Bankruptcy  
20 Code.

21 Authority for a debtor release pursuant to a plan arises  
22 out of Section 1123(b)(3)(A), which indicates that a plan may  
23 provide for "the settlement or adjustment of any claim or  
24 interest belonging to the debtor or to the estate."

25 In this context, it would appear that the only analysis



1 required is to determine whether the release or settlement of  
2 the claim is an exercise of reasonable business judgment on  
3 that part of the debtor, is it fair and equitable, is it in  
4 the best interest of the estate, given all the relevant facts  
5 and circumstances? Also relevant is whether there's  
6 consideration given of some sort by the releasees.

7 Now, the second type of very commonplace Chapter 11 plan  
8 release is an exculpation. Chapter 11 plans also very often  
9 have these exculpation provisions, and they're something much  
10 narrower in scope and time than a full-fledged release. An  
11 exculpation provision is more like a shield for a certain  
12 subset of key actors in the case for their acts during and in  
13 connection with the case, which acts may have been merely  
14 negligent.

15 Specifically, a plan may absolve certain actors -- usually  
16 estate fiduciaries -- such as an Official Unsecured Creditors'  
17 Committee and its members, Committee professionals, sometimes  
18 Debtor professionals, senior management, officers and  
19 directors of the Debtor, from any liability for postpetition  
20 negligent conduct -- *i.e.*, conduct which occurred during the  
21 administration of the Chapter 11 case and in the negotiation,  
22 drafting, and implementation of a plan. An exculpation  
23 provision typically excludes gross negligence and willful  
24 misconduct. It is usually worded in a passive voice, so it  
25 may seem a little unclear as to whether it is actually a

1 release and by whom.

2 In any event, the rationale is that parties who actively  
3 participate in a court-approved process -- often, court-  
4 approved transactions by court order -- should receive  
5 protection for their work. Otherwise, who would want to work  
6 in such a messy, contentious situation, only to be sued for  
7 alleged negligence for less-than-perfect end results?

8 Chapter 11 end results are not always pretty. One could  
9 argue that these exculpation provisions, though, are much ado  
10 about nothing. Why? For one thing, again, the shield is only  
11 as to negligent conduct. There is no shield for other  
12 problematic conduct, such as gross negligence or willful  
13 misconduct.

14 Second, in many situations, any claims or causes of action  
15 that might arise will belong to the Debtor or its estate.  
16 Thus, they would already be released pursuant to a debtor  
17 release.

18 Additionally, there is case law stating that, where a  
19 claim is brought against an estate professional whose fees  
20 have already been approved in a final fee application, any  
21 claims are barred by *res judicata*. Thus, exculpated  
22 professionals would only have potential exposure for a very  
23 short window of time, until final fee applications.

24 Additionally, certain case law in Texas makes clear that  
25 an attorney generally does not owe any duties to persons other

1 than his own client.

2 All of this suggests that the shield of a typical  
3 exculpation provision may rarely become useful or needed.

4 Moving now to the third type of release, a true third-  
5 party release, Chapter 11 plans also sometimes contain third-  
6 party releases. A true third-party release involves the  
7 release of claims held by nondebtor third parties against  
8 other nondebtor third parties, and there is often no  
9 limitation on the scope and time of the claims released.

10 This is the most heavily scrutinized of the three types of  
11 plan releases. Much of the case authority focuses on whether  
12 a third-party release is consensual or not in analyzing their  
13 propriety and/or enforceability.

14 In Highland, there are no third-party releases. Rather,  
15 there are debtor releases and exculpations. There also happen  
16 to be plan injunctions and gatekeeper provisions that have  
17 been challenged. The Objectors argue that these provisions  
18 violate the Fifth Circuit's opinion in *Pacific Lumber* or are  
19 otherwise beyond the jurisdiction or authority of the  
20 bankruptcy court. These arguments are now addressed.

21 First, the debtor release is found at Article IX.D of the  
22 Plan. The language, in pertinent part, reads as follows. "On  
23 and after the effective date, each Released Party is deemed to  
24 be hereby conclusively, absolutely, unconditionally,  
25 irrevocably, and forever released and discharged by the Debtor

1 and the Estate, in each case on behalf of themselves and their  
2 respective successors, assigns, and representatives, including  
3 but not limited to the Claimant Trust and the Litigation Sub-  
4 Trust, from any and all causes of action, including any  
5 derivative claims, asserted on behalf of the Debtor, whether  
6 known or unknown, foreseen or unforeseen, matured or  
7 unmatured, existing or hereafter arising, in law, equity,  
8 contract, tort, or otherwise, that the Debtor or the Estate  
9 would have been legally entitled to assert in their own right,  
10 whether individually or collectively, or on behalf of the  
11 holder of any claim against, or interest in, a debtor or other  
12 person."

13       There are certain exceptions discussed, and then Released  
14 Parties are defined at Definition 113 of the Plan collectively  
15 as: the Independent Directors; Strand, solely from the date  
16 of the appointment of the Independent Directors through the  
17 effective date; the CEO/CRO; the Committee, the members of the  
18 Committee, in their official capacities; the professionals  
19 retained by the Debtor and the Committee in the Chapter 11  
20 case; and the employees. This is a defined term in the Plan  
21 Supplement and does not include certain employees.

22       To be clear, these are not third-party releases such as  
23 addressed in the *Pacific Lumber* case. These are the Debtor's  
24 and/or the bankruptcy estate's causes of action that are  
25 proposed to be released. Releases by a debtor are

1 discretionary and can be provided by a debtor to persons who  
2 have provided consideration to the debtor and the estate.  
3 Section 1123(b) (3) (A) of the Bankruptcy Code permits this.

4 The evidence here supported the notion that these releases  
5 are a *quid pro quo* for the Released Parties' significant  
6 contributions to a highly complex and contentious  
7 restructuring. The Debtor is releasing its own claims. Some  
8 of the Released Parties would have indemnification rights  
9 against the Debtor. And the Debtor's CEO, James Seery,  
10 credibly testified that he does not believe any claims exist  
11 as to the Released Parties. The Court approves the Debtor  
12 releases and overrules the objections to them.

13 Next, the exculpations appear at Article IX.C of the Plan  
14 and provide as follows: Subject in all respects to Article  
15 XII.D of the Plan, to the maximum extent permitted by  
16 applicable law, no Exculpated Party will have or incur, and  
17 each Exculpated Party is hereby exculpated from, any claim,  
18 obligation, suit, judgment, damage, demand, debt, right, cause  
19 of action, remedy, loss, and liability for conduct occurring  
20 on or after the petition date in connection with or arising  
21 out of the filing and administration of the Chapter 11 case,  
22 the negotiation and pursuit of a disclosure statement, the  
23 Plan, or the solicitation of votes for or confirmation of the  
24 Plan, the funding or consummation of the Plan, or any related  
25 agreements, instruments, et cetera, et cetera, whether or not

1 such Plan distributions occur following the effective date,  
2 the implementation of the Plan, and any negotiation,  
3 transactions, and documentation in connection with the  
4 foregoing clauses, provided, however, the foregoing will not  
5 apply to any acts or omissions of any Exculpated Party arising  
6 out of or related to acts or omissions that constitute bad  
7 faith, fraud, gross negligence, criminal misconduct, or  
8 willful misconduct; or Strand or any employee other than with  
9 respect to actions taken by such entities from the date of  
10 appointment of the Independent Directors through the effective  
11 date.

12 Exculpated Parties are later defined at Section -- or,  
13 earlier defined at Section 62 of the Plan, Definition No. 62  
14 of the Plan, as later limited by the Debtor, as announced in  
15 the confirmation hearing. And so these are the Exculpated  
16 Parties: the Debtor and its successors and assigns; the  
17 employees, certain employees, as defined; Strand; the  
18 Independent Directors; the Committee, the members of the  
19 Committee, in their official capacities; the professionals  
20 retained by the Debtor and the Committee in the Chapter 11  
21 case; the CEO and CRO; and the related persons as to each of  
22 these parties listed in Part (iv) through (viii) above;  
23 provided, for the avoidance of doubt, and it goes on to say  
24 Dondero, Mark Okada, and various others aren't Exculpated  
25 Parties.

1 Now, as earlier mentioned, the Objectors argue that  
2 *Pacific Lumber*, 584 F.3d 229, a Fifth Circuit case from 2009,  
3 categorically rejects the permissibility of nonconsensual  
4 exculpations as well as third-party releases in a Chapter 11  
5 plan. So the Court is going to take a deep dive into that  
6 assertion.

7 In *Pacific Lumber*, the Fifth Circuit reviewed on appeal  
8 numerous challenges to a confirmed plan of affiliated debtors  
9 known as Palco and Scopac and four subsidiaries. The debtor  
10 Palco owned and operated the sawmill, a power plant, and even  
11 a town called Scotia, California. The debtor Scopac owned  
12 timberlands. A creditor, a secured creditor called Marathon  
13 had a claim against Palco's assets. Marathon estimated  
14 Palco's assets were worth \$110 million. Its claim was \$160  
15 million. Meanwhile, other parties had large secured claims  
16 against the other debtor, Scopac.

17 The plan that the bankruptcy court confirmed, which was on  
18 appeal to the Fifth Circuit, was filed by both the secured  
19 creditor Marathon and a joint plan proponent called MRC. MRC  
20 was a competitor of the debtor Palco. The Marathon/MRC plan  
21 proposed to dissolve all the debtors, cancel intercompany  
22 debts, and create two new entities, Townco and Newco. Almost  
23 all of the debtor Palco's assets, including the town of  
24 Scotia, California, would be transferred to Townco. The  
25 timberlands and other assets, including the sawmill, would be



1 placed in Newco.

2 Marathon and MRC proposed to contribute \$580 million to  
3 Newco to pay claims against Scopac. And Marathon would  
4 convert its secured claim against Palco's assets into equity,  
5 giving it full ownership of Townco, a 15 percent stake in  
6 Newco, and a new note for the sawmill's working capital. MRC  
7 would own the other 80 percent of Newco and would manage and  
8 run the company.

9 An indenture trustee for the secured indebtedness against  
10 Scopac -- which, by the way, had also been a plan proponent of  
11 a competing plan -- appealed the confirmation order, raising  
12 eight distinct issues on appeal. One of the eight issues  
13 pertained to what the Fifth Circuit referred to as a  
14 "nondebtor exculpation and release clause." This issue is  
15 discussed on the last two pages of a very lengthy opinion.

16 While the complained-of provision is not quoted verbatim  
17 in the *Pacific Lumber* opinion, it appears to have been a  
18 typical exculpation clause. Not a third-party release; a  
19 typical exculpation clause. The Fifth Circuit stated, "The  
20 plan releases MRC, Marathon, Newco, Townco, and the Unsecured  
21 Creditors' Committee, and their personnel, from liability,  
22 other than for willful and gross negligence related to  
23 proposing, implementing, and administering the plan" at Page  
24 251.

25 The Fifth Circuit held that "the nondebtor releases must

1 be struck except with respect to the Creditors' Committee and  
2 its members."

3 Footnote 26 of the opinion also states that the appellants  
4 had "not briefed why Newco and Townco or their officers and  
5 directors should not be released," and so "we do not analyze  
6 their position." Rather, the Fifth Circuit merely analyzed  
7 why the exculpation provision was not permissible as to the  
8 two plan proponents, MRC and Marathon.

9 Thus, the Court views *Pacific Lumber* as being a holding  
10 that squarely addressed the propriety of two plan proponents,  
11 a secured lender and a third-party competitor purchaser of the  
12 Debtors, obtaining nonconsensual exculpation in the plan.  
13 However, its reasoning certainly cannot be ignored, strongly  
14 suggesting it would not be inclined to approve an exculpation  
15 for any party other than a Creditors' Committee or its  
16 members.

17 As far as the Fifth Circuit's reasoning, it relied on  
18 Bankruptcy Code Section 524(e) for striking down the  
19 exculpations, stating, "The law states, however, that  
20 discharge of a debt of the debtor does not affect the  
21 liability of any other entity on such debt." Page 251. The  
22 opinion suggests that MRC and Marathon may have tried to argue  
23 that 524(e) did not apply to their exculpations because MRC  
24 and Marathon were not liable as co-obligors in any way on any  
25 of the debtor's debt.

1 The Fifth Circuit seemed dismissive of this argument,  
2 stating as follows, "MRC/Marathon insist the release clause is  
3 part of their bargain because, without the clause, neither  
4 company would have been willing to provide the plan's  
5 financing. Nothing in the records suggests that MRC/Marathon,  
6 the Committee, or the Debtor's officers and directors were co-  
7 liable for the Debtor's prepetition debts. Instead, the  
8 bargain the proponents claim to have purchased is exculpation  
9 from any negligence that occurred during the course of the  
10 case. Any costs the released parties might incur defending  
11 against suits alleging such negligence are unlikely to swamp  
12 either of these parties or the consummated reorganization. We  
13 see little equitable about protecting the released nondebtors  
14 from negligence suits arising out of the reorganization."

15 The Court goes on to note that, in a variety of cases,  
16 that releases have been approved, but these cases "seem  
17 broadly to foreclose nonconsensual nondebtor releases and  
18 permanent injunctions."

19 The Court then adds at Footnote 27 that the Fifth Circuit  
20 in the past did not set aside challenged plan releases that  
21 were in final nonappealable orders and were the subject of  
22 collateral attack much later, citing its famous *Republic*  
23 *Supply v. Shoaf* case, where the Fifth Circuit ruled that *res*  
24 *judicata* barred a debtor from bringing a claim that was  
25 specifically and expressly released by a confirmed

1 reorganization plan because the debtor -- the objector failed  
2 to object to the release at confirmation.

3 The Fifth Circuit in *Pacific Lumber* also noted that the  
4 Bankruptcy Code permits bankruptcy courts to enjoin third-  
5 party asbestos claims under certain circumstances, 524(g),  
6 which the Court said suggests nondebtor releases are most  
7 appropriate as a method to channel mass tort claims towards a  
8 specific pool of assets, citing numerous cases, including  
9 *Johns-Manville*.

10 In reach its holding, the Fifth Circuit saw no reason to  
11 uphold exculpation to the plan proponents MRC and Marathon,  
12 seeming to find it inconsistent with 524(e) under the facts at  
13 bar, but the Court did uphold exculpation for the Creditors'  
14 Committee and its members, stating, "We agree, however, with  
15 courts that have held that 1103(c) under the Code, which lists  
16 the Creditors' Committee's powers, implies Committee members  
17 have qualified immunity for actions within the scope of their  
18 duties." Numerous cites. "The Creditors' Committee and its  
19 members are the only disinterested volunteers among the  
20 parties sought to be released here. The scope of protection,  
21 which does not insulate them from willful and gross  
22 negligence, is adequate."

23 Thus, the Court held that the exculpation provisions in  
24 *Pacific Lumber* must be struck except with regard to the  
25 Creditors' Committee and its members.

1 Now, after all of that, this Court believes the following  
2 can be gleaned from *Pacific Lumber*. First, the Fifth Circuit  
3 hinted that consensual exculpations and/or consensual  
4 nondebtor third-party releases are permissible. The Court  
5 was, of course, dealing with nonconsensual exculpations in  
6 *Pacific Lumber*. In this regard, I note Page 252, where the  
7 Court cited various prior Fifth Circuit authority and then  
8 stated, "These cases seem broadly to foreclose nonconsensual  
9 nondebtor releases and permanent injunctions."

10 The second thing that can be gleaned from *Pacific Lumber*:  
11 The Fifth Circuit hinted that nondebtor releases may be  
12 permissible in cases involving global settlements of mass  
13 claims against the debtors and co-liable parties. The Court,  
14 of course, referred to 524(g), but various other cases which  
15 approved nondebtor releases where mass claims were channeled  
16 to a specific pool of assets.

17 Third, the Fifth Circuit outright held that exculpations  
18 from negligence for a Creditors' Committee and its members are  
19 permissible because the concept is both consistent with  
20 1103(c), "which implies Committee members have qualified  
21 immunity for actions within the scope of their duties," and a  
22 good policy result, since "if members of the Committee can be  
23 sued by persons unhappy with the outcome of the case, it will  
24 be extremely difficult to find members to serve on an official  
25 committee."

1 Fourth, the Fifth Circuit recognized in *Pacific Lumber*  
2 that *res judicata* may bar complaints regarding an  
3 impermissible plan release, citing to its earlier *Republic*  
4 *Supply v. Shoaf* opinion.

5 Now, being ever-mindful of the Fifth Circuit's words in  
6 *Pacific Lumber*, this Court cannot help but wonder about at  
7 least three things.

8 First, did the Fifth Circuit leave open the door that  
9 facts/equities might sometimes justify approval of an  
10 exculpation for a person other than a Creditors' Committee and  
11 its members? For example, the Fifth Circuit stated, in  
12 referring to the plan proponents Marathon and MRC, that "Any  
13 costs the released parties might incur defending against suits  
14 alleging such negligence are unlikely to swamp either of these  
15 parties or the consummated reorganization." Here, this Court  
16 can easily expect the proposed exculpated parties to incur  
17 costs that could swamp them and the reorganization based on  
18 the past litigious conduct of Mr. Dondero and his controlled  
19 entities. Do these words of the Fifth Circuit hint that  
20 equities/economics might sometimes justify an exculpation?

21 Second, did the Fifth Circuit's rationale for permitted  
22 exculpations to Creditors' Committee and their members, which  
23 was clearly policy-based, based on their implied qualified  
24 immunity flowing from their duties in Section 1103 and their  
25 disinterestedness, and the importance of their role in a

1 Chapter 11 case, did this rationale leave open the door to  
2 sometimes permitting exculpations to other parties in a  
3 particular Chapter 11 case besides Creditors' Committees and  
4 their members? For example, in a situation such as the  
5 Highland case, in which Independent Directors, brought in to  
6 avoid a trustee, are more like a Creditors' Committee than an  
7 incumbent board of directors.

8 Third, the Fifth Circuit's sole statutory basis was  
9 Section 524(e). This Court would humbly submit that this is a  
10 statute dealing with prepetition liability in which some  
11 nondebtor is liable with the Debtor. Exculpation is a concept  
12 dealing with postpetition liability.

13 The Ninth Circuit recently, in a case called *Blixseth v.*  
14 *Credit Suisse*, 961 F.3d 1074 (9th Cir. 2020), approved the  
15 validity of an exculpation clause incorporated into a  
16 confirmed Chapter 11 plan that purported to absolve certain  
17 nondebtor parties that were "closely involved" in drafting the  
18 plan. They were the largest secured creditor, a purchaser,  
19 and an individual who was an indirect owner of certain of the  
20 debtor companies. The exculpation was from any negligence,  
21 liability, for "any act or omission in connection with,  
22 related to, or arising out of the Chapter 11 cases."

23 By the time the appeal was before the Ninth Circuit, the  
24 only issue was the propriety of the exculpation clause as to  
25 the large secured creditor, which was also a plan proponent,



1 since all the other exculpated parties had settled with the  
2 appellant.

3 The Court, in determining that the exculpation clause was  
4 permissible as to the secured lender, concluded that Section  
5 524(e) "does not bar a narrow exculpation clause of the kind  
6 here at issue -- that is, one focused on actions of various  
7 participants in the plan approval process and relating only to  
8 that process," Page 1082. Why? Because "Section 524(e)  
9 establishes that discharge of a debt of the debtor does not  
10 affect the liability of any other entity on such debt." In  
11 other words, the discharge in no way affects the liability of  
12 any other entity for the discharged debt. By its terms,  
13 524(e) prevents a bankruptcy court from extinguishing claims  
14 of creditors against nondebtors over the very discharged debt  
15 through the bankruptcy proceedings.

16 The Court went on to explicitly disagree with *Pacific*  
17 *Lumber* in its analysis of 524(e), reiterating that an  
18 exculpation clause covers only liabilities arising from the  
19 bankruptcy proceedings and not of any of the debtor's  
20 discharged debt. Footnote 7, Page 1085.

21 Ultimately, the Court held that under Section 105(a),  
22 which empowers a bankruptcy court to issue any order, process,  
23 or judgment that is necessary or appropriate to carry out the  
24 provisions of Chapter 11 and Section 1123, which establishes  
25 the appropriate content of the bankruptcy plan, under these

1 sections, the bankruptcy court had authority to approve an  
2 exculpation clause intended to trim subsequent litigation over  
3 acts taken during the bankruptcy proceedings and so render the  
4 plan viable.

5 This Court concludes that, just as the Fifth Circuit left  
6 open the door for consensual exculpations and releases in  
7 *Pacific Lumber*, just as it left open the door for consensual  
8 exculpations and releases in *Pacific Lumber*, its dicta  
9 suggests that an exculpation might be permissible if there is  
10 a showing that "costs that the released parties might incur  
11 defending against suits alleging such negligence are likely to  
12 swamp either the Exculpated Parties or the reorganization."  
13 Again, that was a quote from the Fifth Circuit.

14 If ever there were a risk of that happening in a Chapter  
15 11 reorganization, it is this one. The Debtor's current CEO  
16 credibly testified that Mr. Dondero has said outside the  
17 courtroom that if Mr. Dondero's own pot plan does not get  
18 approved, that he will "burn the place down." Here, this  
19 Court can easily expect the proposed exculpated parties might  
20 expect to incur costs that could swamp them and the  
21 reorganization process based on the past litigious conduct of  
22 Mr. Dondero and his controlled entities.

23 Additionally, this Court concludes that the Fifth  
24 Circuit's rationale in *Pacific Lumber* for permitted  
25 exculpations to Creditors' Committees and their members, which

1 was clearly policy-based based on their implied qualified  
2 immunity flowing from Section 1103 and their importance in a  
3 Chapter 11 case, leaves the door open to sometimes permitting  
4 exculpations to other parties in a particular Chapter 11 case  
5 besides a UCC and its members.

6 Again, if there was ever such a case, the Court believes  
7 it is this one, in which Independent Directors were brought in  
8 to avoid a trustee and are much more like a Creditors'  
9 Committee than an incumbent board of directors. While,  
10 admittedly, there are a few exculpated parties here proposed  
11 beyond the independent board, such as certain employees, it  
12 would appear that no one is invulnerable to a lawsuit here if  
13 past is prologue in this Highland saga.

14 The Creditors' Committee was initially not keen on  
15 exculpations for certain employees. However, Mr. Seery  
16 credibly testified that there was a contentious arm's-length  
17 negotiation over this and that he needs these employees to  
18 preserve value implementing the Plan. Mr. Dondero has shown  
19 no hesitancy to litigate with former employees in the past, to  
20 the *nth* degree, and there is every reason to believe he would  
21 again in the future, if able.

22 Finally, in this situation, in the case at bar, we would  
23 appear to have a *Shoaf* reason to approve the exculpations.  
24 The January 9, 2020 order of this Court, Docket Entry 339,  
25 which approved the independent board and an ongoing corporate

1 governance structure for this case, and which is incorporated  
2 into the Plan at Article IX.H, provided as follows: "No  
3 entity may commence or pursue a claim or cause of action of  
4 any kind against any Independent Director, any Independent  
5 Director's agents, or any Independent Director's advisors  
6 relating in any way to the Independent Director's role as an  
7 Independent Director of Strand without the Court (1) first  
8 determining, after notice, that such claim or cause of action  
9 represents a colorable claim of willful misconduct or gross  
10 negligence against Independent Director, any Independent  
11 Director's agents, or any Independent Director's advisors; and  
12 (2) specifically authorizing such entity to bring such a  
13 claim. The Court will have sole jurisdiction to adjudicate  
14 any claim for which approval of the Court to commence or  
15 pursue has been granted."

16 This was both an exculpation from negligence as to the  
17 Independent Directors and their agents and advisors, as well  
18 as a gatekeeping provision. This Court believes that this  
19 provision basically approved an exculpation for the  
20 Independent Directors way back on January 9, 2020 for their  
21 postpetition conduct that might be negligent. And this is the  
22 law of the case and has *res judicata* preclusive effect now.

23 Thus, as to the three Independent Directors, as well as  
24 the other named parties in the January 9, 2020 order, their  
25 agents, their advisors, we have a situation that fits within

1 *Republic Supply v. Shoaf*, and we fit within the exception  
2 articulated in *Pacific Lumber*.

3 The Court reserves the right to supplement these findings  
4 and conclusions as to the exculpations, but based on the  
5 foregoing, they are approved and the objections are overruled.

6 Now, turning to the Plan objection, it appears at Article  
7 IX.F of the Plan and provides, in pertinent part, as follows:  
8 Upon entry of the confirmation order, all enjoined parties are  
9 and shall be permanently enjoined on and after the effective  
10 date from taking any action to interfere with the  
11 implementation or consummation of the Plan. Except as  
12 expressly provided in the Plan, the confirmation order, or a  
13 separate order of the Bankruptcy Court, all Enjoined Parties  
14 are and shall be permanently enjoined on and after the  
15 effective date, with respect to any claims and interests, from  
16 directly or indirectly -- and then commencing, conducting,  
17 continuing any suit, action, proceeding of any kind, and  
18 numerous other acts of that vein.

19 The injunction set forth herein shall extend to and apply  
20 to any act of the type set forth in any of the causes above  
21 against any successors to the Debtor, including but not  
22 limited to the Reorganized Debtor, the Litigation Sub-Trust,  
23 and the Claimant Trust, and their respective property and  
24 interests in property.

25 Plan injunctions like this are commonplace and

1 appropriate. They are entirely consistent with and  
2 permissible under Bankruptcy Code Sections 1123(a)(5),  
3 1123(a)(6), 1141(a) and (c), and 1142, as well as Bankruptcy  
4 Rule 3016(c), which articulates the form that a plan  
5 injunction must be set forth in a plan.

6 The Court finds the objections to the Plan Injunctions to  
7 be unfounded, and they are thus overruled without much  
8 discussion here.

9 Now, lastly, the Gatekeeper Provision. It appears at  
10 Paragraph 4 of Article IX.F of the Plan and provides, in  
11 pertinent part, "Subject in all respects to Article XII.D, no  
12 Enjoined Party may commence or pursue a claim or cause of  
13 action of any kind against any Protected Party that arose or  
14 arises from or is related to the Chapter 11 case, the  
15 negotiation of the Plan, the administration of the Plan, or  
16 property to be distributed under the Plan, the wind-down of  
17 the business of the Debtor or Reorganized Debtor, the  
18 administration of the Claimant Trust or the Litigation Sub-  
19 Trust, or the transactions in furtherance of the foregoing,  
20 without the Bankruptcy Court (1) first determining, after  
21 notice and a hearing, that such claim or cause of action  
22 represents a colorable claim of any kind, including but not  
23 limited to negligence, bad faith, criminal misconduct and  
24 willful misconduct, fraud, or gross negligence against a  
25 Protected Party; and (2) specifically authorizing such

1 Enjoined Party to bring such claim or cause of action against  
2 such Protected Party, provided, however, that the foregoing  
3 will not apply to a claim or cause of action against Strand or  
4 against any employee other than with respect to actions taken,  
5 respectively, by Strand or any such employee from the date of  
6 appointment of the Independent Directors through the effective  
7 date. The Bankruptcy Court will have sole and exclusive  
8 jurisdiction to determine whether a claim or cause of action  
9 is colorable and, only to the extent legally permissible and  
10 as provided for in Article XI, shall have jurisdiction to  
11 adjudicate the underlying colorable claim or cause of action."

12 This gatekeeper provision appears necessary and reasonable  
13 in light of the litigiousness of Mr. Dondero and his  
14 controlled entities that has been described at length herein.  
15 Provisions similar to this have been approved in this district  
16 in the *Pilgrim's Pride* case and the *CHC Helicopter* case. The  
17 provision is within the spirit of the Supreme Court's Barton  
18 Doctrine. And it appears consistent with the notion of a pre-  
19 filing injunction to deter vexatious litigants that has been  
20 approved by the Fifth Circuit in such cases as *Baum v. Blue*  
21 *Moon Ventures*, 513 F.3d 181, and in the *In re Carroll* case,  
22 850 F.3d 811, which arose out of a bankruptcy pre-filing  
23 injunction.

24 The Fifth Circuit, in fact, noted in the *Carroll* case that  
25 federal courts have authority to enjoin vexatious litigants



1 under the All Writs Act, 28 U.S.C. § 1651. And additionally,  
2 under the Bankruptcy Code, a bankruptcy court can issue any  
3 order, including a civil contempt order, necessary or  
4 appropriate to carry out the provisions of the Code, citing,  
5 of course, 105 of the Bankruptcy Code.

6 The Fifth Circuit stated that, when considering whether to  
7 enjoin future filings against a vexatious litigant, a  
8 bankruptcy court must consider the circumstances of the case,  
9 including four factors: (1) the party's history of  
10 litigation; in particular, whether he has filed vexatious,  
11 harassing, or duplicative lawsuits; (2) whether the party had  
12 a good faith basis for pursuing the litigation, or perhaps  
13 intended to harass; (3) the extent of the burden on the courts  
14 and other parties resulting from the party's filings; and (4)  
15 the adequacy of alternatives.

16 In the *Baum* case, the Fifth Circuit stated that the  
17 traditional standards for injunctive relief -- *i.e.*,  
18 irreparable harm and inadequate remedy at law -- do not apply  
19 to the issuance of an injunction against a vexatious litigant.

20 Here, although I have not been asked to declare Mr.  
21 Dondero and his affiliated entities as vexatious litigants *per*  
22 *se*, it is certainly not beyond the pale to find that his long  
23 history with regard to the major creditors in this case has  
24 strayed into that possible realm, and thus this Court is  
25 justified in approving this provision.

1 One of the Objectors' lawyers stated very eloquently in  
2 closing argument, in opposing the plan injunction and  
3 gatekeeping provisions, that "Even a serial killer has  
4 constitutional rights," suggesting that these provisions would  
5 deprive Mr. Dondero and his controlled entities of fundamental  
6 rights or due process somehow. But to paraphrase the district  
7 court in the *Carroll* case, no one, rich or poor, is entitled  
8 to abuse the judicial process. There exists no constitutional  
9 right of access to the courts to prosecute actions that are  
10 frivolous or malicious. The Plan injunction and gatekeeper  
11 provisions in Highland's plan simply set forth a way for this  
12 Court to use its tools, its inherent powers, to avoid abuse of  
13 the court system, protect the implementation of the Plan, and  
14 preempt the use of judicial time that properly could be used  
15 to consider the meritorious claims of other litigants.

16 Accordingly, the Objectors' objections to this provision  
17 are overruled.

18 As earlier stated, this Court reserves the right to alter  
19 or supplement this ruling in a written order. In this regard,  
20 the Court directs Debtor's counsel -- I hope you are still  
21 awake; it's been a long time -- the Court directs Debtor's  
22 counsel to submit a form of order. And specifically, I assume  
23 that you've already prepared or have been in the process of  
24 preparing a set of findings of fact, conclusions of law, and  
25 confirmation order that tracks the confirmation evidence and

1 recites conclusions of law that the Plan complies with all the  
2 various provisions of Section 1123, 1129, and other applicable  
3 Code provisions.

4 What I want you to do is take this bench ruling and add it  
5 to what you've prepared. And what I mean is, as you can tell,  
6 I've been reading: I will have my courtroom deputy email to  
7 you all a copy of what I just read. I'll have her obviously  
8 copy the Debtor's counsel, Creditors' Committee, Dondero and  
9 the other Objectors, copy them on this written document she's  
10 going to send out. And, again, I want you to kind of meld it  
11 into what you've already been preparing.

12 Obviously, I did not address in this oral ruling every  
13 provision of 1129(a) and (b). I did not address every 1123  
14 objection. I did not even address every single objection of  
15 the Objectors. But, again, any objection I've not  
16 specifically addressed today is overruled.

17 The briefing, I should say, that the Debtor submitted,  
18 there was a Memorandum of Law in Support of Confirmation filed  
19 on January 22nd. There was also a reply brief, a hundred  
20 pages or so, separately filed, replying to all the objections.  
21 I don't disagree with anything that was in that. So, again,  
22 to the extent you want to send me conclusions of law that are  
23 along the lines of that briefing, I would consider that.

24 And so what I thought is you'll send me the melded  
25 document and I will edit it if I see fit. I recognize this

Case: 21-90011 Document: 00515803515 Page: 234 Date Filed: 03/31/2021

49

1 may take a few days, so I don't give you a strict timetable,  
2 just hopefully it won't take too many days.

3 All right. Is there anyone out there -- Mr. Pomerantz,  
4 you had to go to jury duty, except I can't believe --

5 MR. POMERANTZ: No, I --

6 THE COURT: I can't believe you were called, but are  
7 you there?

8 MR. POMERANTZ: Your Honor, I am here. I was luckily  
9 excused, because I probably wouldn't have made it.

10 Your Honor, one just comment I'd make. You referred to  
11 the January 9th order. You didn't refer to the CEO order,  
12 which is your order July 16th, which had the same gatekeeper  
13 provision. I assume that was the same analysis?

14 THE COURT: That was an oversight. Same analysis.  
15 And that's exactly why I said I reserve the right to  
16 supplement or amend, because I know there had to be places  
17 like that where I omitted to mention something important.

18 MR. POMERANTZ: But thank you, Your Honor, for your  
19 thoughtful ruling, and we will certainly incorporate your  
20 materials into the order that we're working on and get it to  
21 you when we can. But we appreciate it on behalf of the  
22 Debtor. We know this took a lot of time and a lot of effort.  
23 Hopefully, you got a chance to still watch the Super Bowl  
24 yesterday.

25 THE COURT: Well, when I saw that Tom Brady was going

1 to win, I turned it off.

2 I'm sorry. That's terrible. You know, my law clerk, my  
3 law clerk that you can't see, Nate, he is from Ann Arbor,  
4 Michigan, University of Michigan, and he almost cried when I  
5 said I didn't like Tom Brady the other day. So, I apologize.

6 MR. POMERANTZ: Your Honor, one other comment. We  
7 had our motion to assume our nonresidential real property  
8 lease that was also on. It got missed in all the fanfare, but  
9 it was -- it has been unopposed and essentially done pursuant  
10 to stipulation. So we'd like to submit an order on that as  
11 well.

12 THE COURT: Okay. I have seen that, and I approve it  
13 under 365. You may submit the order. Okay. Thank you.

14 MR. POMERANTZ: Thank you, Your Honor.

15 THE CLERK: All rise.

16 (Proceedings concluded at 10:35 a.m.)

17 --oOo--

18

19

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
above-entitled matter.

23 **/s/ Kathy Rehling**

**02/09/2021**

24

25 \_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

Case: 21-90011 Document: 00515803515 Page: 236 Date Filed: 03/31/2021

		51
	INDEX	
1		
2	PROCEEDINGS	3
3	WITNESSES	
4	-none-	
5	EXHIBITS	
6	-none-	
7	RULINGS	
8	Confirmation Hearing [1808]	3
9	Agreed Motion to (1) Assume Non-Residential Real Property	50
10	Lease with Crescent TC Investors, LP upon Confirmation of	
	Plan and (II) Extend Assumption Deadline [1624]	
11	END OF PROCEEDINGS	50
12	INDEX	51
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Case: 21-90011 Document: 00515803515 Page: 237 Date Filed: 03/31/2021

# EXHIBIT C



MUNSCH HARDT KOPF & HARR, P.C.  
Davor Rukavina, Esq.  
Texas Bar No. 24030781  
Julian P. Vasek, Esq.  
Texas Bar No. 24070790  
3800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75202-2790  
Telephone: (214) 855-7500  
Facsimile: (214) 978-4375

ATTORNEYS FOR HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P. AND  
NEXPOINT ADVISORS, L.P.

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	
	)	Case No. 19-34054 (SGJ11)
Debtor.	)	
	)	
	)	
	)	

**NOTICE OF APPEAL**

COME NOW Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (the “Appellants”), creditors and parties-in-interest in the above styled and numbered bankruptcy case (the “Bankruptcy Case”) of Highland Capital Management, L.P. (the “Debtor”), and, pursuant to 28 U.S.C. § 158(a), hereby appeal to the United States District Court for the Northern District of Texas that certain *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* (the “Confirmation Order”) entered by the Bankruptcy Court on February 22, 2021 at docket no. 1943 in the Bankruptcy Case.

A copy of the Confirmation is attached hereto as Exhibit “A.”

The names of the parties to the Confirmation Order, and the contact information for their attorneys, is as follows:

1. Appellants:

Highland Capital Management Fund Advisors, L.P.  
NexPoint Advisors, L.P.

Attorneys:

Davor Rukavina  
Julian P. Vasek  
MUNSCH HARDT KOPF & HARR, P.C.  
3800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7587  
Facsimile: (214) 855-7584  
Email: [drukavina@munsch.com](mailto:drukavina@munsch.com)

2. Appellee:

Highland Capital Management, L.P.

Attorneys:

Jeffrey N. Pomerantz  
Ira D. Kharasch  
John A. Morris  
Gregory V. Demo  
Hayley R. Winograd  
PACHULSKI STANG ZIEHL & JONES LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[ikharasch@pszjlaw.com](mailto:ikharasch@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of March, 2021.

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Davor Rukavina  
Davor Rukavina, Esq.  
Texas Bar No. 24030781  
3800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
Email: [drukavina@munsch.com](mailto:drukavina@munsch.com)

**ATTORNEYS FOR HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P. AND  
NEXPOINT ADVISORS, L.P.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 1<sup>st</sup> day of March, 2021, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on counsel for the Appellee.

By: /s/ Davor Rukavina  
Davor Rukavina, Esq.

Case: 21-90011 Document: 00515803515 Page: 241 Date Filed: 03/31/2021

# EXHIBIT D

MUNSCH HARDT KOPF & HARR, P.C.  
 Davor Rukavina, Esq.  
 Texas Bar No. 24030781  
 Julian P. Vasek, Esq.  
 Texas Bar No. 24070790  
 3800 Ross Tower  
 500 N. Akard Street  
 Dallas, Texas 75202-2790  
 Telephone: (214) 855-7500  
 Facsimile: (214) 978-4375

ATTORNEYS FOR HIGHLAND CAPITAL  
 MANAGEMENT FUND ADVISORS, L.P. AND  
 NEXPOINT ADVISORS, L.P.

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	
Debtor.	)	Case No. 19-34054 (SGJ11)
	)	
	)	
	)	

**STATEMENT BY NEXPOINT ADVISORS, L.P. AND HIGHLAND CAPITAL  
 MANAGEMENT FUND ADVISORS, L.P. OF ISSUES ON APPEAL**

COME NOW Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (the “Appellants”), creditors and parties-in-interest in the above styled and numbered bankruptcy case (the “Bankruptcy Case”) of Highland Capital Management, L.P. (the “Debtor”), and, with respect to their *Notice of Appeal* [docket no. 1957], hereby file their *Statement of Issues on Appeal* (the “Statement”).

With respect to the Bankruptcy Court’s *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [docket no. 1943] (the “Confirmation Order”), by which the Bankruptcy Court confirmed

EXHIBIT D  
 000731

the Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [docket no. 1808], as further modified (the "Plan"):

1. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order under the Absolute Priority Rule codified by 11 U.S.C. § 1129(b)(2)(B)(ii) because the Plan provides that the holders of equity interests, in the form of limited partnership interests in the Debtor, retain or receive any property under the Plan even though Class 8 under the Plan, a class of unsecured creditors not paid in full under the Plan, rejected the Plan?

2. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the exculpation provisions of the Plan, contained in Article IX of the Plan, effectuated:

- (i) third party releases (*i.e.* releasing a claim of a non-debtor against a non-debtor) prohibited by the Bankruptcy Court and over which the Bankruptcy Court had no jurisdiction, in direct violation of Fifth Circuit and Northern District of Texas precedent (*see, e.g., In re Pacific Lumber Co.*, 584 F.3d 229, 253 (5th Cir. 2009) and *In re Thru, Inc.*, Civil Action No. 3:17-CV-1958-G, 2018 WL 5113124, at \*22-23 (N.D. Tex. Oct. 19, 2018) and in violation of due process rights;
- (ii) releases of business decisions, actions, and potential liabilities, as opposed to case administration matters;
- (ii) releases of non-debtor entities and their managers and professionals, as opposed to estate managers and professionals; and
- (iv) releases of post-confirmation matters.

3. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the permanent injunction contained in Article IX of the Plan, which prohibits "taking any actions to interfere with the implementation or consummation of the Plan," is overly broad and impermissibly vague, and because the injunction prohibits the Appellants from advising various funds that they advise and manage, or causing said funds, to

remove the Debtor as CLO portfolio manager over various CLOs that the Debtor manages pursuant to executory contracts assumed by the Plan, even though the assumption of an executory contract subjects, as a matter of law, the Debtor to all provisions of the contract on a go-forward basis?

4. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the “gatekeeper” injunction contained in Article IX of the Plan, which requires leave of the Bankruptcy Court upon a showing of a “colorable” claim or cause of action, is:

- (i) not permitted by the Bankruptcy Code and effectively effectuates prohibited third party releases for the same reasons as stated above with respect to exculpation;
- (ii) not permitted with respect to any post-confirmation matter as the Bankruptcy Court will have no jurisdiction over such matters to make any finding or render any order, which would be purely advisory; and
- (iii) not permitted because it violates due process by requiring a party with a claim to seek leave from a court that has no jurisdiction and, if such leave is not granted, such claim will be permanently enjoined without having a court of competent jurisdiction pass on its merits.

5. Whether the Bankruptcy Court erred as a matter of fact in confirming the Plan and entering the Confirmation Order because the “gatekeeper” injunction contained in Article IX of the Plan, which requires leave of the Bankruptcy Court upon a showing of a “colorable” claim or cause of action, is based on the Bankruptcy Court’s finding of vexatious litigation against the Appellants and the need for an ant-filing or pre-filing injunction, when there was no evidence to support such finding?

6. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the Debtor failed to satisfy the 11 U.S.C. § 1129(a)(2) element for confirmation requiring the Debtor to have complied with all applicable provisions of the Bankruptcy Code, which the Debtor admittedly failed to do because it utterly failed to comply with Bankruptcy Rule 2015.3?



RESPECTFULLY SUBMITTED this 11th day of March, 2021.

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Davor Rukavina  
Davor Rukavina, Esq.  
Texas Bar No. 24030781  
3800 Ross Tower  
500 N. Akard Street  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
Email: [drukavina@munsch.com](mailto:drukavina@munsch.com)

**ATTORNEYS FOR HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P. AND  
NEXPOINT ADVISORS, L.P.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 11th day of March, 2021, true and correct copies of this document were electronically served by the Court's ECF system on parties entitled to notice thereof, including on counsel for the Appellee.

By: /s/ Davor Rukavina  
Davor Rukavina, Esq.

Case: 21-90011 Document: 00515803515 Page: 246 Date Filed: 03/31/2021

# EXHIBIT E



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 16, 2021

  
United States Bankruptcy Judge

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	)	Case No. 19-34054 (SGJ11)
Debtor.	)	

**ORDER CERTIFYING APPEALS OF THE CONFIRMATION ORDER  
FOR DIRECT APPEAL TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

CAME ON FOR CONSIDERATION the *Joint Motion for Certification of Appeals of Confirmation Order for Direct Appeal to the Fifth Circuit* (the “Motion”), filed jointly by Highland Capital Management, L.P., Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund, James Dondero, Get Good Trust, and The Dugaboy Investment Trust (collectively, the “Parties”).

EXHIBIT E

By the Motion, the Parties jointly request a certification for a direct appeal to the Fifth Circuit of the following appeals (collectively, the “Appeals”) of the Court’s *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [docket no. 1943] (the “Confirmation Order”):

- (i) the notice of appeal filed by Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. on March 1, 2021 at docket no. 1957;
- (ii) the notice of appeal filed by Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., and NexPoint Strategic Opportunities Fund on March 3, 2021 at docket no. 1966;
- (iii) the notice of appeal filed by James Dondero on March 4, 2021 at docket no. 1970; and
- (iv) the notice of appeal filed by Get Good Trust and The Dugaboy Investment Trust on March 4, 2021 at docket no. 1972.

Having considered the Motion, concluding that the Court has core jurisdiction over the Motion, finding that no further notice or hearing on the Motion is required as all parties affected thereby are the Parties to the Motion, and, based on the Parties joint certification and request as provided for in 28 U.S.C. § 158(d)(2)(B), and based also on the Court’s agreement with the factual predicates underlying the Parties’ certification and request, it is hereby:

ORDERED that the Appeals of the Confirmation Order are certified for direct appeal to the Fifth Circuit because a direct appeal may materially advance the progress of the case or proceeding in which the appeal is taken, within the meaning and operation of 28 U.S.C. § 158(d)(2)(A)(iii).

### END OF ORDER ###

## EXHIBIT 19

No. \_\_\_\_\_

IN THE  
**United States Court of Appeals for the Fifth Circuit**

---

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P.

Proposed Appeal of Highland Income Fund, NexPoint Strategic Opportunities  
Fund, Highland Global Allocation Fund and NexPoint Capital, Inc.

---

*On petition for direct appeal from the United States Bankruptcy Court  
for the Northern District of Texas at No. 19-34054; Appeal pending in the United States  
District Court for the Northern District of Texas at No. 3:21-cv-00539-N*

---

**PETITION FOR DIRECT APPEAL UNDER 28 U.S.C. § 158(d)**

---

A. Lee Hogewood, III  
**K&L GATES LLP**  
4350 Lassiter at North Hills Ave.  
Suite 300  
Raleigh, N.C. 27609  
(919) 743-7306  
lee.hogewood@klgates.com

David R. Fine  
**K&L GATES LLP**  
Market Square Plaza  
17 North Second St.  
18th Floor  
Harrisburg, PA 17101  
(717) 231-5820  
david.fine@klgates.com

Artoush Varshosaz  
**K&L GATES LLP**  
1717 Main St.  
Suite 2800  
Dallas, TX 75201  
(214) 939-5659  
artoush.varshosaz@klgates.com

*Counsel for Petitioners*

## CERTIFICATE OF INTERESTED PERSONS

### **Appellants**

Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund and NexPoint Capital, Inc.

#### *Counsel:*

K&L GATES LLP  
A. Lee Hogewood, III  
Artoush Varshosaz  
David R. Fine

### **Appellee**

Highland Capital Management, L.P.

#### *Counsel:*

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz  
John A. Morris

HAYWARD PLLC  
Melissa S. Hayward  
Zachery Z. Annable

### **Other Appellants:**

1. James Dondero

#### *Counsel:*

BONDS ELLIS EPPICH SCHAFFER JONES LLP  
D. Michael Lynn  
John Y. Bonds, III  
Clay M. Taylor  
Bryan C. Assink



2. Get Good Trust  
The Dugaboy Investment Trust

*Counsel:*

HELLER, DRAPER & HORN, L.L.C.  
Douglas S. Draper  
Leslie A. Collins  
Greta M. Brouphy

3. NexPoint Advisors, L.P.  
Highland Capital Management Fund Advisors, L.P.

*Counsel:*

MUNSCH HARDT KOPF & HARR, P.C.  
Davor Rukavina

## TABLE OF CONTENTS

INTRODUCTION.....	1
FACTUAL AND PROCEDURAL HISTORY .....	3
QUESTIONS PRESENTED .....	11
REASONS FOR THE COURT TO GRANT THIS PETITION.....	12
A. The Bankruptcy Court correctly determined that an immediate appeal would materially advance the progress of the case. ....	13
B. The Bankruptcy Court’s Confirmation Order involves questions of law on which lower courts have differed such that this Court’s resolution is necessary.....	14
C. The Bankruptcy Court’s determination that certain protections afforded to a creditors’ committee and its members should be extended to “other parties in a particular chapter 11 case that perform similar roles to a creditors’ committee and its members” raises a question of law as to which there is no controlling authority .....	20
CONCLUSION.....	22

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

*Bank of N.Y. Trust Co., N.A. v. Official Unsecured Creditors’ Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009).....*passim*

*Dropbox, Inc. v. Thru, Inc. (In re Thru, Inc.)*,  
No. 3:17-CV-1958-G, 2018 WL 5113124 (N.D. Tex. Oct. 19, 2018) ..... 16, 17, 19

*In re MPF Holding U.S. LLC*, 444 B.R. 719 (Bankr. S.D. Tex. 2011)..... 13

*In re MPF Holding U.S. LLC*, 701 F.3d 449 (5th Cir. 2012) ..... 14

*In re OCA, Inc.*, 552 F.3d 413 (5th Cir. 2008) ..... 13

*In re Patriot Place, Ltd.*, 486 B.R. 773 (Bankr. W.D. Tex. 2013) .....16, 19

*In re Pilgrim’s Pride Corp.*, 08-45664-DML-11, 2010 WL 200000  
(Bankr. N.D. Tex. Jan. 14, 2010)..... 18

**Statutes**

11 U.S.C. § 524(e)..... 18

11 U.S.C. § 1103(c) .....20

28 U.S.C. § 158(d) ..... 1, 12

28 U.S.C. § 158(d)(2)(A)(i) ..... 2, 12, 13, 21

28 U.S.C. § 158(d)(2)(A)(ii) .....2, 12, 13, 15, 20

28 U.S.C. § 158(d)(2)(A)(iii) ..... 1, 11, 13, 14

## INTRODUCTION

Section 158(d)(2) allows a direct appeal from a bankruptcy court to the court of appeals if at least one of four conditions is met. *See* 28 U.S.C. § 158(d). The bankruptcy court order at issue here, which confirmed a complex plan and included a number of contested provisions, independently meets three of Section 158(d)(2)'s provisions.

*First*, as the Bankruptcy Court held when it certified its confirmation order for direct appeal, a direct appeal “may materially advance the progress of the case” because (1) the interests at stake guarantee that the case will ultimately be appealed to this Court, (2) the parties have significant interests in obtaining this Court’s prompt review so that they can order their affairs accordingly in light of certain future actions Highland Capital Management, L.P. (the “Debtor”), proposes to take and (3) the parties will collectively spend hundreds of thousands of dollars in district-court proceedings that will almost certainly be unnecessary in light of this Court’s ultimate review. *See* 28 U.S.C. § 158(d)(2)(A)(iii).

*Second*, the confirmed plan includes broad exculpation and injunction provisions the Funds believe *Bank of N.Y. Trust Co., N.A. v. Official Unsecured Creditors’ Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009), plainly

prohibits.<sup>1</sup> A number of district courts and bankruptcy courts in this Circuit read *Pacific Lumber* as the Funds do, but the Bankruptcy Court read the case more narrowly. Accordingly, there is a conflict among the “lower” courts on a question of law that requires this Court’s resolution. *See* 28 U.S.C. § 158(d)(2)(A)(ii).

*Third*, the Bankruptcy Court held that the protections the Bankruptcy Code affords to creditors’ committees and their members may be extended to “other parties in a particular chapter 11 case that perform similar roles to a creditors’ committee and its members.” Neither this Court nor the Supreme Court has addressed or approved such a protection-by-analogy holding, and, so, there is no controlling authority on that legal question. *See* 28 U.S.C. § 158(d)(2)(A)(i).

The Confirmation Order meets the requirements of Section 158(d)(2) in three independent ways, and the Funds request that the Court allow a direct appeal.<sup>2</sup>

---

<sup>1</sup> The Funds, who are the petitioners, include Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund and NexPoint Capital, Inc.

<sup>2</sup> As other aggrieved parties have noted in their separate petition for permission, there are issues for review beyond the exculpation and injunction issues. Because of space constraints, the Funds focus here on those issues that most plainly demonstrate that the confirmation order should be directly appealed; the Funds reserve the right to raise additional issues should the Court accept the direct appeal.

## FACTUAL AND PROCEDURAL HISTORY

The Bankruptcy Court fairly noted that this is not a garden-variety bankruptcy case. However, while the facts and procedural history are complex, the Funds believe the Court needs only a summary to understand this petition.

James Dondero co-founded Highland Capital Management L.P. (the “Debtor”) in 1993.<sup>3</sup> The Debtor provided services to and support for an extensive network of investment entities, trusts, other ventures and investment advisers.<sup>4</sup> The Debtor invested and managed billions of dollars on behalf of itself, its subsidiaries and affiliates and other unaffiliated entities.<sup>5</sup> The Debtor provided such services to collateralized loan obligation vehicles (“CLOs”).<sup>6</sup> The CLOs own assets, generally securities at this stage, and the Debtor manages them pursuant to a series of portfolio-management agreements between itself and the CLOs.<sup>7</sup>

---

<sup>3</sup> Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief (the “Confirmation Order”) at ¶ 4 (attached at Tab “A”).

<sup>4</sup> Confirmation Order at ¶ 6.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (the “Plan”) at Exh. B (attached at Tab “B”).

The Debtor filed for Chapter-11 bankruptcy protection in Delaware in October 2019.<sup>8</sup>

The Debtor and the Official Unsecured Creditors' Committee (the "Committee") had a difficult relationship from the start.<sup>9</sup> First, the Committee moved for a change of venue to the Northern District of Texas (which was granted).<sup>10</sup> Second, the Committee and, ultimately, the bankruptcy trustee pushed for appointment of a Chapter-11 trustee.<sup>11</sup>

On January 9, 2020, the Debtor, the Committee and Mr. Dondero entered into a stipulation and consent order (the "January 9 Order").<sup>12</sup> The January 9 Order provided, among other things, for the removal of Mr. Dondero from the management of the Debtor, replaced him with a board of independent directors (the "Independent Directors) and prohibited Mr. Dondero from causing "Related Entities" to terminate contracts with the Debtor.<sup>13</sup>

---

<sup>8</sup> *Id.* at ¶ 4.

<sup>9</sup> *Id.* at ¶ 11.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at ¶ 12.

<sup>13</sup> *Id.* The Independent Directors include James P. Seery, Jr.; John S. Dubel and retired bankruptcy judge Russell Nelms. *Id.*



Among other things, Mr. Dondero beneficially owns two investment advisers, Highland Capital Management Fund Advisors, L.P., and NexPoint Advisors, L.P. (the “Advisors”), because he owns their general partners.<sup>14</sup>

Petitioners are several retail investment funds (the “Funds”). The Funds invest more than \$1 billion for the benefit of thousands of investors/shareholders. In doing so, the Funds receive advice and services from the Advisors. The Advisors and the Funds are subject to the regulatory regime established pursuant to the Investment Company Act of 1940 and the Investment Advisers Act of 1940. Among other investments, the Funds hold interests in a number of the CLOs described above.

Because Mr. Dondero is a beneficial owner, the Advisors are “Related Entities” under the January 9 Order. At the time of the January 9 Order, each of the Advisors was a party to a shared-services agreement with the Debtor. Under the respective shared-services agreements, the Debtor was required to provide a wide range of services and support to the Advisors (and by extension, to the Funds), including accounting, legal, clerical, valuation and other “back-office” services, as well as office space, in exchange for a fee. The Advisors’ compliance with their

---

<sup>14</sup> The Advisors have filed a separate appeal from the Confirmation Order and have filed a separate petition seeking permission to appeal directly to this Court. That petition is docketed at No. 21-90011.

regulatory and fiduciary obligations to the Funds was facilitated by their access to shared services provided by the Debtor.

While the January 9 Order limited Mr. Dondero’s ability to cause the Advisors to terminate agreements, the Debtor was not so limited. Thus, the Debtor notified the Advisors on November 30, 2020, that the shared-services agreements would be terminated effective January 31, 2021 (as extended, through February 28). In December 2020, the Advisors advised—and the Funds agreed—that the Advisors should seek limited relief from the Bankruptcy Court with respect to the Debtor’s role as portfolio manager of the CLOs. Specifically, the Advisors and the Funds requested that the Bankruptcy Court prohibit the Debtor from trading or disposing of CLO assets pending the confirmation hearing on the Debtor’s plan.<sup>15</sup> After the Bankruptcy Court denied the motion, the Advisors and the Funds requested that the Debtor not trade in CLO assets on a voluntary basis. The Debtor denied that request.

Outside of the bankruptcy context, the Funds collectively hold the majority of preference shares in three CLOs for which the respective portfolio-management agreements allow them to remove the Debtor as portfolio manager “for cause.” While the Debtor remained in bankruptcy and before confirmation of the Plan, the

---

<sup>15</sup> The CLO assets are not property of the bankruptcy estate; they are, instead, assets under the Debtor’s management and for which the Debtor is paid a management fee.

Bankruptcy Court would have had to approve any such removal in the form of relief from the automatic stay. After confirmation, the general rule is that contracts may be terminated according to their terms, if those contracts have been assumed.

Over objections from the Funds and others, the Bankruptcy Court confirmed the Plan on February 22, 2021. The Debtor’s representatives presented the Plan as an “asset-maximization plan.” Under the confirmed Plan, the reorganized Debtor intends to liquidate its assets over the course of an approximate two-year period. In addition to liquidating its assets, the Debtor, having assumed the portfolio-management agreements, continues to manage the assets of others, including the CLOs. It similarly intends to liquidate the assets of others within the same period.

As noted, the Debtor assumed the portfolio-management agreements. However, the Plan goes further than merely assuming and reinstating those agreements and binding the parties to their written terms.

The Plan, as approved over objections by the Funds and others, includes a number of disputed provisions. Article IX includes both exculpation and injunction provisions:

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the

Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.<sup>16</sup>

Article I.B of the Plan defines “Exculpated Parties” broadly:

“*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii) ...<sup>17</sup>

---

<sup>16</sup> See Plan at IX.C.

<sup>17</sup> *Id.* at I.B.

Thus, the approved Plan exculpates not only the Debtor but also the Independent Directors, employees of the Debtor, officers and directors of the Debtor and professionals retained by the Debtor—among others. That exculpation extends not only to creditors’ direct claims but to the negotiation, administration and implementation of the Plan as well as to ordinary business matters and post-confirmation matters related to plan implementation.<sup>18</sup>

The accompanying Plan injunction is broad as well. It provides, among other things, that “all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.”<sup>19</sup> (“Enjoined Parties” is defined broadly to include, among others, all entities that “have held, hold, or may hold claims against the Debtor’s equity interests and any entity “that has appeared and/or filed any motion, objection, or other pleading” in the Chapter-11 case.<sup>20</sup>) The Confirmation Order bars any Enjoined Party from commencing or pursuing a claim or cause of action against

---

<sup>18</sup> To be clear, the exculpation is not a full release but imposition of a particularly high burden of proof on anyone seeking to assert a claim against an Exculpated Party. Essentially, an Exculpated Party is released unless its acts or omissions “constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct ...” Plan at IX.C. That heightened burden is material in that, among other things, it releases that large group of persons and entities from claims for negligence.

<sup>19</sup> Plan at IX.F.

<sup>20</sup> *Id.* at I.B.

any “Protected Party” unless the Bankruptcy Court first determines that the claim or cause of action is “colorable.”<sup>21</sup> (“Protected Parties” is defined broadly to include, among others, the Debtor, the Debtor’s employees, the Committee and its members and professionals retained by the Debtor and the Committee in the Chapter-11 case.<sup>22</sup>)

The Funds believe that the exculpation and gatekeeper/channeling-injunction provisions exceed the scope of what this Court has previously permitted. The Funds contend that these provisions restrict their ability to act quickly and appropriately in fulfillment of their investment objectives and impair their ability to protect their retail investors. The issue is of critical and practical importance to the Funds because they invest in a number of illiquid assets with a long-term investment horizon. On the other hand, the Debtor’s liquidation plan anticipates a short, two-year window for the Debtor to liquidate its assets as well as those assets it manages. Thus, the Debtor’s short-term liquidation goal conflicts with the Funds’ plan to hold the assets for a longer term. Were the Debtor to sell the CLO assets as planned, it would act against the Fund’s wishes, and the Funds believe the challenged Plan terms

---

<sup>21</sup> Plan at IX.F.

<sup>22</sup> *Id.* at I.B.

improperly interfere with the Funds' right and ability to remove the manager in such a situation.

### QUESTIONS PRESENTED

1. Whether the Court should accept direct review of the Bankruptcy Court's Confirmation Order because an immediate appeal may materially advance the progress of the case, *see* 28 U.S.C. § 158(d)(2)(A)(iii), since—

a. all parties concur that the interests at stake in this bankruptcy matter are such that, if the appeals are heard in the District Court, it is all but certain that the non-prevailing party or parties will then take an appeal or appeals to this Court;

b. all parties concur that, in light of the inevitability of this Court's review, requiring the parties to pursue appeals first in the District Court would delay finality of the Plan for the Debtor, creditors and other interested parties by a year or more; and

c. all parties concur that, in light of the inevitability of this Court's review, requiring the parties to pursue appeals first in the District Court would cause the parties collectively to incur hundreds of thousands of dollars in attorneys' fees for ultimately unnecessary proceedings in the District Court.



2. Whether the Court should accept direct review of the Bankruptcy Court's Confirmation Order because that order involves a question of law requiring resolution of conflicting decisions since a number of cases in this Circuit have interpreted *Pacific Lumber* to prohibit inclusion in a bankruptcy plan of broad exculpation and injunction provisions such as those the Bankruptcy Court approved in this case. *See* 28 U.S.C. § 158(d)(2)(A)(ii).

3. Whether the Court should accept direct review of the Confirmation Order because the Bankruptcy Court's holding that the protections the Bankruptcy Code affords to creditors' committees and their members may be extended to "other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members" is a question of law as to which there is no controlling decision of this Court or the Supreme Court. *See* 28 U.S.C. § 158(d)(2)(A)(i).

### **REASONS FOR THE COURT TO GRANT THIS PETITION**

Section 158(d)(2) of Title 28 of the U.S. Code provides that a bankruptcy court may certify an order for direct appeal to the court of appeals when the order (1) involves a controlling issue of law as to which there is no controlling decision of the court of appeals or the Supreme Court, (2) the order involves a question of law requiring resolution of conflicting decisions or (3) an immediate appeal from the order may materially advance the progress of the case or proceeding in which the

appeal is taken. *See* 28 U.S.C. § 158(d)(2)(A)(i)-(iii); *In re OCA, Inc.*, 552 F.3d 413, 418 (5th Cir. 2008). If the bankruptcy court certifies the order, the would-be appellant must then file a petition with the court of appeals seeking permission to appeal under the same standard. *Id.*

The parties jointly asked the Bankruptcy Court to certify its confirmation order for direct appeal to this Court, and the Bankruptcy Court did so.<sup>23</sup>

***A. The Bankruptcy Court correctly determined that an immediate appeal would materially advance the progress of the case.***

In granting the parties’ joint motion for certification, the Bankruptcy Court agreed that “a direct appeal may materially advance the progress of the case or proceeding in which the appeal is taken.”<sup>24</sup> The Funds agree.

In *In re MPF Holding U.S. LLC*, 444 B.R. 719 (Bankr. S.D. Tex. 2011), a bankruptcy court held that a direct appeal would be appropriate because the stakes were sufficiently high that it was particularly likely that any decision by the district court would ultimately be appealed to this Court such that requiring the parties first to appeal to the district court would unnecessarily delay a final resolution of the

---

<sup>23</sup> *See* Order Certifying Appeals of the Confirmation Order for Direct Appeal to the United States Court of Appeals for the Fifth Circuit (the “Certification Order”) (Tab “C”).

<sup>24</sup> *Id.* at 2.

bankruptcy. *Id.* at 727. This Court accepted and decided the appeal. *See* 701 F.3d 449 (5th Cir. 2012).

Moreover, as the parties informed the Bankruptcy Court in requesting its certification for direct appeal, the parties, creditors and others would benefit from a direct appeal in that they would have this Court’s decision that much sooner and the bankruptcy case could be fully administered and closed. Among other things, as noted above the Debtor intends to take certain steps in the next two years—steps the Funds believe may impair their interests and those of the CLOs—and the Funds believe the Plan as confirmed leaves them with an insufficient remedy. When it reviews the Plan, this Court will of course either reject or allow the challenged provisions, but the progression of events and the Debtor’s plans make it important for the parties to have that resolution sooner rather than later.

Thus, the case meets the requirements of Section 158(d)(2)(A)(iii), and the Funds request that the Court grant permission for a direct appeal from the Bankruptcy Court’s Confirmation Order.

***B. The Bankruptcy Court’s Confirmation Order involves questions of law on which lower courts have differed such that this Court’s resolution is necessary.***

On at least one of the principal issues on which the Funds seek permission to appeal, the Bankruptcy Court’s interpretation of the law conflicts with that of other

courts. While the Funds believe the Bankruptcy Court erred in not following *Pacific Lumber* such that its Confirmation Order should be reversed, they will focus here on detailing the conflict rather than arguing the ultimate merits because the conflict is the focus under § 158(d)(2)(A)(ii).

In this Circuit, *Pacific Lumber* is important—and, in the Funds view, controlling—authority regarding the permissible scope of exculpation provisions and related injunctions. The procedural background of *Pacific Lumber* is lengthy and complex, but the facts relevant here are neither. The bankruptcy court approved a plan that included an exculpation provision that protected not just the debtor but a number of other persons and entities, including the debtor’s personnel, the current owners of the reorganized debtor (MRC and Marathon) and two entities created by the plan (Newco and Townco) into which certain of the debtor’s assets were transferred as well as the personnel of those parties. On direct appeal from the bankruptcy court, this Court rejected the exculpation of non-debtor parties:

The plan releases MRC, Marathon, Newco, Townco, and the Unsecured Creditors’ Committee (and their personnel) from liability—other than for willfulness and gross negligence—related to proposing, implementing, and administering the plan. The law states, however, that “discharge of a debt of the debtor does not affect the liability of any other entity on such debt.” 11 U.S.C. § 524(e).

\*\*\*

We see little equitable about protecting the released non-debtors from negligence suits arising out of the reorganization. In a variety of contexts, this court has held that Section 524(e) only releases the

debtor, not co-liable third parties. *See, e.g., In re Coho Resources, Inc.*, 345 F.3d 338, 342 (5th Cir. 2003); *Hall v. National Gypsum Co.*, 105 F.3d 225, 229 (5th Cir. 1997); *Matter of Edgeworth*, 993 F.2d 51, 53-54 (5th Cir. 1993); *Feld v. Zale Corporation*, 62 F.3d 746 (5th Cir. 1995). These cases seem broadly to foreclose non-consensual non-debtor releases and permanent injunctions.

\*\*\*

There are no allegations in this record that either MRC/Marathon or their or the Debtors' officers or directors were jointly liable for any of Palco's or Scopac's pre-petition debt. They are not guarantors or sureties, nor are they insurers. Instead, the essential function of the exculpation clause proposed here is to absolve the released parties from any negligent conduct that occurred during the course of the bankruptcy. The fresh start § 524(e) provides to debtors is not intended to serve this purpose.

584 F.3d at 251-52 (footnotes omitted). A number of courts have interpreted *Pacific Lumber* broadly to reject exculpation provisions that reach beyond the debtor itself and the creditors' committee. For example, in *In re Patriot Place, Ltd.*, 486 B.R. 773 (Bankr. W.D. Tex. 2013), the court wrote that this Court "takes a very restrictive approach to non-debtor releases in bankruptcy cases" and cited *Pacific Lumber* for the proposition that "[t]he Fifth Circuit cases seem 'broadly to foreclose non-consensual non-debtor releases and permanent injunctions.'" 486 B.R. at 882. In *Dropbox, Inc. v. Thru, Inc. (In re Thru, Inc.)*, No. 3:17-CV-1958-G, 2018 WL 5113124 (N.D. Tex. Oct. 19, 2018), the district court rejected an exculpation clause much like the one in the Plan in this case and offered the following analysis:

In *In re The Pacific Lumber Company*, the plan in question released the debtor and its personnel from liability, other than for willfulness and gross negligence, “related to proposing, implementing, and administering the plan.” *In re The Pacific Lumber Company*, 584 F.3d at 251. There, the Fifth Circuit determined that the broad exculpation provision contained in the plan was designed “to absolve the released parties from any negligent conduct that occurred during the course of the bankruptcy” which the fresh start provision in Bankruptcy Code section 524(e)[14] was not intended to do. *Id.* at 252. Here, Thru’s plan releases Thru, its officers, directors, and various other personnel from liability, except for acts or omissions made in bad faith, “in connection with or related to formulating, negotiating, implementing, confirming, or consummating” the plan, disclosure statement, or any plan document. Modified Chapter 11 Plan at 25, ¶ 9.7 (emphasis added).

The appellees’ attempts to distinguish their plan’s exculpation language from that of the language used in *In re The Pacific Lumber Company* are unpersuasive.

*Id.* at \*22-\*23. The court also rejected an injunction provision that was “broad enough to cover non-debtor third parties ...” because the court read *Pacific Lumber* to preclude such an injunction. *Id.* at \*21 (citing *Pacific Lumber*, 584 F.3d at 252 (Fifth Circuit authority “seems broadly to foreclose non-consensual non-debtor releases and permanent injunction.”)).

A judge in the same bankruptcy court from which this matter arises understood *Pacific Lumber* to preclude non-consensual third-party exculpation:

The plan in *Pacific Lumber* provided numerous third parties with protection from liability for their negligent conduct during the course of the chapter 11 case including liability related to proposing, implementing, and administering the plan. The third-party protections in *Pacific Lumber* applied to the debtors’ officers and directors as well as

the companies that proposed the plan and that ultimately acquired majority ownership of the reorganized debtors. Although a third-party exculpation provision arguably might be defended as justified by the bankruptcy court's equitable powers given by Code § 105, Chief Judge of the Fifth Circuit Court of Appeals Edith Jones struck the exculpatory provisions because the Court saw "little equitable about protecting the released non-debtors from negligence suits arising out of the reorganization." *Id.* at 252.

\*\*\*

Debtors and the Equity Committee argue that the ruling in *Pacific Lumber* is limited to the facts of that case. The court disagrees. Chief Judge Jones wrote that "non-debtor releases are most appropriate as a method to channel mass claims toward a specific pool of assets." *Id.* at 252. Chief Judge Jones also cited to several prior Fifth Circuit decisions ... stating that, "these cases seem broadly to foreclose non-consensual non-debtor releases and permanent injunctions." *Id.* These statements persuade the court that the ruling in *Pacific Lumber* is not limited to its facts. Indeed, there is nothing in the *Pacific Lumber* opinion which, in the court's view, can reasonably be read to limit its ruling to the facts of that case.

*In re Pilgrim's Pride Corp.*, 08-45664-DML-11, 2010 WL 200000 at \*4-\*5 (Bankr. N.D. Tex. Jan. 14, 2010).

The Bankruptcy Court in this matter understood *Pacific Lumber* differently.<sup>25</sup>

The court held that *Pacific Lumber* focused on 11 U.S.C. § 524(e) but that the case

---

<sup>25</sup> The Bankruptcy Court wrote that certain earlier orders in the case, including the January 9 Order described in the statement of the case, above, and a July 16, 2020, order had already exculpated the Independent Directors and Mr. Seery and were due *res judicata* effect. See Confirmation Order at ¶ 73. When the merits are before this Court, the Funds will demonstrate that the Bankruptcy Court was mistaken in that determination, and in any event those orders would not shield the exculpation and injunction provisions from appellate review.



does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditor's committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties. ... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on the committee. *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy based and based on creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members.<sup>26</sup>

Thus, the Bankruptcy Court read *Pacific Lumber* as rejecting only third-party exculpations in the Section-524(e) context but not in others. That holding is plainly in conflict with cases like *Patriot Place*, 486 B.R. at 882 ("[t]he Fifth Circuit cases seem 'broadly to foreclose non-consensual non-debtor releases and permanent injunctions.'"), and *In re Thru*, 2018 WL 5113124 at \*22.

The Bankruptcy Court also overruled the Funds' objection that the Plan's channeling injunction is foreclosed by *Pacific Lumber* because it extends impermissibly to protect third parties.<sup>27</sup> As noted, *In re Thru* understood *Pacific*

---

<sup>26</sup> Confirmation Order at ¶ 74(a).

<sup>27</sup> *Id.* at ¶¶ 75-76.

*Lumber* to prohibit non-consensual, permanent injunctions in favor of non-debtors.

See *In re Thru*, 2018 WL 5113124 at \*21.

While the Funds believe this Court will confirm that *Pacific Lumber* should be read more broadly than the Bankruptcy Court did, the Court need not decide that issue now. It is enough for the Court to decide that there are conflicting decisions in need of this Court's resolution. See § 158(d)(2)(A)(ii). There are.

**C. *The Bankruptcy Court's determination that certain protections afforded to a creditors' committee and its members should be extended to "other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members" raises a question of law as to which there is no controlling authority.***

As noted in the previous section, in its discussion of *Pacific Lumber*, the Bankruptcy court held that

*Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy based and based on creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members.<sup>28</sup>

The Funds believe that protection-by-analogy holding is wrong under both *Pacific Lumber* and Section 1103(c), but for present purposes it is sufficient to say that the

---

<sup>28</sup> *Id.* at ¶ 74(a).

Bankruptcy Court appears to be the first court to reach that holding and that neither this Court nor the Supreme Court has addressed it.

Section 158(d)(2)(A)(i) permits a direct appeal when the bankruptcy court's order "involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States ..." The legal question of whether parties "that perform similar roles to a creditors' committee and its members" should be entitled to the same protections as creditors' committees and their members is such a question.

## CONCLUSION

Accordingly, the Funds respectfully request that the Court grant this petition and allow a direct appeal to this Court from the Bankruptcy Court's Confirmation Order.

A. Lee Hogewood, III  
4350 Lassiter at North Hills Ave.  
Suite 300  
Raleigh, N.C. 27609  
(919) 743-7306  
lee.hogewood@klgates.com

Artoush Varshosaz  
1717 Main St., Suite 2800  
Dallas, TX 75201  
(214) 939-5659  
artoush.varshosaz@klgates.com

Respectfully submitted,  
**K&L GATES LLP**

/s/ David R. Fine  
David R. Fine  
Market Square Plaza  
17 North Second St.  
Harrisburg, PA 17101  
(717) 231-5820  
david.fine@klgates.com

*Counsel for Petitioners*  
April 13, 2021

## CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel certifies that this brief:

(i) complies with the type-volume limitation of Federal Rule of Appellate Procedure 5(C)(1) because it contains 4,912 words, including footnotes and excluding the cover, certificate of interested persons, table of contents, table of authorities, certificate of compliance and certificate of service.

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2010 and is set in Equity font in a size equivalent to 14 points or larger.

/s/ David R. Fine

## CERTIFICATE OF SERVICE

I certify that, on April 13, 2021, I filed the attached document with the Court's CM/ECF system and that I also e-mailed a copy with exhibits to the following:

Jeffrey Pomerantz, Esq. ([jpomerantz@pszlaw.com](mailto:jpomerantz@pszlaw.com))  
John A. Morris, Esq. ([jmorris@pszlaw.com](mailto:jmorris@pszlaw.com))  
*Counsel for the Debtor*

John Bonds, Esq. ([john@bondsellis.com](mailto:john@bondsellis.com))  
Clay Taylor, Esq. ([clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com))  
*Counsel for J. Dondero*

Douglas Draper, Esq. ([ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com))  
*Counsel for the Dugaboy Investment Trust*

Davor Rukavina, Esq. ([drukavina@munsch.com](mailto:drukavina@munsch.com))  
*Counsel for the Advisors*

/s/ David R. Fine

Case: 21-90011 Document: 00515826308 Page: 30 Date Filed: 04/14/2021

Tab “A”





CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

  
United States Bankruptcy Judge

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

\_\_\_\_\_)  
In re: ) Chapter 11  
\_\_\_\_\_)  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> ) Case No. 19-34054-sgj11  
\_\_\_\_\_)  
Debtor. )  
\_\_\_\_\_)

**ORDER (I) CONFIRMING THE FIFTH AMENDED  
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court<sup>2</sup> having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

*Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

*Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

*Certificate of Service* dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed<sup>3</sup> pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;<sup>4</sup> (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

<sup>4</sup> The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor’s Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an “asset monetization plan” because it involves the orderly wind-down of the Debtor’s estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor’s economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the



bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are



offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor’s Operational History.** The Debtor’s primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor’s current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was “run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits.” The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor’s Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.<sup>5</sup> As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,<sup>6</sup> and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

---

<sup>5</sup> This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

<sup>6</sup> See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also



included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.<sup>7</sup> The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

---

<sup>7</sup> See *Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

**17. Questionability of Good Faith as to Outstanding Confirmation**

**Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." See Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.



22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is



Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trust Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

**46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

**47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the



Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, un rebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and



certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R. 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.<sup>8</sup> Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

---

<sup>8</sup> See Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor’s release of the Debtor’s and Estate’s claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a “disguised” release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor’s conditional release of claims against employees, as identified in the Plan, and the Plan’s conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual



fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, *Collier on Bankruptcy*, ¶ 1103.05[4][b] (15<sup>th</sup> Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor’s enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors’ committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber’s* policy of exculpating creditors’ committees and their members from “being sued by persons unhappy with the committee’s performance during the case or unhappy with the outcome of the case” is applicable to the Independent Directors in this Chapter 11 Case.<sup>9</sup>

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that “costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization.” *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero’s pot plan does not get approved, that Mr. Dondero will “burn the place down.” The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

---

<sup>9</sup> The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan’s release, discharge and release provisions (the “Injunction Provision”). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor’s assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor’s assets and those assets could be monetized for less money to the detriment of the Debtor’s creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a “third-party release.” The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms “implementation” and “consummation” are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the “Gatekeeper Provision”). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court’s time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor’s settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court’s order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero’s affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the “Dondero Post-Petition Litigation”).

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery’s credible testimony, that if Mr. Dondero’s plan proposal was not accepted, he would “burn down the place.” The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery’s testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result



in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5<sup>th</sup> Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5<sup>th</sup> Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5<sup>th</sup> Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots<sup>10</sup> – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

---

<sup>10</sup> As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**A. Confirmation of the Plan.** The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.<sup>11</sup>

**B. Findings of Fact and Conclusions of Law.** The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

**C. Objections.** Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

**D. Plan Supplements and Plan Modifications.** The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

---

<sup>11</sup> The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**E. Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

**F. Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the



representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

**G. Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

**H. Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

**I. Preservation of Causes of Action.** Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**J. Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

**K. Cancellation of Equity Interests and Issuance of New Partnership**

**Interests.** On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

**L. Transfer of Assets to Claimant Trust.** On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

**M. Transfer of Estate Claims to Litigation Sub-Trust.** On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

**N. Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

**O. Objections to Claims.** The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

**P. Assumption of Contracts and Leases.** Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

**Q. Rejection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

**R. Assumption of Issuer Executory Contracts.** On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers<sup>12</sup> a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples” and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

**S. Release of Issuer Claims.** Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

---

<sup>12</sup> The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.



assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

**T. Release of Debtor Claims against Issuer Released Parties.** Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Feronia Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

**U. Authorization to Consummate.** The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

**V. Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

**W. Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

**X. Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**Y. Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

*provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

**Z. Releases by the Debtor.** On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

**AA. Injunction.** Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,





**Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.**

**BB. Duration of Injunction and Stays.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

**CC. Continuance of January 9 Order and July 16 Order.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

**DD. No Governmental Releases.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

**EE. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**FF. Cancellation of Notes, Certificates and Instruments.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

**GG. Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

**HH. Post-Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

**II. Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**JJ. Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

**KK. Notice of Effective Date.** As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

**LL. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

**MM. Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

**NN. References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

**OO. Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

**PP. Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

**QQ. Resolution of Objection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.



**RR. Resolution of Objections of Scott Ellington and Isaac Leventon.**

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

**SS. No Release of Claims Against Senior Employee Claimants.** For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

**TT. Resolution of Objection of Internal Revenue Service.** Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

**UU. IRS Proof of Claim.** Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

**VV. CLO Holdco, Ltd. Settlement** Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

**WW. Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

**XX. Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**YY. Dissolution of the Committee.** On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

**ZZ. Miscellaneous.** After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

**###END OF ORDER###**

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 6**



SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>				<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>				<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

Vol. 8

001349

001352

001359

001361

001369

001381

Thru Vol. 10

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018				
	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024				
	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036				
	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051				
Thru Vol 14				
Vol. 15	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
002916				
Thru Vol. 18				
Vol. 19	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
003783				
Thru Vol. 22				



001. 22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

*/s/ Mazin A. Sbaiti*

\_\_\_\_\_  
Mazin A. Sbaiti



**Exhibit A**

**Fifth Amended Plan (as Modified)**

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

---

In re: )  
 ) Chapter 11  
 )  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> ) Case No. 19-34054-sgj11  
 )  
Debtor. )  
 )

---

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

---

<b>PACHULSKI STANG ZIEHL &amp; JONES LLP</b>	<b>HAYWARD &amp; ASSOCIATES PLLC</b>
Jeffrey N. Pomerantz (CA Bar No. 143717)	Melissa S. Hayward (TX Bar No. 24044908)
Ira D. Kharasch (CA Bar No. 109084)	Zachery Z. Annable (TX Bar No. 24053075)
Gregory V. Demo (NY Bar No. 5371992)	10501 N. Central Expy, Ste. 106
10100 Santa Monica Boulevard, 13th Floor	Dallas, TX 75231
Los Angeles, CA 90067	Telephone: (972) 755-7100
Telephone: (310) 277-6910	Facsimile: (972) 755-7110
Facsimile: (310) 201-0760	Email: MHayward@HaywardFirm.com
Email: jpomerantz@pszjlaw.com	ZAnnable@HaywardFirm.com:
ikharasch@pszjlaw.com	
gdemo@pszjlaw.com	

Counsel for the Debtor and Debtor-in-Possession

---

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

ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
 GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law..... 1

    B. Defined Terms ..... 2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 17

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
 AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
 Equity Interests ..... 18

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes ..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes ..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests..... 19

    I. Special Provision Governing Unimpaired Claims ..... 24

    J. Subordinated Claims ..... 24

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN ..... 24

    A. Summary ..... 24

    B. The Claimant Trust ..... 25

        1. Creation and Governance of the Claimant Trust and Litigation  
 Sub-Trust..... 25

        2. Claimant Trust Oversight Committee ..... 26

	<u>Page</u>
3. Purpose of the Claimant Trust .....	27
4. Purpose of the Litigation Sub-Trust.....	27
5. Claimant Trust Agreement and Litigation Sub-Trust Agreement. ....	27
6. Compensation and Duties of Trustees. ....	29
7. Cooperation of Debtor and Reorganized Debtor. ....	29
8. United States Federal Income Tax Treatment of the Claimant Trust. ....	29
9. Tax Reporting. ....	30
10. Claimant Trust Assets. ....	30
11. Claimant Trust Expenses. ....	31
12. Trust Distributions to Claimant Trust Beneficiaries. ....	31
13. Cash Investments. ....	31
14. Dissolution of the Claimant Trust and Litigation Sub-Trust. ....	31
C. The Reorganized Debtor .....	32
1. Corporate Existence .....	32
2. Cancellation of Equity Interests and Release.....	32
3. Issuance of New Partnership Interests .....	32
4. Management of the Reorganized Debtor .....	33
5. Vesting of Assets in the Reorganized Debtor .....	33
6. Purpose of the Reorganized Debtor .....	33
7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets .....	33
D. Company Action .....	34
E. Release of Liens, Claims and Equity Interests.....	35
F. Cancellation of Notes, Certificates and Instruments.....	35

	<u>Page</u>
G. Cancellation of Existing Instruments Governing Security Interests.....	35
H. Control Provisions .....	35
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	36
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	38
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	39
C. Cash Distributions.....	40
D. Disputed Claims Reserve.....	40
E. Distributions from the Disputed Claims Reserve .....	40
F. Rounding of Payments.....	40
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	41
I. General Distribution Procedures.....	41
J. Address for Delivery of Distributions.....	41
K. Undeliverable Distributions and Unclaimed Property.....	41
L. Withholding Taxes.....	42

	<u>Page</u>
M. Setoffs .....	42
N. Surrender of Cancelled Instruments or Securities .....	42
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	43
A. Filing of Proofs of Claim .....	43
B. Disputed Claims.....	43
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	43
D. Allowance of Claims and Equity Interests.....	44
1. Allowance of Claims.....	44
2. Estimation .....	44
3. Disallowance of Claims .....	44
ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	45
A. Conditions Precedent to the Effective Date .....	45
B. Waiver of Conditions .....	46
C. Dissolution of the Committee .....	46
ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	47
A. General.....	47
B. Discharge of Claims.....	47
C. Exculpation .....	47
D. Releases by the Debtor.....	48
E. Preservation of Rights of Action.....	49
1. Maintenance of Causes of Action .....	49
2. Preservation of All Causes of Action Not Expressly Settled or Released .....	49





---

## DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### **ARTICLE I.** **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

#### **A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.



24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests



unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized



Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.



102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.



117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

#### **B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

#### **C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.



4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6



Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

### **ARTICLE IV.** **MEANS FOR IMPLEMENTATION OF THIS PLAN**

#### **A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### **1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.**

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.





- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;



(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and



4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,



the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

#### **D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.



**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),





The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.



**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however,* that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.



**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**

**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

#### **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing



will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

#### **D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### **1. Maintenance of Causes of Action**

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### **2. Preservation of All Causes of Action Not Expressly Settled or Released**

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,



without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court**

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

#### **B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

#### **C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the



Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

#### **I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

#### **J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

#### **K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

##### **If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700



Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

Case: 21094011 Doc 19 Filed 05/25/22 Entered 05/25/22 16:41:27 of  
161

**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.



51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

Case: 21-90011 Document: 00515826308 Page: 192 Date Filed: 04/14/2021

Tab “B”

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

---

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	
	)	

---

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

---

<b>PACHULSKI STANG ZIEHL &amp; JONES LLP</b> Jeffrey N. Pomerantz (CA Bar No. 143717) Ira D. Kharasch (CA Bar No. 109084) Gregory V. Demo (NY Bar No. 5371992) 10100 Santa Monica Boulevard, 13th Floor Los Angeles, CA 90067 Telephone: (310) 277-6910 Facsimile: (310) 201-0760 Email: jpomerantz@pszjlaw.com ikharasch@pszjlaw.com gdemo@pszjlaw.com	<b>HAYWARD &amp; ASSOCIATES PLLC</b> Melissa S. Hayward (TX Bar No. 24044908) Zachery Z. Annable (TX Bar No. 24053075) 10501 N. Central Expy, Ste. 106 Dallas, TX 75231 Telephone: (972) 755-7100 Facsimile: (972) 755-7110 Email: MHayward@HaywardFirm.com ZAnnable@HaywardFirm.com:
---	---

Counsel for the Debtor and Debtor-in-Possession

---

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

ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law..... 1

    B. Defined Terms ..... 2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 17

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
Equity Interests ..... 18

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes ..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests..... 19

    I. Special Provision Governing Unimpaired Claims ..... 24

    J. Subordinated Claims ..... 24

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN ..... 24

    A. Summary ..... 24

    B. The Claimant Trust ..... 25

        1. Creation and Governance of the Claimant Trust and Litigation  
Sub-Trust..... 25

        2. Claimant Trust Oversight Committee ..... 26

	<u>Page</u>
3. Purpose of the Claimant Trust.....	27
4. Purpose of the Litigation Sub-Trust.....	27
5. Claimant Trust Agreement and Litigation Sub-Trust Agreement. ....	27
6. Compensation and Duties of Trustees. ....	29
7. Cooperation of Debtor and Reorganized Debtor. ....	29
8. United States Federal Income Tax Treatment of the Claimant Trust. ....	29
9. Tax Reporting. ....	30
10. Claimant Trust Assets. ....	30
11. Claimant Trust Expenses. ....	31
12. Trust Distributions to Claimant Trust Beneficiaries. ....	31
13. Cash Investments. ....	31
14. Dissolution of the Claimant Trust and Litigation Sub-Trust. ....	31
C. The Reorganized Debtor.....	32
1. Corporate Existence.....	32
2. Cancellation of Equity Interests and Release.....	32
3. Issuance of New Partnership Interests.....	32
4. Management of the Reorganized Debtor.....	33
5. Vesting of Assets in the Reorganized Debtor.....	33
6. Purpose of the Reorganized Debtor.....	33
7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets.....	33
D. Company Action.....	34
E. Release of Liens, Claims and Equity Interests.....	35
F. Cancellation of Notes, Certificates and Instruments.....	35

	<u>Page</u>
G. Cancellation of Existing Instruments Governing Security Interests.....	35
H. Control Provisions .....	35
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	36
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	38
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	39
C. Cash Distributions.....	40
D. Disputed Claims Reserve.....	40
E. Distributions from the Disputed Claims Reserve .....	40
F. Rounding of Payments.....	40
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	41
I. General Distribution Procedures.....	41
J. Address for Delivery of Distributions.....	41
K. Undeliverable Distributions and Unclaimed Property.....	41
L. Withholding Taxes.....	42

	<u>Page</u>
M. Setoffs .....	42
N. Surrender of Cancelled Instruments or Securities .....	42
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	43
A. Filing of Proofs of Claim .....	43
B. Disputed Claims.....	43
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	43
D. Allowance of Claims and Equity Interests.....	44
1. Allowance of Claims.....	44
2. Estimation .....	44
3. Disallowance of Claims .....	44
ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	45
A. Conditions Precedent to the Effective Date .....	45
B. Waiver of Conditions .....	46
C. Dissolution of the Committee .....	46
ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	47
A. General.....	47
B. Discharge of Claims.....	47
C. Exculpation .....	47
D. Releases by the Debtor.....	48
E. Preservation of Rights of Action.....	49
1. Maintenance of Causes of Action .....	49
2. Preservation of All Causes of Action Not Expressly Settled or Released .....	49



	<u>Page</u>
F. Injunction .....	50
G. Duration of Injunctions and Stays.....	51
H. Continuance of January 9 Order .....	51
ARTICLE X. BINDING NATURE OF PLAN .....	51
ARTICLE XI. RETENTION OF JURISDICTION.....	52
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	54
A. Payment of Statutory Fees and Filing of Reports .....	54
B. Modification of Plan .....	54
C. Revocation of Plan.....	54
D. Obligations Not Changed.....	55
E. Entire Agreement .....	55
F. Closing of Chapter 11 Case .....	55
G. Successors and Assigns.....	55
H. Reservation of Rights.....	55
I. Further Assurances.....	56
J. Severability .....	56
K. Service of Documents .....	56
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	57
M. Governing Law .....	58
N. Tax Reporting and Compliance .....	58
O. Exhibits and Schedules .....	58
P. Controlling Document .....	58

---

## DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### **ARTICLE I.** **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

#### **A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "\$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests



unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.



42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,



and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder



of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## ARTICLE II.

### ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

#### A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

#### **B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

#### **C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until



full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.



4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

### **ARTICLE IV.** **MEANS FOR IMPLEMENTATION OF THIS PLAN**

#### **A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust<sup>2</sup>**

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.



The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:



- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

### **C. The Reorganized Debtor**

#### **1. Corporate Existence**

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

#### **2. Cancellation of Equity Interests and Release**

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

#### **3. Issuance of New Partnership Interests**

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.



4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.



**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.



The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.



Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however,* that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**

**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

#### **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on



the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation



Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### **1. Maintenance of Causes of Action**

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### **2. Preservation of All Causes of Action Not Expressly Settled or Released**

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court**

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

**ARTICLE XII.**  
**MISCELLANEOUS PROVISIONS**

**A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.



**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the



Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700

Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

### **Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.



36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

Case: 21-90011 Document: 00515826308 Page: 263 Date Filed: 04/14/2021

Tab “C”



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 16, 2021

  
United States Bankruptcy Judge

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

\_\_\_\_\_)  
In re: )  
 ) Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P. )  
 ) Case No. 19-34054 (SGJ11)  
Debtor. )  
 )  
 )  
\_\_\_\_\_)

**ORDER CERTIFYING APPEALS OF THE CONFIRMATION ORDER  
FOR DIRECT APPEAL TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

CAME ON FOR CONSIDERATION the *Joint Motion for Certification of Appeals of Confirmation Order for Direct Appeal to the Fifth Circuit* (the "Motion"), filed jointly by Highland Capital Management, L.P., Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund, James Dondero, Get Good Trust, and The Dugaboy Investment Trust (collectively, the "Parties").

By the Motion, the Parties jointly request a certification for a direct appeal to the Fifth Circuit of the following appeals (collectively, the “Appeals”) of the Court’s *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [docket no. 1943] (the “Confirmation Order”):

- (i) the notice of appeal filed by Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. on March 1, 2021 at docket no. 1957;
- (ii) the notice of appeal filed by Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., and NexPoint Strategic Opportunities Fund on March 3, 2021 at docket no. 1966;
- (iii) the notice of appeal filed by James Dondero on March 4, 2021 at docket no. 1970; and
- (iv) the notice of appeal filed by Get Good Trust and The Dugaboy Investment Trust on March 4, 2021 at docket no. 1972.

Having considered the Motion, concluding that the Court has core jurisdiction over the Motion, finding that no further notice or hearing on the Motion is required as all parties affected thereby are the Parties to the Motion, and, based on the Parties joint certification and request as provided for in 28 U.S.C. § 158(d)(2)(B), and based also on the Court’s agreement with the factual predicates underlying the Parties’ certification and request, it is hereby:

ORDERED that the Appeals of the Confirmation Order are certified for direct appeal to the Fifth Circuit because a direct appeal may materially advance the progress of the case or proceeding in which the appeal is taken, within the meaning and operation of 28 U.S.C. § 158(d)(2)(A)(iii).

**### END OF ORDER ###**

## **EXHIBIT 20**

Case No. \_\_\_\_\_

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

**In re: HIGHLAND CAPITAL MANAGEMENT, L.P.**

**Proposed Appeal of The Dugaboy Investment Trust  
And Get Good Trust**

---

On Appeal from the United States Bankruptcy Court for  
the Northern District of Texas, Dallas Division  
Bankruptcy Case No. 19-34054 (SGJ11)

Appeal Pending as Civil Action No. 3:21-cv-00550-N in the United States District  
Court for the Northern District of Texas, Dallas Division

---

**PETITION FOR DIRECT APPEAL UNDER 28 U.S.C. § 158(d)**

---

Douglas S. Draper, La. Bar No. 5073  
[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)  
Heller, Draper & Horn, L.L.C.  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
Telephone: (504) 299-3300  
Fax: (504) 299-3399

**ATTORNEY FOR PETITIONERS THE DUGABOY  
INVESTMENT TRUST AND GET GOOD TRUST**



## CERTIFICATE OF INTERESTED PERSONS

Undersigned counsel certifies that the following listed persons and entities, as described in the fourth sentence of Rule 28.2.1, have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal:

### 1. Appellants

#### **The Dugaboy Investment Trust Get Good Trust**

Counsel:

Douglas S. Draper, La. Bar No. 5073  
[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)  
Heller, Draper & Horn, L.L.C.  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
Telephone: (504) 299-3300  
Fax: (504) 299-3399

### 2. Appellee:

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

Counsel:

Jeffrey N. Pomerantz  
John A. Morris  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

Melissa S. Hayward  
Zachery Z. Annable  
Hayward PLLC  
10501 N. Central Expy, Ste. 106  
Dallas, Texas 75231  
Telephone: (972) 755-7100  
Facsimile: (972) 755-7110

3. Other Appellants

**NexPoint Advisors, L.P.**  
**Highland Capital Management Fund Advisors, L.P.**

Counsel:  
Davor Rukavina  
MUNSCH HARDT KOPF & HARR, P.C.  
500 North Akard Street, Suite 3800  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584

**Highland Income Fund**  
**NexPoint Strategic Opportunities Fund**  
**Highland Global Allocation Fund**  
**NexPoint Capital, Inc.**

Counsel:  
Artoush Varshosaz  
K&L GATES LLP  
1717 Main Street, Suite 2800  
Dallas, TX 75201  
Tel: (214) 939-5659

A. Lee Hogewood, III  
K&L GATES LLP  
4350 Lassiter at North Hills Ave.  
Suite 300  
Raleigh, NC 27609  
Tel: (919) 743-7306

David R. Fine  
K&L GATES LLP  
Market Square Plaza  
17 North Second St.  
18th Floor  
Harrisburg, PA 17101  
Tel: (717) 231-5820

**James Dondero**

Counsel:  
D. Michael Lynn  
John Y. Bonds, III  
Clay M. Taylor  
John T. Wilson IV  
Bryan C. Assink  
BONDS ELLIS EPPICH SCHAFFER JONES LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76102  
(817) 405-6900 telephone  
(817) 405-6902 facsimile

/s/ Douglas S. Draper  
Douglas S. Draper  
Counsel for The Dugaboy Investment  
Trust and Get Good Trust

## INTRODUCTION

The Dubagoy Investment Trust and Get Good Trust (the “Trusts”) respectfully request that the Court grant them permission to appeal, pursuant to Federal Rule of Appellate Procedure 5 and 28 U.S.C. § 158(d)(2)(A), the *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified); and (ii) Granting Related Relief* (the “Confirmation Order”)<sup>1</sup> directly to this Court from the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”).

A direct appeal from the Bankruptcy Court to the District Court is authorized pursuant to § 158(d)(2) provided that four conditions are satisfied. It is the position of the Trusts that the conditions for direct appeal are satisfied for the reason set forth herein and in the Petitions filed by Highland Income Fund, NexPoint Stategic Opportunities Fund, Highland Global Allocation Fund, Nexpoint Capital Inc., James Dondero, NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. each of which has filed a Petition for Direct Appeal with this Court.

The Trusts, in support of this Petition, note the following:

- a) The Bankruptcy Court affirmatively held that the direct appeal of the Confirmation Order to this Court will “materially advance the progress of the case”;
- b) The Confirmed Plan contains broad exculpation, release and channeling injunctions (called gatekeeper provisions under the Plan) that are contrary to established precedent in this Court. See *In re Pacific Lumber*, 584 F.3d 220 (5<sup>th</sup> Circuit) and *SEC vs Stanford Bank*, 17-10663 (5<sup>th</sup> Cir. 2019). It is interesting to note that the *In Pacific Lumber* case involved a direct appeal to this Court; and
- c) The Plan that was confirmed by the Court granted protection by analogy to third parties and by analogy applied the Barton Doctrine without any precedent supporting the opinion.

The direct appeal of the Confirmation Order meets the statutory requirements for a direct appeal of the Confirmation Order to this Court.

The Confirmation Order raises questions of law as to the use and effect of exculpation and release provisions and the imposition of a gatekeeper injunction in a bankruptcy plan where there is no controlling precedent from this Court or the Supreme Court.

## BACKGROUND

The Bankruptcy Court on February 21, 2021 entered the Confirmation Order confirming the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the "Plan"). The Plan, in essence, is a liquidation Plan notwithstanding the fact that Highland Capital Management, L.P. ("Debtor") refers to it as a monetization Plan. The Debtor projects it will operate certain assets over a projected two year liquidation period.

The Plan exculpates and releases the Debtor and its independent directors, employees, officers, and their retained professionals. The Plan further protects the same group from pre and post confirmation claims by imposing a gatekeeper injunction that bars parties from bringing a claim or causes of action against the released and exculpated parties for their activities related to the Debtor or reorganized Debtor without first seeking approval from the Bankruptcy Court that the claim is "colorable."

On March 4, 2021, the Trusts timely filed a *Notice of Appeal* of the Confirmation Order to the United States District Court for the Northern District of Texas (the "District Court"). Ex. A. The Trusts' appeal is pending as Civil Action No. 3:21-cv-00550-N (the "Appeal").

Similar appeals to the Confirmation Order were filed as follows:

Civil Action No.: 3:21-cv-00539-N by Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., and NexPoint Strategic Opportunities Fund.

Civil Action No.: 3:21-cv-00546-L by James Dondero.

Civil Action No.: 3:21-cv-00538-N by Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.

(collectively “Related Parties” or “Related Appeals”). These appeals have been consolidated in the District Court for the purpose of deciding issues on a stay pending appeal. It is anticipated that these Related Appeals will also be consolidated by the District Court or this Court on a final basis sometime in the near future.

On March 16, 2021, the Trusts, the Related Parties and the Debtor jointly moved for the Bankruptcy Court to certify their collective appeals for direct appeal to this Court. The Parties agreed that direct appeals would materially advance the progress of the case. The same day, the Bankruptcy Court granted the joint motion and entered its *Order Certifying Appeals of the Confirmation Order for Direct Appeal to the United States Court of Appeals for the Fifth Circuit* (“Certification Order”) per 28 U.S.C. § 158(d)(2)(A)(iii).

All Parties have filed Petitions for Direct Appeal to this Court.

### ISSUES ON APPEAL

1. Whether the U.S. Bankruptcy Court for the Northern District of Texas (the “*Bankruptcy Court*”) erred in confirming the Debtor’s Fifth Amended



Plan of Reorganization of Highland Capital Management, L.P. (as Modified) (the “*Plan*”).<sup>2</sup>

2. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the exculpation provisions of the Plan, contained in Article IX of the Plan, effectuated third party releases (i.e. releasing a claim of a non-debtor against a non-debtor) prohibited by the Bankruptcy Court and over which the Bankruptcy Court had no jurisdiction, in direct violation of Fifth Circuit Court of Appeal (“*Fifth Circuit*”) case law (see, e.g., *In re Pacific Lumber Co.*, 584 F.3d 229, 253 (5th Cir. 2009) and *Securities and Exchange Commission vs Stanford International Bank, Ltd.* No. 17-10663 (5th Cir. 2019)). The third party releases and exculpations in the confirmed Plan provide releases and exculpations for business decisions and operational decisions as opposed to case administration matters. The releases and exculpations are also in favor of non-debtor entities and their managers and professionals, as opposed to estate managers and professionals, and post-confirmation claims against entities, their officers, managers and professionals, for entities that are to be formed pursuant to the confirmed Plan.

3. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the permanent injunction contained in Article IX of the Plan, which prohibits “taking any actions to interfere with the implementation or consummation of the Plan,” is overly broad and impermissibly vague.

4. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the “gatekeeper” injunction contained in Article IX of the Plan is a disguised grant of jurisdiction to the Bankruptcy Court to enter final orders on matters upon which it would not possess jurisdiction.

5. Whether the Bankruptcy Court erred as a matter of fact in confirming the Plan and entering the Confirmation Order because the “gatekeeper” injunction contained in Article IX of the Plan, which requires leave of the Bankruptcy Court upon a showing of a “colorable” claim or cause of action, is based on the Bankruptcy Court’s finding of vexatious litigation on the part of the Appellants and the need for a form of pre-filing injunction, when there was no evidence to support such findings.

6. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the Debtor failed to satisfy the 11 U.S.C. § 1129(a)(2) element for confirmation requiring the Debtor to have complied with all applicable provisions of the Bankruptcy Code, which the

---

<sup>2</sup> Capitalized terms used but not otherwise defined have the meanings set forth in the Plan.

Debtor admittedly failed to do because it utterly failed to comply with Bankruptcy Rule 2015.3.

7. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the Plan violates 11 U.S.C. §1107(a)(7).

8. Whether the Bankruptcy Court erred as a matter of law in confirming the Plan and entering the Confirmation Order because the Plan does not meet the requirements of 11 U.S.C. §1129(b), unfairly discriminates and is not fair and equitable.

### **REASONS FOR DIRECT APPEAL**

The Trusts' reasons for direct appeal mirror those asserted by the Related Parties and adopts the assertions made by such parties.

### **RELIEF REQUESTED**

The Trusts respectfully request, pursuant to 28 U.S.C. § 158(d)(2), that this Court grant permission for the instant appeal, and all those Related Appeals, to bypass the District Court and be heard directly by this Court because (i) as certified by the Bankruptcy Court, a direct appeal will materially advance the progress of the case and (ii) the underlying judgment involves questions of law without controlling precedent.

April 15, 2021

Respectfully Submitted,

/s/ Douglas S. Draper

Douglas S. Draper, La. Bar No. 5073

[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)

Heller, Draper & Horn, L.L.C.

650 Poydras Street, Suite 2500

New Orleans, LA 70130

Telephone: (504) 299-3300

Fax: (504) 299-3399

Attorneys for The Dugaboy Investment

Trust and Get Good Trust

### **CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that, on this 15th day of April 2021, he caused a true and correct copies of this Petition to be served via e-mail on the following parties through their counsel of record:

Highland Capital Management, L.P.:

Jeffrey Pomerantz ([jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com))

John A. Morris ([jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com))

NexPoint Advisors, L.P.

Highland Capital Management Fund Advisors, L.P.

Davor Rukavina ([drukavina@munsch.com](mailto:drukavina@munsch.com))

Highland Income Fund

NexPoint Strategic Opportunities Fund

Highland Global Allocation Fund

NexPoint Capital, Inc.:

A. Lee Hogewood, III ([A.Lee.HogewoodIII@klgates.com](mailto:A.Lee.HogewoodIII@klgates.com))

Mr. James Dondero

Clay M. Taylor ([clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com))

/s/ Douglas S. Draper

Douglas S. Draper

### **CERTIFICATION OF WORD COUNT**

Pursuant to Federal Rule of Appellate Procedure 32(g), undersigned counsel certifies that this Petition complies with Rule 5(c) because it contains 2044 words, excepting those portions that may be excepted, and complies with the typeface and type-style requirements of Rule 32 because it has been prepared using Microsoft Office Word 2010 and set in Times New Roman font in a size equivalent to 14 points or larger.

*/s/ Douglas S. Draper*

\_\_\_\_\_  
Douglas S. Draper

# “TAB” - A

Douglas S. Draper, La. Bar No. 5073  
ddraper@hellerdraper.com  
Leslie A. Collins, La. Bar No. 14891  
lcollins@hellerdraper.com  
Greta M. Brouphy, La. Bar No. 26216  
gbrouphy@hellerdraper.com  
Heller, Draper & Horn, L.L.C.  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
Telephone: (504) 299-3300  
Fax: (504) 299-3399  
*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor \*

**AMENDED NOTICE OF APPEAL AND STATEMENT OF ELECTION**

**Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s): \_\_\_\_

*The Dugaboy Investment Trust and Get Good Trust*

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

- Plaintiff
- Defendant
- Other (describe)

\_\_\_\_\_

For appeals in a bankruptcy case and not in an adversary proceeding.

- Debtor
- Creditor
- Trustee
- Other (describe)

\_\_\_\_\_

**Part 2: Identify the subject of this appeal**

1. Describe the judgment, order, or decree appealed from: *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified) and (II) Granting Related Relief [Dkt. # 1943]*

2. State the date on which the judgment, order, or decree was entered: February 22, 2021

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. **Party/Appellee:** Debtor: Highland Capital Management, L.P.

Attorney:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffery N. Pomerantz

Ira D. Kharasch

John A. Morris

Gregory V. Demo

Hayley R. Winograd

780 Third Avenue, 34th Floor

New York, NY 10017-2024

Telephone: (212) 561-7700

Fax: (212) 561-7777

And

Hayward & Associates PLLC

Melissa S. Hayward

Zachery Z. Annable

10501 N. Central Expy. Ste. 106

Dallas, TX 75231

Telephone: (972) 755-7100

Fax: (972) 755-7110

2. **Party/Appellants:** The Dugaboy Investment Trust and Get Good Trust

Attorney:

HELLER, DRAPER & HORN, L.L.C.

Douglas S. Draper

Leslie A. Collins

Greta M. Brouphy

650 Poydras Street, Suite 2500

New Orleans, LA 70130

Telephone: (504) 299-3300

Fax: (504) 299-3399



**Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)**

**Not applicable.**

March 11, 2021

Respectfully submitted,

*/s/Douglas S. Draper.*

Douglas S. Draper, La. Bar No. 5073

[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)

Leslie A. Collins, La. Bar No. 14891

[lcollins@hellerdraper.com](mailto:lcollins@hellerdraper.com)

Greta M. Brouphy, La. Bar No. 26216

[gbrouphy@hellerdraper.com](mailto:gbrouphy@hellerdraper.com)

Heller, Draper & Horn, L.L.C.

650 Poydras Street, Suite 2500

New Orleans, LA 70130

Telephone: (504) 299-3300

Fax: (504) 299-3399

*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

## **EXHIBIT 21**

Case No. \_\_\_\_\_

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

**In re: HIGHLAND CAPITAL MANAGEMENT, L.P.**

**Proposed Appeal of James Dondero**

---

On Appeal from the United States Bankruptcy Court for  
the Northern District of Texas, Dallas Division  
Bankruptcy Case No. 19-34054 (SGJ11)

Appeal Pending as Civil Action No. 3:21-cv-00546-L in the United States District  
Court for the Northern District of Texas, Dallas Division

---

**PETITION FOR DIRECT APPEAL UNDER 28 U.S.C. § 158(d)**

---

D. Michael Lynn  
John Y. Bonds, III  
Clay M. Taylor  
John T. Wilson IV  
Bryan C. Assink  
BONDS ELLIS EPPICH SCHAFFER JONES LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76102  
(817) 405-6900 telephone  
(817) 405-6902 facsimile

**ATTORNEYS FOR PETITIONER JAMES DONDERO**

## CERTIFICATE OF INTERESTED PERSONS

Undersigned counsel certifies that the following listed persons and entities, as described in the fourth sentence of Rule 28.2.1, have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal:

1. Appellant

**James Dondero**

Counsel:

D. Michael Lynn  
John Y. Bonds, III  
John T. Wilson IV  
Clay M. Williams  
Bryan C. Assink  
BONDS ELLIS EPPICH SCHAFER JONES LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76102  
(817) 405-6900 telephone  
(817) 405-6902 facsimile

2. Appellee:

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

Counsel:

Jeffrey N. Pomerantz  
John A. Morris  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

Melissa S. Hayward  
Zachery Z. Annable  
Hayward PLLC  
10501 N. Central Expy, Ste. 106

Dallas, Texas 75231  
Telephone: (972) 755-7100  
Facsimile: (972) 755-7110

3. Other Appellants

**NexPoint Advisors, L.P.**  
**Highland Capital Management Fund Advisors, L.P.**

Counsel:  
Davor Rukavina  
MUNSCH HARDT KOPF & HARR, P.C.  
500 North Akard Street, Suite 3800  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584

**Highland Income Fund**  
**NexPoint Strategic Opportunities Fund**  
**Highland Global Allocation Fund**  
**NexPoint Capital, Inc.**

Counsel:  
Artoush Varshosaz  
K&L GATES LLP  
1717 Main Street, Suite 2800  
Dallas, TX 75201  
Tel: (214) 939-5659

A. Lee Hogewood, III  
K&L GATES LLP  
4350 Lassiter at North Hills Ave.  
Suite 300  
Raleigh, NC 27609  
Tel: (919) 743-7306

David R. Fine  
K&L GATES LLP  
Market Square Plaza  
17 North Second St.

18th Floor  
Harrisburg, PA 17101  
Tel: (717) 231-5820

**Get Good Trust**  
**The Dugaboy Investment Trust**

Counsel:  
Douglas S. Draper  
Leslie A. Collins  
Greta M. Brouphy  
HELLER, DRAPER & HORN, L.L.C.  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
Telephone: (504) 299-3300  
Fax: (504) 299-3399

/s/ Clay M. Taylor  
Clay M. Taylor  
Counsel for James Dondero

## INTRODUCTION

James Dondero (“Mr. Dondero”) respectfully requests that the Court grant him permission to appeal, pursuant to Federal Rule of Appellate Procedure 5 and 28 U.S.C. § 158(d)(2)(A), the *Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified); and (ii) Granting Related Relief* (the “Confirmation Order”)<sup>1</sup> directly to this Court from the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”).

This Court should grant permission for a direct appeal because, as all parties agree, a direct appeal would materially advance the progress of the bankruptcy case. The conduct and statements of the parties have made their intention plain that the issues presented on appeal will ultimately be brought to this Court by whichever parties are unsuccessful at the District Court. Further, the Confirmation Order raises questions of law as to the use and effect of exculpation provisions and imposition of a gatekeeper injunction in the bankruptcy plan where there is no controlling precedent from this Court or the Supreme Court.

## BACKGROUND

The issues on appeal arise from the cramdown confirmation of a Chapter 11 plan containing a broad exculpation provision that releases typically unreleased third

---

<sup>1</sup> Included as Exhibit A.



parties and a permanent gatekeeper injunction prohibiting any claims, including post-confirmation claims, without prior approval of the Bankruptcy Court. Inversely, the same plan lacks the requisite notice or participation provisions for creditor and parties-in-interest involvement in sales to be in the best interest of the creditors.

Mr. Dondero founded Highland Capital Management, L.P. (“Debtor”). On October 16, 2019, Debtor filed for voluntary Chapter 11 bankruptcy protection, creating its bankruptcy estate. On January 9, 2020, the Debtor, the Official Unsecured Creditors’ Committee, and Mr. Dondero entered into a stipulation and consent order that, among other things, provided for the removal of Mr. Dondero from Debtor and his replacement by a board of independent directors.

On February 22, 2021, the Bankruptcy Court entered the Confirmation Order confirming the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* (the “Plan”). The Plan is a wind down and liquidation plan where Debtor intends to liquidate over the course of a two-year period. In the interim, the reorganized Debtor continues to manage the assets of others.

Under the Plan, and over the objection of Mr. Dondero and others, the Debtor and its independent directors, employees, officers, and their retained professionals are exculpated and anyone with a claim, even one arising post-confirmation, is

enjoined via the gatekeeper injunction from bringing a claim or cause of action against those released parties for their activities related to the Debtor or reorganized Debtor without first seeking approval from the Bankruptcy Court that the claim is “colorable.”

On March 8, 2021, Mr. Dondero timely filed his *Notice of Appeal* of the Confirmation Order to the United States District Court for the Northern District of Texas (the “District Court”). Ex. B. Mr. Dondero’s appeal is pending as Civil Action No. 3:21-cv-00546-L (the “Appeal”).

Similar appeals to the Confirmation Order were filed as follows:

Civil Action No.: 3:21-cv-00539-N by Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., and NexPoint Strategic Opportunities Fund.

Civil Action No.: 3:21-cv-00550-L by Get Good Trust and The Dugaboy Investment Trust.

Civil Action No.: 3:21-cv-00538-N by Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.

(collectively “Related Parties” or “Related Appeals”). These appeals have been consolidated in the District Court for the purpose of deciding issues on a stay pending appeal. It is anticipated that these Related Appeals will also be consolidated by the District Court or this Court on a final basis sometime in the near future.

On March 16, 2021, Mr. Dondero, along with Debtor and the Related Parties (the “Parties”), jointly moved for the Bankruptcy Court to certify their collective appeals for direct appeal to this Court. The Parties agreed that direct appeals would

materially advance the progress of the case. The same day, the Bankruptcy Court granted the joint motion and entered its *Order Certifying Appeals of the Confirmation Order for Direct Appeal to the United States Court of Appeals for the Fifth Circuit* (“Certification Order”)<sup>2</sup> per 28 U.S.C. § 158(d)(2)(A)(iii).

On March 31, 2021, NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. (collectively the “Advisors”) filed their *Petition for Permission to Appeal* with this Court in Case No. 21-90011 (“Advisors’ Petition”).<sup>3</sup> The Advisors’ Petition addresses issues similar to those raised by Mr. Dondero on appeal. Mr. Dondero joins in the arguments asserted in the Advisors’ Petition and will endeavor not to duplicate those arguments here.

On April 9, 2021, Debtor filed a response to Advisors’ Petition (“Debtor’s Response”)<sup>4</sup> challenging, not this Court taking up the appeal, but whether a direct appeal should be granted for more reasons than just because it would materially advance the progress of the case. Debtor’s Response is an attempt to argue the merits of the appeal. Rather than being a reason to limit the direct appeal, Debtor’s Response highlights why there is a need for controlling precedent on the issues raised in Mr. Dondero’s appeal and the Related Appeals.

---

<sup>2</sup> Included as Exhibit C.

<sup>3</sup> Included as Exhibit D.

<sup>4</sup> Included as Exhibit E.

On April 13, 2021, Highland Income Fund, NexPoint Strategic Opportunities Fund, Highland Global Allocation Fund, and NexPoint Capital, Inc. (the “Funds”) filed their *Petition for Direct Appeal Under 28 U.S.C. § 158(d)* with this Court in Case No.: 21-90014 (“Funds’ Petition”).<sup>5</sup> The Funds’ Petition addresses issues similar to those raised by Mr. Dondero on appeal. Mr. Dondero also joins in the arguments asserted in the Funds’ Petition and will also endeavor not to duplicate those arguments here.

### ISSUES ON APPEAL

The issues raised by Mr. Dondero on appeal are as follows:

1. Whether the Plan’s channeling injunction/gatekeeper injunction violates applicable law by requiring claims against certain parties to be brought before the Bankruptcy Court for a finding the claims are colorable before those causes of action can be asserted against those parties in the Bankruptcy Court or any other court of competent jurisdiction, and that, as a result, confirmation of that Plan was improper both under the law and the facts of this case and record at trial?
2. Whether the Plan’s broad post-confirmation jurisdictional grant to the Bankruptcy Court was so over-broad as to violate applicable law and that, as a result, confirmation of that Plan was improper both under the law and the facts of this case and record at trial?
3. Whether the exculpation provisions of the Plan releasing third-party, non-debtor parties violates applicable law and that, as a result, confirmation of that Plan was improper both under the law and the facts of this case and record at trial?
4. Whether confirmation of the plan violates 11 U.S.C. § 1129(a)(7), especially given the Claimant Trust’s unfettered ability to sell assets without providing creditors and other parties-in-interest notice of the sales or the ability to

---

<sup>5</sup> Included as Exhibit F.

participate in the sales processes either as bidders, or to bring in other bidders who might pay a higher and better value to the table?

Ex. G, *Statement of Issues on Appeal*.

### **BASES FOR DIRECT APPEAL**

Mr. Dondero's bases for direct appeal are similar to those raised by the Funds and Advisors: a direct appeal materially advances the case, the exculpation provisions in the Plan go beyond this Court's *Pacific Lumber* opinion, and the gatekeeper injunction extends the bounds of the Bankruptcy Court's jurisdiction beyond the scope of controlling authority. Mr. Dondero incorporates and joins in the arguments in the Advisors' Petition and Funds' Petition on these issues and addresses each only to highlight how Debtor's Response further shows the need for this Court to opine on the issues on direct appeal.

#### **I. Mr. Dondero, Debtor, the Related Parties, and the Bankruptcy Court Agree that a Direct Appeal will Materially Advance this Case.**

There is no dispute that a direct appeal will materially advance this case. Debtor welcomes a direct appeal so that the case will be materially advanced. A direct appeal ensures a faster resolution such that the bankruptcy case can be promptly administered and closed, which is beneficial for all parties and the Court.

## **II. Debtor’s Assertion that the Exculpatory Provision Issue Has Controlling Authority Highlights the need for Clarity from this Court.**

Resolution of the exculpatory provision issue would advance this case and presents an opportunity for this Court to clarify and reinforce its holding in *Pacific Lumber*. This Court stated that “non-consensual non-debtor releases and permanent injunctions” are foreclosed. *In re Pac. Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009). Such releases are limited to creditor committees and their members. *Id.* at 253. There is little doubt that under applicable law officers and directors generally are not afforded releases. *See In re Thru, Inc.*, 2018 U.S. Dist. LEXIS 179769, 2018 WL 5113124, at \*67 (N.D. Tex. October 19, 2018), *aff’d.*, *In re Thru, Inc.*, 2019 U.S. App. LEXIS 32405, 2019 WL 5561276 (5th Cir. Tex., Oct. 28, 2019) (holding it was clear error to approve plan with exculpation provision releasing officers and directors from liability for own negligence). The allegedly unanswered question is where do independent directors and officers appointed post-petition and their professionals fall under *Pacific Lumber*: are they non-debtors not to be afforded releases or are they the equivalent of creditor committee members?

Debtor clings to the Bankruptcy Court’s analysis of *Pacific Lumber* to suggest that because the Bankruptcy Court analyzed *Pacific Lumber*, it interpreted the case correctly. Debtor’s argument is focused on winning the merits, not on whether there is an important issue for this Court’s consideration. That Debtor stresses a particular

and inconsistent reading of *Pacific Lumber* emphasizes the need for a clarification of how that precedent should be applied in this case.

Debtor also suggests that under *Shoaf* the exculpatory provision issue is precluded by res judicata. *Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir. 1987). This again goes to the merits of the issue and not the need for its resolution. Regardless, this Court re-stated its *Shoaf* holding as “once a reorganization plan passed the appeal stage it could not be challenged even though it violated the Bankruptcy Code’s prohibition on such discharges.” *In re Vitro SAB De CV*, 701 F.3d 1031, 1069 (5th Cir. 2012). This is not *Shoaf*; the Plan is what is being appealed.

### **III. Debtor’s Defense of the Gatekeeper Injunction Emphasizes the Need for Controlling Authority.**

Debtor focuses on the potential for the Bankruptcy Court’s post-confirmation jurisdiction in matters pertaining to implementation of the Plan, the Bankruptcy Court’s gatekeeping function for claims asserted by creditor committees or against trustees, and the authority of a court to protect its jurisdiction from vexatious litigation to support the gatekeeper injunction. However, Debtor does not cite controlling authority that stands for the proposition that the Bankruptcy Court can make “the initial determination as to whether a claim is colorable” for claims asserted post-confirmation, not against trustees, and by parties that are not creditor committees. Ex. E, ¶ 18. By arguing that these different concepts synthesize to



support the gatekeeper injunction in the Plan, Debtor is highlighting the gap in controlling authority that is primed for this Court's review.

Debtor asserts that the Bankruptcy Court's post-confirmation jurisdiction "concerning the implementation or execution of a confirmed plan" allows for the jurisdiction necessary for the gatekeeper injunction. *In re United States Brass Corp.*, 301 F.3d 296, 305 n.29 (5th Cir. 2002) (citing *In re Craig's Stores of Tex., Inc.*, 266 F.3d 388, 390 (5th Cir. 2001)). However, this ignores that the gatekeeper injunction applies to claims or causes of action a party may assert not necessarily concerning the plan. *In re Stonebridge Techs., Inc.* is similarly inapposite because the jurisdictional question concerned an adversary action brought by the trustee on behalf of the bankruptcy estate. 430 F.3d 260, 266-67 (5th Cir. 2005). The gatekeeper injunction effectively forever protects Debtor from claims and causes of action from third parties by forcing them to all be brought before the Bankruptcy Court, whether there is a basis for jurisdiction or not. The gatekeeper injunction itself manufactures jurisdiction for the Bankruptcy Court, which is not a function derived from the bankruptcy statutes or Debtor's case law.

Debtor contends that the gatekeeping function can be derived from the Bankruptcy Court's similar function for claims asserted by a creditor committee or against a trustee. *See La. World Exposition v. Fed. Ins. Co.*, 858 F.2d 233 (5th Cir. 1988) (bankruptcy court has gatekeeping function to determine if committee claims

are colorable before authorizing suit); *see also Villegas v. Schmidt*, 788 F.3d 156, 158 (5th Cir. 2015) (bankruptcy court has gatekeeping function as to claims brought against bankruptcy trustee). While these cases provide for a gatekeeping function, they do not stand for the proposition that such a function should be used by the Bankruptcy Court to insulate a debtor from all claims after the bankruptcy estate has ended. This dramatic expansion of both the duration and scope of an Article I court’s jurisdictional power in spite of *Stern v. Marshall* decided by the U.S. Supreme Court is particularly troubling. 564 U.S. 462 (2011). *Stern* stands for the limited jurisdiction of the Bankruptcy Court over only bankruptcy matters. *Id.* at 499. An expansive gatekeeper injunction, asserting jurisdiction over every possible claim or cause of action, goes against *Stern*. This Court needs to provide guidance to its lower courts on the appropriate use of “gatekeeper” functions in light of the jurisdictional limitations of *Stern* and its progeny.

Debtor also finds authority for the gatekeeper injunction in a court’s ability to sanction harassing or vexatious litigants. Debtor cites *Baum v. Blue Moon Ventures, LLC* to argue that the gatekeeper injunction is just an extension of the Bankruptcy Court’s inherent power over its docket. 513 F.3d 181 (5th Cir. 2008). *Baum* is focused on a district court’s *sua sponte* change to an injunction limiting the ability to file claims of those who had previously been sanctioned to jail time and a \$100,000.00 fine for impersonating attorneys, lying to the court, and abusing the

judicial system. *Id.* at 187. *Baum*, and other cases like it, are not about enjoining claims against a debtor that could, after the bankruptcy estate has ended, be brought in other courts.

While it may be the case that the Bankruptcy Court synthesized concepts from the likes of *In re U.S. Brass Corp., La. World Exposition, Villegas*, and *Baum*, this amalgamation of different concepts to reach new conclusions shows that controlling authority on the subject is lacking. This is especially the case where the new amalgamation contradicts the jurisdictional limits the Supreme Court imposed in *Stern* and this Court's prohibitions in *Pacific Lumber*. This points to the need for this Court to opine on the issues presented in these Appeals.

### **RELIEF REQUESTED**

Mr. Dondero respectfully requests, pursuant to 28 U.S.C. § 158(d)(2), that this Court grant permission for the instant appeal, and all those Related Appeals, to bypass the District Court and be heard directly by this Court because (i) as certified by the Bankruptcy Court, a direct appeal will materially advance the progress of the case and (ii) the underlying judgment involves questions of law without controlling precedent.

April 15, 2021

Respectfully Submitted,

/s/ Clay M. Taylor

D. Michael Lynn

State Bar I.D. No. 12736500  
John Y. Bonds, III  
State Bar I.D. No. 02589100  
Clay M. Taylor  
State Bar I.D. No. 24033261  
John T. Wilson, IV  
State Bar I.D. No. 24033344  
Bryan C. Assink  
State Bar I.D. No. 24089009  
BONDS ELLIS EPPICH SCHAFFER JONES LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76102  
Telephone: (817) 405-6900  
Facsimile: (817) 405-6902  
E-mail: michael.lynn@bondsellis.com  
E-mail: john@bondsellis.com  
E-mail: clay.taylor@bondsellis.com  
E-mail: john.wilson@bondsellis.com  
E-mail: bryan.assink@bondsellis.com

*Attorneys for James Dondero*

**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that, on this 15th day of April 2021, he caused a true and correct copies of this Petition, with all exhibits attached hereto, to be served via e-mail on the following parties through their counsel of record:

Highland Capital Management, L.P.:  
Jeffrey Pomerantz (jpomerantz@pszjlaw.com)  
John A. Morris (jmorris@pszjlaw.com)

NexPoint Advisors, L.P.  
Highland Capital Management Fund Advisors, L.P.  
Davor Rukavina (drukavina@munsch.com)

Highland Income Fund  
NexPoint Strategic Opportunities Fund  
Highland Global Allocation Fund  
NexPoint Capital, Inc.:  
A. Lee Hogewood, III (A.Lee.HogewoodIII@klgates.com)

Get Good Trust  
The Dugaboy Investment Trust:  
Douglas Draper (ddraper@hellerdraper.com)

/s/ Clay M. Taylor  
Clay M. Taylor

**CERTIFICATION OF WORD COUNT**

Pursuant to Federal Rule of Appellate Procedure 32(g), undersigned counsel certifies that this Petition complies with Rule 5(c) because it contains 2,537 words, excepting those portions that may be excepted, and complies with the typeface and type-style requirements of Rule 32 because it has been prepared using Microsoft Office Word 2010 and set in Times New Roman font in a size equivalent to 14 points or larger.

/s/ Clay M. Taylor  
Clay M. Taylor

**EXHIBIT 22**

Case: 21-90011 Document: 00515847079 Page: 1 Date Filed: 05/04/2021

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

May 4, 2021

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 21-90011  
\_\_\_\_\_

IN RE: HIGHLAND CAPITAL MANAGEMENT, L.P.,

*Debtor,*

NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT  
FUND ADVISORS, L.P.; HIGHLAND INCOME FUND; NEXPOINT  
STRATEGIC OPPORTUNITIES FUND; HIGHLAND GLOBAL  
ALLOCATION FUND; NEXPOINT CAPITAL, INCORPORATED;  
JAMES DONDERO; THE DUGABOY INVESTMENT TRUST; GET  
GOOD TRUST,

*Petitioners,*

*versus*

HIGHLAND CAPITAL MANAGEMENT, L.P.,

*Respondent.*

\_\_\_\_\_  
Motion for Leave to Appeal  
Pursuant to 28 U.S.C. § 158(D)  
\_\_\_\_\_

Before DENNIS, SOUTHWICK, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

Appx 0955  
001040



No. 21-90011

IT IS ORDERED that the motion of NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. for leave to appeal under 28 U.S.C. § 158(d) is GRANTED.

Case: 21-90011 Document: 00515847110 Page: 1 Date Filed: 05/04/2021

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

May 04, 2021

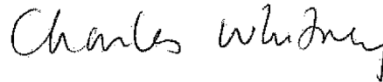
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-90011 NexPoint v. Highland Capital  
USDC No. 19-34054

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Charles B. Whitney, Deputy Clerk  
504-310-7679

Mr. Zachery Z. Annable  
Mr. Bryan Christopher Assink  
Mr. Douglas Scott Draper  
Mr. David R. Fine  
Ms. Melissa Sue Hayward  
Mr. Jeffrey N. Pomerantz  
Mr. Davor Rukavina  
Mr. Clay Marshall Taylor  
Mr. Jed Weintraub

## EXHIBIT 23

Case: 21-90011 Document: 00515884578 Page: 1 Date Filed: 06/02/2021

**United States Court of Appeals  
for the Fifth Circuit**

United States Court of Appeals  
Fifth Circuit

**FILED**

June 2, 2021

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 21-90011  
\_\_\_\_\_

IN RE: HIGHLAND CAPITAL MANAGEMENT, L.P.,

*Debtor,*

NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT  
FUND ADVISORS, L.P.; HIGHLAND INCOME FUND; NEXPOINT  
STRATEGIC OPPORTUNITIES FUND; HIGHLAND GLOBAL  
ALLOCATION FUND; NEXPOINT CAPITAL, INCORPORATED;  
JAMES DONDERO; THE DUGABOY INVESTMENT TRUST; GET  
GOOD TRUST,

*Petitioners,*

*versus*

HIGHLAND CAPITAL MANAGEMENT, L.P.,

*Respondent.*

\_\_\_\_\_  
Motion for Leave to Appeal  
Pursuant to 28 U.S.C. § 158(D)  
\_\_\_\_\_

Before DENNIS, SOUTHWICK, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the motion of Highland Global Allocation  
Fund, Highland Income Fund, NexPoint Capital, Incorporated, and

No. 21-90011

NexPoint Strategic Opportunities Fund for leave to appeal under 28 U.S.C. § 158(d) is GRANTED.

IT IS FURTHER ORDERED that the motion of James Dondero for leave to appeal under 28 U.S.C. § 158(d) is GRANTED.

IT IS FURTHER ORDERED that the motion of Get Good Trust and The Dugaboy Investment Trust for leave to appeal under 28 U.S.C. § 158(d) is GRANTED.

Case: 21-90011 Document: 00515884597 Page: 1 Date Filed: 06/02/2021

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

June 02, 2021

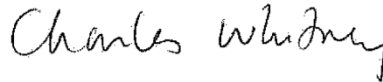
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-90011 NexPoint v. Highland Capital  
USDC No. 19-34054

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Charles B. Whitney, Deputy Clerk  
504-310-7679

Mr. Zachery Z. Annable  
Mr. Bryan Christopher Assink  
Mr. Robert P. Colwell  
Mr. Douglas Scott Draper  
Mr. David R. Fine  
Ms. Melissa Sue Hayward  
Mr. Jeffrey N. Pomerantz  
Mr. Davor Rukavina  
Mr. Clay Marshall Taylor

Appx 09/21  
001046

## **EXHIBIT 24**



**Case No. 21-10449**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

In re: Highland Capital Management, L.P.

Debtor.

-----

NexPoint Advisors, L.P., and Highland Capital Management Fund Advisors, L.P.,

Appellants,

v.

Highland Capital Management, L.P.,

Appellee.

---

**APPELLANTS' MOTION FOR STAY PENDING APPEAL**

---

Direct Appeal from the United States Bankruptcy Court  
for the Northern District of Texas, Honorable Stacey G.C. Jernigan

Davor Rukavina, Esq.  
Julian P. Vasek, Esq.  
MUNSCH HARDT KOPF & HARR, P.C.  
500 North Akard Street, Ste. 3800  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584

ATTORNEYS FOR APPELLANTS/MOVANTS

**Case No. 21-10449**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

In re: Highland Capital Management, L.P.

Debtor.

-----

NexPoint Advisors, L.P., and Highland Capital Management Fund Advisors, L.P.,

Appellants,

v.

Highland Capital Management, L.P.,

Appellee.

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons and entities, as described in the fourth sentence of Rule 28.2.1, have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

**1. APPELLANTS/MOVANT:**

**NexPoint Advisors, L.P.**

Owned by:

The Dugaboy Investment Trust

NexPoint Advisors GP, LLC

Owned by:

James Dondero

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

Owned by:

Highland Capital Management Services, Inc.  
Strand Advisors XVI, Inc.  
Okada Family Revocable Trust

**Represented by:**

Davor Rukavina, Esq.  
Julian P. Vasek, Esq.  
MUNSCH HARDT KOPF & HARR, P.C.

**2. RETAIL FUNDS MANAGED BY APPELLANTS:**

**NexPoint Capital, Inc.**

**Highland Income Fund**

**NexPoint Global Strategic Opportunities, Fund**

**3. APPELLEE/RESPONDENT:**

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

Owned by:

Hunter Mountain Investment Trust  
The Dugaboy Investment Trust  
Mark and Pamela Okada Family Trust – Exempt Trust 2  
Mark and Pamela Okada – Exempt Descendants’ Trust  
Mark Kiyoshi Okada  
Strand Advisors, Inc.

**Represented by:**

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz, Esq.  
John Morris, Esq.  
HAYWARD PLLC  
Melissa S. Hayward, Esq.  
Zachery Annable, Esq.

4. **OTHER PARTIES INDIRECTLY AFFECTED BY APPEAL:**

**Official Committee of Unsecured Creditors**

Members:

Redeemer Committee of Highland Crusader Fund  
Meta-e Discovery  
UBS Securities LLC  
UBS AG London Branch  
Acis Capital Management, L.P.  
Acis Capital Management GP, LLC  
Josh Terry

**All creditors in Highland Capital Management, L.P. bankruptcy**

/s/ Davor Rukavina  
Davor Rukavina, Esq.  
Counsel for the Appellants

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... v

I. SUMMARY ..... 1

II. BACKGROUND ..... 3

A. THE DEBTOR AND THE CLOS ..... 3

B. THE CONFIRMATION ORDER AND PLAN ..... 4

C. MOTION FOR STAY PENDING APPEAL PROCEEDINGS BELOW ..... 6

III. ARGUMENTS AND AUTHORITIES ..... 7

A. STANDARD FOR A STAY PENDING APPEAL ..... 7

B. THERE IS A LIKELIHOOD OF SUCCESS ON THE MERITS ..... 8

i. Legal Standard ..... 8

ii. The Plan Violates *Pacific Lumber* ..... 8

iii. The Plan Violates the Absolute Priority Rule ..... 16

iv. Conclusion ..... 18

C. MOVANTS WILL SUFFER IRREPARABLE INJURY WITHOUT  
A STAY ..... 19

D. DEBTOR AND CREDITORS WILL NOT BE UNDULY  
PREJUDICED BY A STAY ..... 21

E. THE PUBLIC INTEREST IS SERVED BY A STAY PENDING APPEAL ..... 22

F. SECURITY FOR STAY PENDING APPEAL ..... 23

IV. CONCLUSION ..... 24

**TABLE OF AUTHORITIES**

**Cases**

*Arnold v. Garlock*, 278 F.3d 426 (5th Cir. 2001) .....8

*Associated Press v. Otter*, 682 F.3d 821 (9th Cir. 2012).....20

*Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. LaSalle P’ship*,  
 526 U.S. 434 (1999)..... 18

*Bank of La. v. Craig’s Stores of Tex., Inc. (In re Craig’s Stores  
 of Tex., Inc.)*, 266 F.3d 388 (5th Cir. 2001)..... 11, 14

*Bank of New York Trust Co., N.A. v. Official Unsecured  
 Creditors’ Comm. (In re Pacific Lumber Co.)*,  
 584 F.3d 229 (5th Cir. 2009) .....*passim*

*Cooper v. U.S. Postal. Serv.*, 246 F.R.D. 415 (D. Conn. 2007) .....20

*Dropbox, Inc. v. Thru, Inc. (In re Thru, Inc.)*, 782 Fed. Appx. 339  
 (5th Cir. 2019).....23

*In re Blast Energy Services, Inc.*, 593 F.3d 418 (5th Cir. 2010) ..... 19

*Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746 (5th Cir. 1995).....9

*In re Edmonds*, 273 B.R. 527 (Bankr. E.D. Mich. 2000) ..... 17

*In re First S. Sav. Ass’n*, 820 F.2d 700 (5th Cir. 1987) ..... 8

*In re Introgen Therapeutics*, 429 B.R. 570 (Bankr. W.D. Tex. 2010) ..... 17

*In re Nat’l Gypsum Co.*, 208 F.3d 498 (5th Cir. 2000).....5, 12

*In re W. Real Fund*, 922 F.2d 592 (10th Cir. 1990) .....9

*Norwest Bank Worthington v. Ahlers*, 485 U.S. 197 (1988)..... 17

*Scott v. Schedler*, 826 F.3d 207 (5th Cir. 2016)..... 13

*Tex. Democratic Party v. Abbott*, 961 F.2d 389 (5th Cir. 2020) .....8, 18

*Weingarten Realty Investors v. Miller*, 661 F.3d 904 (5th Cir. 2011).....8, 19

**Statutes and Rules**

11 U.S.C. § 1126.....16  
11 U.S.C. § 1129.....16  
FED. R. BANKR. P. 8007 .....7, 22



Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (the “Movants”), the appellants in this direct bankruptcy appeal, file this their *Motion for Stay Pending Appeal* (the “Motion”), respectfully stating as follows:

### I. SUMMARY<sup>1</sup>

The Movants respectfully request a stay of the Bankruptcy Court’s Confirmation Order, by which it confirmed the Chapter 11 Plan of Highland Capital Management, L.P. (the “Debtor”).

A stay is necessary to prevent irreparable harm by ensuring that this Appeal does not become equitably moot through the implementation of the Plan. A stay is also necessary because the Plan’s injunctions prevent the Movants from exercising their contractual and statutory rights, post-confirmation, and from potentially asserting claims against various non-debtor parties, which claims the Plan releases, exculpates, and enjoins. If a stay is not entered, then the Debtor is likely to liquidate all of its holdings with judicial immunity by the time that the merits of this appeal are heard.

A stay is appropriate because the Plan violates this Court’s precedent and the Bankruptcy Code. First, the Plan contains sweeping injunction, release, and exculpation provisions expressly forbidden by this Court in *Pacific Lumber*, which provisions permanently enjoin the Movants from exercising their lawful rights and

---

<sup>1</sup> Capitalized terms used in this Summary are defined below.

which impermissibly release claims that the Movants have against various non-debtors. The Bankruptcy Court recognized as much, predicting that this Court would “extend the holding” of *Pacific Lumber*—something that this Court has yet to do, however. Second, the Plan could not have been confirmed at all under the “cramdown” provisions of the Bankruptcy Code because equity interest holders retain certain interests even though unsecured creditors rejected the Plan and are not paid in full under the Plan.

A stay will not prejudice the Debtor or other creditors. The Plan does not provide for a sale, nor for exit financing, nor for the issuance or new securities or investments in the Debtor. Rather, the Plan simply provides for the Debtor to liquidate its assets over time, something that the Debtor is presently doing and can continue doing without a need for the Plan.

A stay will serve the public interests. Thousands of innocent investors, whose investments (more than \$1 billion) the Debtor manages, are enjoined from exercising their solemn rights for post-bankruptcy claims. Potential claims they hold against the Debtor’s management and non-debtors are simultaneously extinguished through the Plan’s exculpation provisions. The public interest cannot be served by permitting a Plan that clearly violates this Court’s precedent to become effective, and the public interest cannot be served when these innocent investors are enjoined from exercising their contractual and statutory rights.

## I. BACKGROUND<sup>2</sup>

### A. THE DEBTOR AND THE CLOS

The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940.<sup>3</sup> Under that Act, the Debtor owes strict fiduciary duties to the funds that it manages and to the investors whose investments it manages.<sup>4</sup> Among other things, the Debtor manages more than \$1 billion in investments in various collateralized loan obligations (“CLOs”) pursuant to portfolio management agreements (the “PMAs”) in exchange for various fees paid by the CLOs.<sup>5</sup>

The Movants are also registered investment advisors who manage and advise various publicly traded funds, including three such funds (the “Funds”)<sup>6</sup> which collectively have invested approximately \$140 million in the CLOs the Debtor manages.<sup>7</sup> The Movants are also unsecured and administrative creditors

---

<sup>2</sup> Contemporaneously with the filing of this Motion, the Movants are filing their *Appendix of Appellants*. Citations to the appendix shall be notated as follows: Appx. #.

<sup>3</sup> Appx. 6.

<sup>4</sup> Appx. 340 (Tr. 179:8-15).

<sup>5</sup> Appx. 350-51 (Tr. 189:3-190:12).

<sup>6</sup> NexPoint Capital Inc., Highland Income Fund, and NexPoint Strategic Opportunities, Fund. Appx. 508 (Tr. 52:20-25).

<sup>7</sup> Appx. 509-11 (Tr. 53:1-55:5).

against the Debtor.<sup>8</sup> The Movants have standing to appeal the Confirmation Order and to seek a stay pending appeal, as confirmed by the Bankruptcy Court.<sup>9</sup>

Under at least three PMAs, the Funds may remove the Debtor as CLO manager because the Funds hold the requisite percentage of shares. There are various other CLOs where the Funds do not hold enough shares but are still able to vote their shares along with other shareholders. Thus, should the Debtor, as manager, act inappropriately, the Funds, and the Movants acting on their behalf, have the ability to protect themselves and their investors, absent the Plan.

**B. THE CONFIRMATION ORDER AND PLAN**

The Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on October 16, 2019.<sup>10</sup> On February 22, 2021, the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) entered an order (the “Confirmation Order”)<sup>11</sup> confirming the Debtor’s Chapter 11 plan (the “Plan”) over the objections of the Movants and various others.<sup>12</sup>

---

<sup>8</sup> Appx. 777-95.

<sup>9</sup> Appx. 733 (Tr. 20:15-18); Appx. 863 (Tr. 68:13-15).

<sup>10</sup> Appx. 7.

<sup>11</sup> Appx. 1.

<sup>12</sup> Appx. 92.

Because Class 8, the class of unsecured creditors, rejected the Plan and is not paid in full under the Plan,<sup>13</sup> the Bankruptcy Court confirmed the Plan under the cramdown provisions of the Bankruptcy Code, *see* 11 U.S.C. § 1129(b)(2)(B), including the critical “Absolute Priority Rule.” This Rule is discussed in detail in section III.B.iii below.

The Plan contains various other provisions directly applicable to this appeal. First, the Plan assumes the PSAs.<sup>14</sup> The effect of assumption is that “the debtor must continue to perform . . . the debtor accepts both the obligations and the benefits of the executory contract.” *In re Nat’l Gypsum Co.*, 208 F.3d 498, 505-06 (5th Cir. 2000). Second, the Plan releases and exculpates claims that the Movants and others have against numerous non-debtors, as discussed in detail in section III.B.ii below. Third, the Plan enjoins the Movants and others from exercising their rights and claims against the Debtor and numerous non-debtors, some of which claims are subject to a “gatekeeper” injunction where the Bankruptcy Court must first determine that a claim against a non-debtor is “colorable,” as discussed in detail in section III.B.ii below.

The Movants timely filed their notice of appeal of the Confirmation Order.<sup>15</sup> On March 31, 2021, and after certification by the Bankruptcy Court,<sup>16</sup> the Movants

---

<sup>13</sup> Appx. 6, ¶ 3 (Class 8 rejected Plan); Appx. 41 (Class 8 projected to receive 71%).

<sup>14</sup> Appx. 69, 157-61.

<sup>15</sup> Appx. 772.

filed their petition for leave to file a direct appeal of the Confirmation Order, asserting five (5) issues on appeal (only the first four (4) of which are relevant to this Motion).<sup>17</sup> On May 4, 2021, this Court granted the Movants’ petition for a direct appeal of the Confirmation Order.<sup>18</sup>

**C. MOTION FOR STAY PENDING APPEAL PROCEEDINGS BELOW**

While the Confirmation Order has been entered, that does not mean that the Plan is effective or operative. Rather, as is common, the Plan contains various conditions precedent that must be met before the Plan can be declared “effective.”<sup>19</sup>

On February 28, 2021, the Movants sought a stay of the Confirmation Order before the Bankruptcy Court.<sup>20</sup> On March 19, 2021, the Bankruptcy Court orally denied said motion.<sup>21</sup> The Bankruptcy Court followed its oral denial with two written orders.<sup>22</sup>

On April 1, 2021, the Movants sought a stay of the Confirmation Order before the United States District Court for the Northern District of Texas, Dallas

---

<sup>16</sup> Appx. 775.

<sup>17</sup> Appx. 885, 897-99.

<sup>18</sup> Appx. 945.

<sup>19</sup> Appx. 142.

<sup>20</sup> Appx. 947-80.

<sup>21</sup> Appx. 861-76 (Tr. 66:13 – 81:13).

<sup>22</sup> Appx. 878-84.

Division (the “District Court”), as that is where the appeal was then pending.<sup>23</sup> On April 12, 2021, the District Court entered an order granting expedited consideration of said motion and ordering expedited briefing.<sup>24</sup> As of the filing of this Motion, the District Court has yet to adjudicate the motion for stay pending appeal.

Because this Court now has jurisdiction over this appeal, the Movants now file this Motion and seek a stay of the Confirmation Order from this Court.

The Debtor has agreed to stay the effectiveness of the Plan through June 25, 2021. Thus, the Plan has yet to become effective or be implemented.

## II. ARGUMENTS AND AUTHORITIES

### A. STANDARD FOR A STAY PENDING APPEAL

Because this Court has granted a direct appeal of the Confirmation Order, this Court is the appropriate court to consider a stay of the Confirmation Order pending appeal. *See* FED. R. BANKR. P. 8007(b)(1). The Movants have satisfied the requirement of first seeking a stay from the Bankruptcy Court, which denied said relief. *See id.* at 8007(b)(2)(B).

In determining whether to grant a discretionary stay pending appeal, the Court considers the following criteria: (1) the likelihood that the movant will

---

<sup>23</sup> Appx. 912-44.

<sup>24</sup> Appx. 907-11.



prevail on the merits of the appeal; (2) whether the movant will suffer irreparable injury if the stay is denied; (3) whether other parties would suffer substantial harm if the stay is granted; and (4) whether the public interest will be served by granting the stay. *See In re First S. Sav. Ass'n*, 820 F.2d 700, 709 (5th Cir. 1987). “The first two factors are the most critical.” *Tex. Democratic Party v. Abbott*, 961 F.2d 389, 397 (5th Cir. 2020). However, the four-element test does not apply “where there is a serious legal question involved and the balance of equities heavily favors a stay; in those situations, the movant only needs to present a substantial case on the merits.” *Weingarten Realty Investors v. Miller*, 661 F.3d 904, 910 (5th Cir. 2011).

**B. THERE IS A LIKELIHOOD OF SUCCESS ON THE MERITS**

**i. Legal Standard.**

“[T]he appellant need not always show a ‘probability’ of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.” *Arnold v. Garlock*, 278 F.3d 426, 439 (5th Cir. 2001) (quotations omitted).

**ii. The Plan Violates *Pacific Lumber***

In *Bank of New York Trust Co., N.A. v. Official Unsecured Creditors’ Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229, 253 (5th Cir. 2009), this Court

broadly foreclosed nonconsensual releases or exculpations of third party claims; *i.e.* a claim held by a non-debtor against a non-debtor. The *Pacific Lumber* plan proposed to exculpate the debtor’s management and professionals for actions (or omissions) they may have taken during the Chapter 11 case. *See id.* at 251. The Court found this impermissible:

this court has held Section 524(e) only releases the debtor, not co-liable third parties. These cases seem broadly to foreclose non-consensual non-debtor releases and permanent injunctions. . . the essential function of the exculpation clause proposed here is to absolve the released parties from any negligent conduct that occurred during the course of the bankruptcy. The fresh start § 524(e) provides to debtors is not intended to serve this purpose.

*Id.* at 252 (internal citations omitted).

Nor can a release of third party claims be effectuated through an injunction: “[s]ection 524 prohibits the discharge of debts of nondebtors. Accordingly, we must overturn a § 105 injunction if it effectively discharges a nondebtor.” *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760 (5th Cir. 1995). The Court concluded that no such injunction could be imposed under a plan on a permanent basis:

the stay may not be extended post-confirmation in the form of a permanent injunction that effectively relieves the nondebtor from its own liability to the creditor. Not only does such a permanent injunction improperly insulate nondebtors in violation of section 524(e), it does so without any countervailing justification of debtor protection.

*Id.* at 760 (quoting *In re W. Real Fund*, 922 F.2d 592, 601-02 (10th Cir. 1990)).

Here, the Plan violates these dictates in three substantial ways: (i) it exculpates claims for negligence that may be held by the Movants and others against numerous non-debtor parties;<sup>25</sup> (ii) it enjoins the Movants and others from exercising their contractual rights after confirmation under contracts that are assumed;<sup>26</sup> and (iii) it subjects any claim that the Movants and others may have against the foregoing for anything other than negligence to a “gatekeeper injunction” where the Bankruptcy Court, reserving “exclusive jurisdiction,” must first determine that a “colorable claim” exists.<sup>27</sup>

With respect to the Plan’s exculpation provisions, “Exculpated Parties” non-debtor managed funds, employees, the Debtor’s general partner, the Debtor’s management and professionals, and the affiliates of the foregoing.<sup>28</sup> Subject to various limitations, the Plan provides that:

no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of . . .<sup>29</sup>

On its face, these provisions directly and clearly violate *Pacific Lumber*.

But these provisions are even more serious because they also apply to, and

---

<sup>25</sup> Appx. 144 (C. Exculpation).

<sup>26</sup> Appx. 147 (F. Injunction)

<sup>27</sup> *Id.*

<sup>28</sup> Appx. 106.

<sup>29</sup> Appx. 144 (C. Exculpation).

exculpate, potential *prospective* liability incurred after the confirmation of the Plan, because these provisions also apply to “the implementation of the Plan.”<sup>30</sup> The “implementation of the Plan” will take between two to three years and involves the Debtor’s management of more than \$1 billion of other peoples’ investments.<sup>31</sup> This is unprecedented, that a federal court would immunize fiduciaries against future claims. This also violates the fundamental premise of what it means to *exit* bankruptcy:

Once the bankruptcy court confirms a plan of reorganization, the debtor may go about its business without further supervision or approval. The firm also is without the protection of the bankruptcy court. It may not come running to the bankruptcy judge every time something unpleasant happens.

*Bank of La. v. Craig’s Stores of Tex., Inc. (In re Craig’s Stores of Tex., Inc.)*, 266 F.3d 388, 390 (5th Cir. 2001).

It is the equivalent of General Motors releasing the post-confirmation entity from liability for manufacturing defects for cars it sells after bankruptcy. Nor is this concern an academic one. As the Debtor’s CEO testified at the confirmation hearing, the Debtor lost approximately \$200 million in value during its bankruptcy case, at least \$100 million of which the CEO blamed on the Debtor’s prior (yet post-bankruptcy) manager.<sup>32</sup>

---

<sup>30</sup> *Id.* (sub. iv).

<sup>31</sup> Appx. 350 (Tr. 189:3-9).

<sup>32</sup> Appx. 256-59 (Tr. 95:17-98:6); Appx. 361 (Tr. 200:16-19).

Next, the Plan contains a sweeping, permanent injunction: “all Enjoined Parties<sup>33</sup> are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.”<sup>34</sup> Of immediate relevance and effect on the Movants, this means that the Movants are enjoined from advising or causing their clients, including the Funds, to remove the Debtor as the manager of the CLOs, even though the Debtor assumed the PMAs and even if the Debtor mismanages the CLOs.<sup>35</sup>

As with exculpations, *Pacific Lumber* broadly foreclosed non-consensual “permanent injunctions.” *In re Pacific Lumber Co.*, 584 F.3d at 252-53. More technically, the assumption of the PMAs means that the Debtor is obligated to perform under them and all rights of the counterparty are preserved and may be enforced: “[w]here the debtor assumes an executory contract, it must assume the entire contract, cum onere – the debtor accepts both the obligations and the benefits of the executory contract.” *In re Nat’l Gypsum Co.*, 208 F.3d at 505-06. The Debtor here found a clever way around this fundamental rule by simply obtaining an injunction that permanently enjoins and alters contract rights and obligations, in direct violation of the Bankruptcy Code.

---

<sup>33</sup> The Movants are “Enjoined Parties.” Appx. 105.

<sup>34</sup> Appx. 147.

<sup>35</sup> Appx. 359 (Tr. 198:12-25).

This injunction, prohibiting “any actions to interfere with the implementation or consummation of the Plan,” is also both overbroad and vague. *See Scott v. Schedler*, 826 F.3d 207, 211-12 (5th Cir. 2016) (“an injunction is overly vague if it fails to satisfy the specificity requirements . . . and it is overbroad if it is not narrowly tailored to remedy the specific action”). The Movants should not be subjected to potential contempt actions when the Plan fails to define with any reasonable specificity what it means to “interfere” with the “implementation or consummation” of the Plan.

With respect to the “gatekeeper injunction,” the Movants are included within the “Enjoined Parties” subject to that injunction, which injunction prohibits the Movants from taking various actions, including to sue any of the “Protected Parties.”<sup>36</sup> The “Protected Parties” include the same entities that are exculpated as discussed above.<sup>37</sup> Like the exculpation provision, this injunction effectuates a non-consensual, non-debtor release prohibited by *Pacific Lumber* because the Movants are enjoined from suing the Protected Parties *even for* claims based on “bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence.”<sup>38</sup> *See In re Pacific Lumber Co.*, 584 F.3d at 252-53.

---

<sup>36</sup> Appx. 105 (“Enjoined Parties”); Appx. 110 (“Protected Parties”); Appx. 147 (F. Injunction).

<sup>37</sup> Appx. 110.

<sup>38</sup> Appx. 147-48.

This injunction is not saved by the fact that the Bankruptcy Court may grant relief from the injunction if it first determines that an Enjoined Party has a “colorable claim” against a “Protected Party.” Nothing in the Bankruptcy Code possibly permits the Bankruptcy Court to require a non-debtor to come to it and prove that it has a viable claim against another non-debtor before it can assert that claim, or else be in contempt of court. And this, too, applies *prospectively* to actions the Debtor will take in the next two to three years during the “wind down of the business of the Debtor or Reorganized Debtor” and the “the administration of the Claimant Trust.”<sup>39</sup> This is unprecedented, it violates due process, it is a taking, and it is prohibited by *Pacific Lumber*.

The Bankruptcy Court also impermissibly reserved to itself the “sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable.”<sup>40</sup> It is black-letter law that the Bankruptcy Court has no such jurisdiction between non-debtors today, and will certainly have no such jurisdiction in the future as the Plan is implemented. *See In re Craig’s Stores of Tex. Inc.*, 266 F.3d at 390 (“After a debtor’s reorganization plan has been confirmed, the debtor’s estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the implementation or execution of the plan.”). And it is certainly

---

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*



black-letter law that the Bankruptcy Court cannot confer onto itself jurisdiction that it does not have.

The end result is that the Movants, and many others, are enjoined *permanently* from exercising their legal and contractual rights; that potential present and *prospective* claims they have against non-debtors are released and exculpated; and that they are required to prove a “colorable” claim for any present or *prospective* claim they may have against non-debtors before they may assert that claim, while the Debtor and its management, officers, and others are free to manage billions of dollars of innocent investors’ funds, taking very large fees for themselves, effectively free from the fiduciary duties imposed on them by the federal securities laws. This is precisely what *Pacific Lumber* prohibits, and the wisdom of *Pacific Lumber*’s prohibition is aptly proven by this case.

The Bankruptcy Court attempted to distinguish *Pacific Lumber*.<sup>41</sup> In fact, the Bankruptcy Court stated its belief that this Court would “extend the holding of *Pacific Lumber*” with respect to the proper scope of an exculpation provision.<sup>42</sup> But if the holdings and limitations of *Pacific Lumber* must be extended in order for the Plan’s exculpation provision to be permissible, then the Movants have demonstrated a likelihood of success on the merits of this issue *per se*.

---

<sup>41</sup> Appx. 744-56.

<sup>42</sup> Appx. 865 (Tr. 70:10-24).

**iii. The Plan Violates the Absolute Priority Rule.**

Creditors vote by class under a Chapter 11 plan. *See* 11 U.S.C. § 1126(c). Class 8—unsecured creditors—rejected the plan.<sup>43</sup> As the Plan does not pay Class 8 in full<sup>44</sup> and Class 8 rejected the Plan, the Plan could only be confirmed if the Debtor satisfied the “Absolute Priority Rule.” Under the Absolute Priority Rule, the holder of any junior interest—*e.g.*, an equity interest—cannot “receive or retain ... any property” on account of its junior interest. 11 U.S.C. § 1129(b)(2)(B)(ii).

Here, the Plan violates the Absolute Priority Rule as a matter of law because the Plan gives the Debtor’s limited partners—*i.e.*, junior interest holders—contingent interests in the “Claimant Trust” created under the Plan to pay creditors and, after they are paid in full, to pay equity holders.<sup>45</sup> There is no question that those contingent trust interests are “property” as admitted by the Debtor at trial: “These are contingent interests. They are property. No doubt they are property.”<sup>46</sup> The Debtor’s CEO also testified that the contingent interests are, in his belief, inchoate property interests which may have some value in the future.<sup>47</sup> As a matter of law, an interest in a trust, even one subject to a contingency that may never

---

<sup>43</sup> Appx. 6. One of the Movants, NexPoint Advisors, L.P., is a partial assignee of four Class 8 Claims. Appx. 777-87.

<sup>44</sup> Appx. 41.

<sup>45</sup> Appx. 120.

<sup>46</sup> Appx. 698 (242:19-20).

<sup>47</sup> Appx. 339 (178:22-25).

happen, is “property.” See *In re Edmonds*, 273 B.R. 527, 529 (Bankr. E.D. Mich. 2000). The Plan therefore violates the Absolute Priority Rule because equity holders retain or receive “property” under the Plan.

The Debtor argued that these contingent interests may have no value and would only vest and be paid if unsecured creditors are paid in full, thus satisfying the Absolute Priority Rule.<sup>48</sup> But the United States Supreme Court has squarely rejected this argument:

Respondents further argue that the absolute priority rule has no application in this case, where the property which the junior interest holders wish to retain has no value to the senior unsecured creditors. . . . We join with the overwhelming consensus of authority which has rejected this ‘no value’ theory. . . . Whether the value is present or prospective, for dividends or only for purposes of control a retained equity interest is a property interest. . . . And while the Code itself does not define what ‘property’ means as the term is used in § 1129(b), the relevant legislative history suggests that Congress’ meaning was quite broad. Property includes both tangible and intangible property.

*Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 207-08 (1988) (internal quotations and citations omitted). Thus, it does not matter that the property may be prospective, intangible, or valueless.

The Bankruptcy Court relied on *In re Introgen Therapeutics*, 429 B.R. 570 (Bankr. W.D. Tex. 2010), for the proposition that, so long as the contingent interests are not paid unless and until all unsecured claims are paid in full, the

---

<sup>48</sup> Appx. 45.

Absolute Priority Rule is satisfied. This opinion was wrongly decided and has never been adopted by this Court or any appellate court.

First, it directly contradicts the language of the Bankruptcy Code, which implicates the Absolute Priority Rule if *any* “property” is being retained or received. Second, the opinion looked to the present value of what was being retained, something directly foreclosed by the Supreme Court’s opinion in *Norwest Bank Worthington* quoted above. Third, the opinion fails to take into account the Supreme Court’s opinion in *Bank of Am. Nat’l Trust & Sav. Ass’n v. 203 N. Lasalle P’ship*, 526 U.S. 434 (1999). There the Supreme Court equated the exclusive opportunity to bid on new equity under a plan as itself “property” that was being granted or retained in violation of the Rule: “[t]his opportunity should, first of all, be treated as an item of property in its own right.” *Id.* at 455. If an exclusive opportunity is “property” for purposes of the Absolute Priority Rule, then so is an “opportunity” to share in a future recovery, however remote.

**(iv) Conclusion.**

At a minimum, the Movants have shown that a “serious legal question is involved and [that] the balance of the equities weighs heavily in favor of granting the stay.” *Tex. Democratic Party v. Abbott*, 961 F.3d at 397. Permanent federal injunctions; a court exculpating someone of potential liability; a court requiring someone to come before it and prove that a claim is “colorable” before he may

have access to the courts; violating the Absolute Priority Rule—all of these are “serious legal questions.” And, given that the Bankruptcy Court ignored the dictates of *Pacific Lumber*, and that billions of dollars of investments from thousands of innocent investors are at stake, whose claims are released and who are enjoined from exercising their legal rights and remedies *after* bankruptcy, “the equities weighs heavily in favor of granting the stay.”

Simply put, debtors and bankruptcy courts must not be permitted to use expediency to trample on legal rights, in the belief that appeals will become moot rendering appellate review unlikely. The Confirmation Order represents such clear errors of law and such a “substantial case on the merits” that the Court need not even consider the remaining factors governing a discretionary stay pending appeal under the authority of *Weingarten Realty Investors*, 661 F.3d at 910. Nevertheless, the Movants address such other factors below.

**C. MOVANTS WILL SUFFER IRREPARABLE INJURY WITHOUT A STAY**

First, there is the threat of equitable mootness, which this Court applies to Chapter 11 confirmation orders to dismiss appeals because it may be effectively too late to “unscramble the eggs.” *See, e.g., In re Blast Energy Services, Inc.*, 593 F.3d 418, 424 (5th Cir. 2010). Indeed, this Court has recognized potential issues with denying a stay pending appeal:

Although the exigencies of the case appeared to demand prompt action, simply denying a stay seems to have been, and often will be,

too simplistic a response. A plan may be designed to take effect, as it was here, after a lapse of sufficient time to initiate appellate review. A supersedeas bond may be tailored to the scope of the appeal. An appeal may be expedited. As with all facets of bankruptcy practice, myriad possibilities exist. Thus, substantial legal issues can and ought to be preserved for review.

*Bank of New York Trust Co., N.A. v. Official Unsecured Creditors' Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229, 243 (5th Cir. 2009). This is all the more important here where the order of the Article I bankruptcy court should be reviewed on its merits by an Article III court.

Second, the various release, exculpation, and injunction provisions of the Plan detailed above will lead to irreparable injury if the Movants are unable to exercise their contractual rights or take other action to protect their interests and those of the investments they manage. Being enjoined from doing what one otherwise has the lawful right to do is irreparable injury as a matter of law. *C.f. Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir. 2012); *Cooper v. U.S. Postal. Serv.*, 246 F.R.D. 415, 418 (D. Conn. 2007).

The Debtor has testified that it intends to liquidate and wind down the CLOs in approximately two years.<sup>49</sup> During that time, if the Movants dispute how the Debtor is doing so, or believe they have claims against the Debtor for its conduct, or wish to advise or cause their clients to take action against the Debtor on account of the same, the Plan will prohibit them from doing so, and the Debtor and its

---

<sup>49</sup> Appx. 273 (line 5); Appx. 343 (line 5).

management will be exculpated. Absent a stay pending appeal, by the time that the Movants may ultimately prevail on their appeal, various rights will effectively have been lost for good.

**D. DEBTOR AND CREDITORS WILL NOT BE UNDULY PREJUDICED BY A STAY**

The Plan does not involve exit financing, a sale of the business, new investments, new money coming in, nor anything else that the Debtor does not already have to monetize its assets for the benefit of its creditors.<sup>50</sup> As the Debtor’s CEO confirmed at trial, “post-confirmation, you are basically going to continue managing the CLOs and funds and trying to monetize assets for creditors the same as you are today.”<sup>51</sup> He does not “need anything in the plan that [he] does [not] have today to keep managing” the “Funds and the CLOs.”<sup>52</sup>

Thus, because the Plan does not give the Debtor anything that it lacks at present to continue monetizing its assets, managing the CLOs, and doing everything else it would under the Plan, the Debtor and its other creditors will not suffer any prejudice if a stay pending appeal is granted. In this respect, the Court should take into account that 27 Class 8 creditors rejected the Plan, while only 17 accepted the Plan.<sup>53</sup> It is the unsecured creditors who would be the only ones

---

<sup>50</sup> Appx. 346 (185:3-188:5).

<sup>51</sup> Appx. 349 (188:2-5).

<sup>52</sup> *Id.* (188:23-189:2).

<sup>53</sup> Appx. 6.



potentially prejudiced if the Plan is stayed, as that may delay their recoveries, but Class 8 overwhelmingly rejected the Plan.

**E. THE PUBLIC INTEREST IS SERVED BY A STAY PENDING APPEAL**

Because the Plan's exculpation and injunction provisions impermissibly infringe upon the contractual, legal, and due-process rights of parties in interest in the bankruptcy case, a stay pending appeal will serve the public interest. Thousands of innocent investors have invested in the CLOs or funds that the Debtor manages, totaling well over \$1 billion, including \$140 million for just the Funds that the Movants manage. A stay will ensure that non-debtor parties can be held accountable for their post-petition and post-confirmation conduct. The public has a strong interest, for example, in ensuring that the Debtor complies with federal securities laws. But the Plan's exculpation provision and injunction threaten to substantially vitiate these laws and effectively relieve the Debtor from its obligations and duties (and potential liabilities) thereunder.

The public interest is also best served by requiring respect for judicial precedent, here *Pacific Lumber*. While the Bankruptcy Court believed that this Court will revisit its *Pacific Lumber* holdings and will expand *Pacific Lumber*, at present *Pacific Lumber* is the law, and the Bankruptcy Court was bound by it. This Court should not permit a Plan that clearly and directly violates *Pacific Lumber* to become effective before addressing the merits of this appeal.

**F. SECURITY FOR STAY PENDING APPEAL**

The Court may, but need not, condition a stay pending appeal on a bond or other security being posted. *See* FED. R. BANKR. P. 8007(c). Because: (i) the Plan so clearly violates *Pacific Lumber*; (ii) the Plan so clearly violates the Absolute Priority Rule; (iii) there is the threat of equitable mootness; and (iv) the Debtor and creditors would not be harmed by a stay pending appeal, the Movants should not be required to post a bond as a condition to obtaining a stay. Indeed, the Debtor argued below for a multi-hundred-million dollar bond, clearly designed *not* to protect other parties but to effectively *prevent* a stay pending appeal as no legitimate appellant should be required to post the entire amount of debt in a bankruptcy case as a condition of obtaining meaningful appellate relief.

The only conceivable harm pending appeal is from a delay in payments to certain creditors and minor added administrative expenses for having to file reports and pleadings with the Bankruptcy Court. If the Plan is affirmed, then those creditors would not have use of those funds for a period of time. Here, the Debtor believes that it will distribute approximately \$60 million to Class 7 and Class 8 creditors within one year of the Plan going effective, which so far it has not.<sup>54</sup> As unsecured creditors, these creditors would be entitled to interest at the federal rate of post-judgment interest. *See Dropbox, Inc. v. Thru, Inc. (In re Thru, Inc.)*, 782

---

<sup>54</sup> Appx. 766.

Fed. Appx. 339, 341 (5th Cir. 2019). That rate is presently less than 1% and is unlikely to rise past that amount during the period of any stay. Thus, the interest that any creditor may be able to claim for any delay in payment is less than 1%, or less than \$600,000.00. With respect to increased administrative costs for having to file reports and pleadings with the Bankruptcy Court, the Movants estimate that it cannot reasonably cost the Debtor more than \$150,000.00 per month to have to continue filing reports and pleadings with the Bankruptcy Court that it would no longer have to do under its Plan.

Assuming this Court resolves this appeal within twelve months, the Movants therefore submit that a bond or security of no more than \$2.4 million is sufficient to protect the Debtor and its estate from any harm resulting from the delay in the effectiveness of the Plan.

#### **IV. CONCLUSION**

WHEREFORE, premises considered, the Movants request that the Court enter an Order: (i) staying the effectiveness of the Confirmation Order pending appeal; and (ii) granting such other relief as is just and proper.

RESPECTFULLY SUBMITTED this the 19th day of May, 2021.

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Davor Rukavina  
Davor Rukavina, Esq.  
Julian P. Vasek, Esq.  
500 N. Akard St., Ste. 3800  
Dallas, Texas 75201-6659  
Telephone: (214) 855-7500  
Facsimile: (214) 855-7584  
[drukavina@munsch.com](mailto:drukavina@munsch.com)  
[jvasek@munsch.com](mailto:jvasek@munsch.com)

**COUNSEL FOR HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS,  
L.P., AND NEXPOINT ADVISORS, L.P.**

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that he discussed the relief requested herein with Jeff Pomerantz, Esq., counsel of record for the Debtor, who informed the undersigned that the Debtor opposes said relief.

/s/ Davor Rukavina  
Davor Rukavina

**CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that this Petition complies with Rule 27(d)(2) because it contains 5,176 words, excepting those portions that may be excepted under Rule 32(f).

/s/ Davor Rukavina  
Davor Rukavina

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this the 19th day of May, 2021, true and correct copies of this document, with any exhibits attached thereto, were served on the recipients listed below via email.

Jeffrey N Pomerantz  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13th Floor  
Los Angeles, CA 90067  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)

John A Morris  
Pachulski Stang Ziehl & Jones LLP  
780 Third Avenue, 34th Floor  
New York, NY 10017-2024  
Email: [jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)

/s/ Davor Rukavina  
Davor Rukavina

## **EXHIBIT 25**

Case: 21-10449 Document: 00515906886 Page: 1 Date Filed: 06/21/2021

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

June 21, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-10449 NexPoint v. Highland Capital Mgmt  
USDC No. 19-34054  
USDC No. 3:21-CV-538

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

*Lisa E. Ferrara*

By: \_\_\_\_\_  
Lisa E. Ferrara, Deputy Clerk  
504-310-7675

Mr. Zachery Z. Annable  
Mr. Robert P. Colwell  
Mr. Douglas Scott Draper  
Mr. David R. Fine  
Ms. Melissa Sue Hayward  
Mr. Jeffrey N. Pomerantz  
Mr. Davor Rukavina  
Mr. Clay Marshall Taylor  
Mr. Julian Preston Vasek



Case: 21-10449 Document: 00515906887 Page: 1 Date Filed: 06/21/2021

United States Court of Appeals  
for the Fifth Circuit

---

No. 21-10449

---

NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT  
FUND ADVISORS, L.P.,

*Appellants,*

*versus*

HIGHLAND CAPITAL MANAGEMENT, L.P.,

*Appellee.*

---

Appeal from the United States Bankruptcy Court  
for the Northern District of Texas  
USDC No. 19-34054

---

Before DENNIS, SOUTHWICK, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that appellants Highland Capital Management Fund Advisors, L.P. and Nexpoint Advisors, L.P.'s motion for stay pending appeal is DENIED.

**EXHIBIT 26**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re: §  
§  
HIGHLAND CAPITAL MANAGEMENT, §  
L.P., § Bankruptcy Case No. 19-34054  
§  
Debtor. §  
\_\_\_\_\_

HIGHLAND CAPITAL MANAGEMENT §  
FUND ADVISORS, L.P. and NEXPOINT §  
ADVISORS, L.P., §  
§  
Appellants, §  
§

v. § Civil Action No. 3:21-cv-538-N  
§

HIGHLAND CAPITAL MANAGEMENT, §  
L.P., §  
§  
Appellee. §  
\_\_\_\_\_

HIGHLAND GLOBAL ALLOCATION §  
FUND, HIGHLAND INCOME FUND, §  
NEXPOINT CAPITAL, INC., and §  
NEXPOINT STRATEGY §  
OPPORTUNITIES FUND §  
§  
Appellants, §  
§

v. § Civil Action No. 3:21-cv-539-N  
§

HIGHLAND CAPITAL MANAGEMENT, §  
L.P., §  
§  
Appellee. §  
\_\_\_\_\_

JAMES DONDERO, §  
§  
Appellant, §  
§  
§

v.	§	Civil Action No. 3:21-cv-546-N
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Appellee.	§	
<hr/>		
	§	
THE DUGABOY INVESTMENT TRUST	§	
AND GET GOOD TRUST	§	
	§	
Appellants,	§	
	§	
v.	§	Civil Action No. 3:21-cv-550-N
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Appellee.	§	

**ORDER**

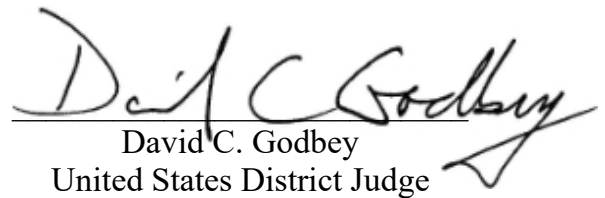
This Order addresses Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (collectively, the “Advisors”), The Dugaboy Investment Trust, and Get Good Trust’s motion for stay pending appeal. The Court denies the motion.

This is a bankruptcy case concerning Highland Capital Management, L.P. On February 22, 2021, the Bankruptcy Court entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* (the “Confirmation Order”). Appellants filed motions for stay in the Bankruptcy Court and initiated four separate appeals of the Confirmation Order to this Court. The Bankruptcy Court denied the motions for stay and certified a direct appeal to the Fifth Circuit. The Advisors then filed this motion for stay pending the outcome of their

appeal to the Fifth Circuit. The Dugaboy Investment Trust and the Get Good Trust then filed a motion adopting the Advisors' motion.

Shortly after this motion became ripe, the Advisors filed a similar motion to the Fifth Circuit. The Fifth Circuit ultimately denied that motion. *See* Order, *NexPoint v. Highland Capital Mgmt.*, No. 21-10449 (5th Cir. June 21, 2021). Because the Fifth Circuit has already reviewed and denied a motion with identical arguments, the Court denies this motion for stay pending appeal.

Signed June 23, 2021.

  
David C. Godbey  
United States District Judge

## **EXHIBIT 27**

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

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

*Counsel for the Debtor*

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

\_\_\_\_\_  
In re:

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

Debtor.  
\_\_\_\_\_

)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11  
)  
)  
)  
)  
)

**NOTICE OF OCCURRENCE OF EFFECTIVE DATE OF  
CONFIRMED FIFTH AMENDED PLAN OF REORGANIZATION  
OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

**PLEASE TAKE NOTICE** that on February 22, 2021, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1943] (the “Confirmation Order”) confirming the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as

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





amended, supplemented, or modified, the “Plan”). Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Plan and the Confirmation Order, as applicable.

**PLEASE TAKE FURTHER NOTICE** that the Effective Date of the Plan occurred on August 11, 2021.

**PLEASE TAKE FURTHER NOTICE** that, except with respect to Administrative Expense Claims that are Professional Fee Claims or as otherwise set forth in the Plan, requests for payment of an Administrative Expense Claim must be Filed with the Bankruptcy Court **no later than forty-five (45) days after the Effective Date** (the “Administrative Expense Claims Bar Date”). **HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE EXPENSE CLAIMS BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE THAT DO NOT FILE AND SERVE SUCH A REQUEST BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE EXPENSE CLAIMS AGAINST THE DEBTOR OR THE REORGANIZED DEBTOR.**

**PLEASE TAKE FURTHER NOTICE** that, unless otherwise ordered by the Bankruptcy Court, all final requests for payment of Professional Fee Claims must be Filed **no later than sixty (60) days after the Effective Date.**

**PLEASE TAKE FURTHER NOTICE** that the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtor or the Reorganized Debtor, as applicable, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan and Confirmation Order, including, without limitation: the injunction with respect to the commencement of claims and causes of action against Protected Parties set forth in Section IX.F of the Plan and Sections AA and BB of the Confirmation Order, the duration of injunction and stays set forth in Section IX.G of the Plan and Section AA of the Confirmation Order, and the continuance of the January 9 Order and July 16 Order set forth in Section IX.H of the Plan and Section CC of the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE** that on the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor’s formation documents, including the Limited Partnership Agreement.

**PLEASE TAKE FURTHER NOTICE** that the Confirmation Order and the Plan

are available for inspection. If you would like to obtain copies you may: (a) access the Debtor's restructuring website at <http://www.kccllc.net/hcmlp>; (b) call toll free: (877) 573-3984 or international: (310) 751-1829; or (c) email HighlandInfo@kccllc.com and reference "Highland" in the subject line. You may also obtain copies of any pleadings filed in this case for a fee via PACER at: [pacer.uscourts.gov](http://pacer.uscourts.gov).

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: August 11, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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

-and-

**HAYWARD PLLC**

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

*Counsel for the Debtor*

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**  
The Charitable DAF Fund LP §

Appellant § 22-03052

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**  
**VOLUME 7**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>			<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>			<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>



Vol. 8

001349

001352

001359

001361

001369

001381

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Thru Vol. 10

			<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)	
Vol. 11 002018	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002024	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002036	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002051 Thru Vol 14	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 19 003783 Thru Vol. 22	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)

001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

/s/ Mazin A. Sbaiti  
**Mazin A. Sbaiti**  
 Texas Bar No. 24058096  
**Jonathan Bridges**  
 Texas Bar No. 24028835  
 JPMorgan Chase Tower  
 2200 Ross Avenue – Suite 4900W  
 Dallas, TX 75201  
 T: (214) 432-2899  
 F: (214) 853-4367  
 E: mas@sbaitilaw.com  
 jeb@sbaitilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

*/s/ Mazin A. Sbaiti*

\_\_\_\_\_  
Mazin A. Sbaiti

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[rfeinstein@pszjlaw.com](mailto:rfeinstein@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

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

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

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

-----  
THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

-----

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**HIGHLAND CAPITAL MANAGEMENT, L.P.’S MOTION TO DISMISS**

Highland Capital Management, L.P. (“Highland”), the putative defendant in the above-captioned case (the “Action”), by and through its undersigned counsel, files this motion (the “Motion”) to dismiss the Action. In support of its Motion, Highland states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), and Rules 12(b)(1), (3), (4), and (6) of the Federal Rules of Civil Procedure, made applicable in this Action pursuant to Bankruptcy Rule 7012.

### **RELIEF REQUESTED**

4. Through this Motion, Highland requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Motion to Dismiss* (the “Memorandum of Law”) filed contemporaneously with this Motion, Highland requests that the Court: (a) dismiss the Action with prejudice, and (b) grant such other and further relief as the Court deems just and proper.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of the Motion Highland is filing: (a) its Memorandum of Law, and (b) the *Appendix in Support of Motion to Dismiss* (the “Appendix”), together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Appendix and the arguments contained in the Memorandum of Law, Highland is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. Highland submits that no other or further notice need be provided.

WHEREFORE, Highland respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Highland such other and further relief as the Court may deem proper.

*[Remainder of Page Intentionally Blank]*



Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

---

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Motion was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*

\_\_\_\_\_  
Zachery Z. Annable

**EXHIBIT A**

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

-----  
 THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

-----

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**ORDER GRANTING MOTION TO DISMISS**

Before the Court is *Highland Capital Management L.P.’s Motion to Dismiss* [Docket No. \_\_\_] (the “Motion”).<sup>1</sup> Having considered: (a) the Motion; (b) *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Motion to Dismiss* [Docket No. \_\_\_] (the “Memorandum of Law”); and (c) the *Appendix in Support of Motion to Dismiss* [Docket No. \_\_\_] (the “Appendix”), and the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that (a) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; (b) the Effective Date has occurred; (c) the Confirmation Order and Plan enjoin Plaintiff from continuing any action or suit against Highland and mandate that claims against Highland be brought in the Bankruptcy Court following the Effective Date pursuant to the Injunction Provision; (d) the purported claims asserted against Highland arise from transactions that took place post-petition and, to the extent

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Memorandum of Law.

valid, would constitute post-petition administrative claims; (e) the Plan provides a specific procedure through which holders of purported administrative claims, such as Plaintiff, can file an application with the Bankruptcy Court for allowance of its administrative expense claims; and (f) based on the foregoing, under the Confirmation Order and Plan, this Court is not the appropriate venue for this Action; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. The Action is **DISMISSED** with prejudice.

**It is so ordered** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

The Honorable David C. Godbey  
United States District Judge

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

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

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

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

THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**HIGHLAND’S MEMORANDUM OF LAW  
IN SUPPORT OF ITS MOTION TO DISMISS**

Highland Capital Management, L.P. (“Highland”), a reorganized debtor and the putative defendant in the above-captioned action (the “Action”), submits this Memorandum of Law in support of its motion to dismiss the Action (the “Motion”).<sup>1</sup> In support of its Motion, Highland states as follows:

### I. PRELIMINARY STATEMENT<sup>2</sup>

1. Highland is a reorganized debtor, having emerged from bankruptcy on August 11, 2021, when its Plan went effective.

2. The Charitable DAF Fund, L.P. (“Plaintiff”), a “trust” that exists for the benefit of James Dondero, Highland’s former owner who is waging a never-ending grudge match against Highland’s stakeholders, commenced this action on July 22, 2021 but never served its Complaint. Instead, on August 26, 2021, without notice to Highland, it filed *Plaintiffs’ Motion to Stay All Proceedings* [Docket No. 6] (the “Stay Motion”). On September 7, 2021, this Court entered an electronic order granting the unopposed Stay Motion [Docket No. 7] (the “Stay Order”).

3. Highland is simultaneously filing its *Motion for Reconsideration of Stay Order* and supporting documentation (together, the “Reconsideration Motion”). For the reasons set forth in the Reconsideration Motion and herein, Highland respectfully requests that the Court (a) grant the Reconsideration Motion and enter a new order vacating the Stay Order and denying the Stay Motion, and (b) then grant this Motion to Dismiss.

4. This Court should enforce the Confirmation Order and dismiss the Action. The Confirmation Order and Plan enjoin Plaintiff from continuing any action or suit against Highland,

---

<sup>1</sup> Concurrently herewith, Highland is filing the *Appendix in Support of Highland Capital Management, L.P.’s Motion for Reconsideration of a Stay Order* (the “Appendix”). Citations to the Appendix are notated as follows: Ex. #, Appx. #.

<sup>2</sup> All capitalized terms used but not defined in this section have the meanings given to them below.



and mandate that claims against Highland be brought in the Bankruptcy Court following the Effective Date pursuant to the Injunction Provision. Dismissal of the Action is also warranted because the purported claims asserted against Highland arise from transactions that took place post-petition, and, to the extent valid, would constitute post-petition administrative claims. The Plan provides specific a procedure through which holders of purported administrative claims, such as Plaintiff, can file an application with the Bankruptcy Court for allowance of its administrative expense claims. Under the Confirmation Order and Plan, this Court is not the appropriate venue for this Action.

5. For the reasons set forth above and below, and pursuant to Federal Rules of Civil Procedure 12(b)(1), (3), (4), and (6), Highland respectfully requests that the Court dismiss the Action.

## II. RELEVANT BACKGROUND

### A. Case Background

6. On October 16, 2019 (the “Petition Date”), Highland commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Case”).

### B. The Plan and Confirmation Order

7. On February 22, 2021, the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) entered its *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Bankr. Dkt. No. 1943] (Ex. 1, Appx. 1-162) (the “Confirmation Order”) which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P (as Modified)* (Ex. 2, Appx. 163-229) (the “Plan”). Pursuant to the Plan, as of the Effective Date (as defined in the Plan), Enjoined Parties (as defined in the Plan) are prohibited from pursuing or continuing actions of any kind against

Highland (the “Injunction Provision”). The Plan and the Confirmation Order each provide, in pertinent part:

**Injunction**

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, **all Enjoined Parties are and shall be permanently enjoined**, on and after the Effective Date, with respect to any Claims and Equity Interests, **from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor**, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation SubTrust, and the Claimant Trust and their respective property and interests in property.

...

**The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable** and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

Ex. 1, Appx. 77-79, and Ex. 2, Appx. 220-221 (emphasis added). By their terms, the Confirmation Order and Plan expressly enjoin Plaintiff from continuing the Action.

8. The Injunction Provision, however, does not leave putative claimants without a course to pursue their claims. The Plan includes a mechanism allowing holders of claims arising after the Petition Date but prior to the Effective Date to assert claims. They may, at their election,

file an application with the Bankruptcy Court seeking an allowed administrative claim. Article II of the Plan provides, in relevant part:

**Administrative Expensive Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; provided, however, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Ex. 2, Appx. 185-186. If Plaintiff wished to continue its Action, the Confirmation Order mandates that it do so by filing for an administrative claim.<sup>3</sup>

**C. Plaintiff Commences the Action but Never Serves Highland, and the Plan Goes Effective**

11. On July 22, 2021, Plaintiff commenced the Action by filing its *Original Complaint*. [Docket No. 1] (the “Complaint”). Plaintiff never served the Complaint.

12. On August 11, 2021, the Plan became Effective (as defined in the Plan), and Highland became the Reorganized Debtor (as defined in the Plan). *See Notice of Occurrence of Effective Date*

---

<sup>3</sup> Under the Plan, the Administrative Expense Claim Bar Date passed on September 25, 2021, so Plaintiff would, in fact, be required to request an order from the Bankruptcy Court permitting it to file a late claim. Highland reserves the right to contest any such request.

of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Bankr. Dkt. No. 2700] (Ex. 3, Appx. 230-234).

**D. Plaintiff Obtains an Unopposed Stay of the Action and Highland Seeks Reconsideration**

9. On August 26, 2021, Plaintiff filed the Stay Motion, requesting a stay of the Action pending resolution of the Fifth Circuit Appeal of the Confirmation Order. In support of its Motion, Plaintiff contended that the Appeal “includes direct challenges to the validity” of the Plan’s exculpation and injunction provisions, that these “provisions are currently in force and prohibit Plaintiffs from continuing this [A]ction,” and the “most efficient course of action” is for a stay. Stay Motion at 4.

10. On September 7, 2021, this Court entered the Stay Order. Highland is simultaneously filing its Reconsideration Motion.

**III. ARGUMENT**

**A. The Confirmation Order Should Be Enforced and the Action Should Be Dismissed**

11. Dismissal of the Action is warranted under the Confirmation Order and the Plan for two reasons: (i) Plaintiffs are enjoined from pursuing the Action against Highland, and (ii) the claims, to the extent valid, constitute post-petition administrative claims which Plaintiff, if it elects, can assert against Highland in the Bankruptcy Court pursuant to the procedure set forth in the Plan and Confirmation Order.

**1. Plaintiff Is Enjoined from Continuing the Action**

12. Pursuant to the Confirmation Order and the Plan, as of the Effective Date, Plaintiff is enjoined from conducting or continuing any suit or proceeding of any kind against Highland. See Docket No. 1943 (Confirmation Order) at 76-78 at 76-78 (Ex. 1, Appx. 77-79), and Ex. A (Plan) at 50-51 (Ex. 2, Appx. 219-220).

13. The parties are bound by the Confirmation Order. *See U.S. v. Ramirez*, 291 B.R. 386, 392 (N.D. TX. 2002) (stating that a “confirmed Chapter 11 plan constitute[s] a binding contract”). Accordingly, this Court should enforce the Confirmation Order and dismiss this Action on the basis that the Confirmation Order prohibits the continuation of this Action in this Court. The Bankruptcy Court has jurisdiction over any claims against Highland.

**2. The Claims Asserted Should Be Adjudicated by the Bankruptcy Court Pursuant to the Procedure for Asserting Administrative Claims in the Plan**

14. The claims asserted in the Action constitute alleged administrative claims that should be adjudicated in the Bankruptcy Court, if at all, and for this additional reason, dismissal of the Action is warranted.

15. As noted *supra*, the Action arises from actions taken by Highland post-petition. The Action is nothing more than a request for payment of an unliquidated and disputed administrative claim which will be subject to allowance or disallowance under the Bankruptcy Code and in accordance with the Plan, and once paid or disallowed, will be discharged. A request for payment of an administrative claim is a core proceeding under 28 U.S.C. § 157(B)(2)(A) and (O), and arises in and under title 11. Thus, the Action is a post-petition claim, and should be filed as a request for an allowed administrative claim in the Bankruptcy Court in accordance with Bankruptcy Code section 503. *See In re Endeavour Highrise L.P.*, 425 B.R. 402, 419 (Bankr. S.D. Tex. 2010) (“[A] party asserting a post-petition claim should file an application with the court and request an order establishing the claim as an allowed administrative claim or an allowed post-petition claim pursuant to a particular statute”).

16. Article II of the Plan provides the methodology for the filing and allowance of administrative claims. A holder of a claim that arises post-petition files a request for payment of an administrative claim under section 503 of the Bankruptcy Code and such claim will be afforded

“administrative priority” if the claim arose post-petition and as a result of actions taken by the debtor that benefitted the estate. *See Matter of Whistler Energy II, L.L.C.*, 931 F.3d 432, 441–42 (5th Cir. 2019) (noting that administrative claims “under section 503(b)(1)(A) ... must have arisen post-petition and as a result of actions taken by the trustee [or debtor-in-possession] that benefitted the estate,” and an administrative priority claim “must have arisen from a transaction with the debtor in possession,” as opposed to the pre-petition debtor); *In re Am. Plumbing & Mech., Inc.*, 323 B.R. 442, 459 and n.23 (Bankr. W.D. Tex. 2005) citing *Toma Steel Supply, Inc. v. TransAmerican Natural Gas Corp. (In Matter of TransAmerican Natural Gas Corp.)*, 978 F.2d 1409, 1416 (5th Cir. 1992).

17. In order to enforce the terms of the Plan and Confirmation Order, this Action should be dismissed so that Plaintiff, if it so chooses, can refile its claims with the Bankruptcy Court.

### **CONCLUSION**

WHEREFORE, Highland respectfully requests that the Court (a) grant the Motion and dismiss the Action, and (b) grant such other and further relief as the Court deems just and proper.

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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



**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Memorandum of Law was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*

---

Zachery Z. Annable

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

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

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

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

-----  
THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.  
-----

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**APPENDIX IN SUPPORT OF HIGHLAND  
CAPITAL MANAGEMENT, L.P.'S MOTION TO DISMISS**

<b>Ex.</b>	<b>Description</b>	<b>Appx. #</b>
1.	<i>Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief, Case No. 19-34054-sgj, D.I. 1943 (Bankr. N.D. Tex. Feb. 22, 2021)</i>	1-162
2.	<i>Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified), Case No. 19-34054-sgj, D.I. 1808 (Bankr. N.D. Tex. Jan. 22, 2021)</i>	163-229
3.	<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P., Case No. 19-34054-sgj, D.I. 2700 (Bankr. N.D. Tex. Aug. 11, 2021)</i>	230-234

[Remainder of Page Intentionally Blank]

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Ira D. Kharasch (CA Bar No. 109084)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[ikharasch@pszjlaw.com](mailto:ikharasch@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Appendix was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*

\_\_\_\_\_  
Zachery Z. Annable

# EXHIBIT 1



CLERK, U.S. BANKRUPTCY COURT  
 NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
 THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

*Henry G. C. George*  
 \_\_\_\_\_  
 United States Bankruptcy Judge

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

In re:	)	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	)	Case No. 19-34054-sgj11
Debtor.	)	)	

**ORDER (I) CONFIRMING THE FIFTH AMENDED  
 PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
 MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court<sup>2</sup> having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the "Disclosure Statement Order"), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.





*Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

*Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

*Certificate of Service* dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed<sup>3</sup> pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;<sup>4</sup> (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

---

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

<sup>4</sup> The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are



offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.



The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.<sup>5</sup> As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,<sup>6</sup> and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

---

<sup>5</sup> This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

<sup>6</sup> See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.<sup>7</sup> The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

---

<sup>7</sup> See *Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)



Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

#### 17. **Questionability of Good Faith as to Outstanding Confirmation**

**Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor’s 2008 return, which the Debtor believes arise from Get Good’s equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor’s alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the “Highland Advisors and Funds.” *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post’s credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors’ request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor’s Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC (“KCC”), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in



connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy



Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trust Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

**46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

**47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity



Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, un rebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will



periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R. 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.<sup>8</sup> Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

---

<sup>8</sup> See Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor’s release of the Debtor’s and Estate’s claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a “disguised” release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor’s conditional release of claims against employees, as identified in the Plan, and the Plan’s conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at



their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15<sup>th</sup> Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor’s enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors’ committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber’s* policy of exculpating creditors’ committees and their members from “being sued by persons unhappy with the committee’s performance during the case or unhappy with the outcome of the case” is applicable to the Independent Directors in this Chapter 11 Case.<sup>9</sup>

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that “costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization.” *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero’s pot plan does not get approved, that Mr. Dondero will “burn the place down.” The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

---

<sup>9</sup> The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan’s release, discharge and release provisions (the “Injunction Provision”). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor’s assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor’s assets and those assets could be monetized for less money to the detriment of the Debtor’s creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a “third-party release.” The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms “implementation” and “consummation” are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the “Gatekeeper Provision”). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court’s time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor’s settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court’s order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero’s affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the “Dondero Post-Petition Litigation”).

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery’s credible testimony, that if Mr. Dondero’s plan proposal was not accepted, he would “burn down the place.” The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery’s testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected



Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5<sup>th</sup> Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5<sup>th</sup> Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5<sup>th</sup> Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots<sup>10</sup> – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

---

<sup>10</sup> As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**A. Confirmation of the Plan.** The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.<sup>11</sup>

**B. Findings of Fact and Conclusions of Law.** The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

**C. Objections.** Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

**D. Plan Supplements and Plan Modifications.** The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

---

<sup>11</sup> The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**E. Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

**F. Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

**G. Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

**H. Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.



**I. Preservation of Causes of Action.** Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**J. Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

**K. Cancellation of Equity Interests and Issuance of New Partnership**

**Interests.** On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

**L. Transfer of Assets to Claimant Trust.** On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

**M. Transfer of Estate Claims to Litigation Sub-Trust.** On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

**N. Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

**O. Objections to Claims.** The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

**P. Assumption of Contracts and Leases.** Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

**Q. Rejection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

**R. Assumption of Issuer Executory Contracts.** On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers<sup>12</sup> a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples” and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

**S. Release of Issuer Claims.** Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

---

<sup>12</sup> The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

**T. Release of Debtor Claims against Issuer Released Parties.** Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Feronia Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,



(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

**U. Authorization to Consummate.** The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

**V. Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

**W. Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

**X. Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**Y. Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

*provided, however,* the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

**Z. Releases by the Debtor.** On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

**AA. Injunction.** Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

**in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in**

**Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.**

**BB. Duration of Injunction and Stays.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

**CC. Continuance of January 9 Order and July 16 Order.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

**DD. No Governmental Releases.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or



any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

**EE. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**FF. Cancellation of Notes, Certificates and Instruments.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

**GG. Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

**HH. Post-Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

**II. Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**JJ. Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

**KK. Notice of Effective Date.** As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

**LL. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

**MM. Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

**NN. References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

**OO. Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

**PP. Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

**QQ. Resolution of Objection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

**RR. Resolution of Objections of Scott Ellington and Isaac Leventon.**

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

**SS. No Release of Claims Against Senior Employee Claimants.** For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior



Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

**TT. Resolution of Objection of Internal Revenue Service.** Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

**UU. IRS Proof of Claim.** Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

**VV. CLO Holdco, Ltd. Settlement** Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

**WW. Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

**XX. Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**YY. Dissolution of the Committee.** On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

**ZZ. Miscellaneous.** After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

**###END OF ORDER###**

**Exhibit A**

**Fifth Amended Plan (as Modified)**

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

\_\_\_\_\_  
In re: )  
 ) Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> )  
 ) Case No. 19-34054-sgj11  
Debtor. )  
\_\_\_\_\_

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

**PACHULSKI STANG ZIEHL & JONES LLP**

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

**HAYWARD & ASSOCIATES PLLC**

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

Counsel for the Debtor and Debtor-in-Possession

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



ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law..... 1

    B. Defined Terms ..... 2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 17

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
Equity Interests ..... 18

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes ..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests..... 19

    I. Special Provision Governing Unimpaired Claims..... 24

    J. Subordinated Claims ..... 24

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN ..... 24

    A. Summary ..... 24

    B. The Claimant Trust ..... 25

        1. Creation and Governance of the Claimant Trust and Litigation  
Sub-Trust..... 25

        2. Claimant Trust Oversight Committee..... 26

	<u>Page</u>
3. Purpose of the Claimant Trust. ....	27
4. Purpose of the Litigation Sub-Trust.....	27
5. Claimant Trust Agreement and Litigation Sub-Trust Agreement. ....	27
6. Compensation and Duties of Trustees. ....	29
7. Cooperation of Debtor and Reorganized Debtor. ....	29
8. United States Federal Income Tax Treatment of the Claimant Trust. ....	29
9. Tax Reporting. ....	30
10. Claimant Trust Assets. ....	30
11. Claimant Trust Expenses. ....	31
12. Trust Distributions to Claimant Trust Beneficiaries.....	31
13. Cash Investments. ....	31
14. Dissolution of the Claimant Trust and Litigation Sub-Trust. ....	31
C. The Reorganized Debtor.....	32
1. Corporate Existence.....	32
2. Cancellation of Equity Interests and Release.....	32
3. Issuance of New Partnership Interests.....	32
4. Management of the Reorganized Debtor.....	33
5. Vesting of Assets in the Reorganized Debtor.....	33
6. Purpose of the Reorganized Debtor.....	33
7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets.....	33
D. Company Action.....	34
E. Release of Liens, Claims and Equity Interests.....	35
F. Cancellation of Notes, Certificates and Instruments.....	35

	<u>Page</u>
G. Cancellation of Existing Instruments Governing Security Interests.....	35
H. Control Provisions .....	35
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	36
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	38
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	39
C. Cash Distributions.....	40
D. Disputed Claims Reserve.....	40
E. Distributions from the Disputed Claims Reserve .....	40
F. Rounding of Payments.....	40
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	41
I. General Distribution Procedures.....	41
J. Address for Delivery of Distributions.....	41
K. Undeliverable Distributions and Unclaimed Property.....	41
L. Withholding Taxes.....	42

	<u>Page</u>
M. Setoffs .....	42
N. Surrender of Cancelled Instruments or Securities .....	42
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	43
A. Filing of Proofs of Claim.....	43
B. Disputed Claims.....	43
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	43
D. Allowance of Claims and Equity Interests.....	44
1. Allowance of Claims.....	44
2. Estimation .....	44
3. Disallowance of Claims .....	44
ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	45
A. Conditions Precedent to the Effective Date .....	45
B. Waiver of Conditions.....	46
C. Dissolution of the Committee .....	46
ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	47
A. General.....	47
B. Discharge of Claims.....	47
C. Exculpation .....	47
D. Releases by the Debtor.....	48
E. Preservation of Rights of Action.....	49
1. Maintenance of Causes of Action.....	49
2. Preservation of All Causes of Action Not Expressly Settled or Released .....	49

	<u>Page</u>
F. Injunction .....	50
G. Duration of Injunctions and Stays.....	51
H. Continuance of January 9 Order .....	51
ARTICLE X. BINDING NATURE OF PLAN .....	51
ARTICLE XI. RETENTION OF JURISDICTION.....	52
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	54
A. Payment of Statutory Fees and Filing of Reports .....	54
B. Modification of Plan .....	54
C. Revocation of Plan.....	54
D. Obligations Not Changed.....	55
E. Entire Agreement .....	55
F. Closing of Chapter 11 Case .....	55
G. Successors and Assigns.....	55
H. Reservation of Rights.....	55
I. Further Assurances.....	56
J. Severability .....	56
K. Service of Documents .....	56
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	57
M. Governing Law .....	58
N. Tax Reporting and Compliance .....	58
O. Exhibits and Schedules .....	58
P. Controlling Document .....	58

---

**DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

**ARTICLE I.**  
**RULES OF INTERPRETATION, COMPUTATION OF TIME,**  
**GOVERNING LAW AND DEFINED TERMS**

**A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy



Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].



62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.



69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.



117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## ARTICLE II.

### ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

#### A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on



or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.



9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.



- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

### **ARTICLE IV.** **MEANS FOR IMPLEMENTATION OF THIS PLAN**

#### **A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### **1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.**

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer



of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.



11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.



**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),



as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.



**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trust, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**



**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.**  
**EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

**B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

**C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### **1. Maintenance of Causes of Action**

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### **2. Preservation of All Causes of Action Not Expressly Settled or Released**

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,



without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court**

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).



**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

**ARTICLE XII.**  
**MISCELLANEOUS PROVISIONS**

**A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700

Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the  
Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*



Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

Case 19-34054-sgj11 Doc 1943 Filed 02/22/21 Entered 02/22/21 16:48:16 Page 157 of 161

**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

### **Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

## **EXHIBIT 2**



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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	
	)	Case No. 19-34054-sgj11
Debtor.	)	
	)	

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
 CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

**PACHULSKI STANG ZIEHL & JONES LLP**

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

**HAYWARD & ASSOCIATES PLLC**

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

Counsel for the Debtor and Debtor-in-Possession

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



ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
 GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law..... 1

    B. Defined Terms .....2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 18

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
 AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
 Equity Interests ..... 19

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes ..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests.....20

    I. Special Provision Governing Unimpaired Claims.....24

    J. Subordinated Claims .....25

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN .....25

    A. Summary .....25

    B. The Claimant Trust .....26

        1. *Creation and Governance of the Claimant Trust and Litigation Sub-  
 Trust.* .....26

        2. *Claimant Trust Oversight Committee* .....27

	<u>Page</u>
3. <i>Purpose of the Claimant Trust</i> .....	27
4. <i>Purpose of the Litigation Sub-Trust</i> .....	28
5. <i>Claimant Trust Agreement and Litigation Sub-Trust Agreement</i> .....	28
6. <i>Compensation and Duties of Trustees</i> .....	29
7. <i>Cooperation of Debtor and Reorganized Debtor</i> .....	30
8. <i>United States Federal Income Tax Treatment of the Claimant Trust</i> .....	30
9. <i>Tax Reporting</i> .....	30
10. <i>Claimant Trust Assets</i> .....	31
11. <i>Claimant Trust Expenses</i> .....	31
12. <i>Trust Distributions to Claimant Trust Beneficiaries</i> .....	31
13. <i>Cash Investments</i> .....	31
14. <i>Dissolution of the Claimant Trust and Litigation Sub-Trust</i> .....	32
C. <i>The Reorganized Debtor</i> .....	32
1. <i>Corporate Existence</i> .....	32
2. <i>Cancellation of Equity Interests and Release</i> .....	33
3. <i>Issuance of New Partnership Interests</i> .....	33
4. <i>Management of the Reorganized Debtor</i> .....	33
5. <i>Vesting of Assets in the Reorganized Debtor</i> .....	34
6. <i>Purpose of the Reorganized Debtor</i> .....	34
7. <i>Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets</i> .....	34
D. <i>Company Action</i> .....	34
E. <i>Release of Liens, Claims and Equity Interests</i> .....	35
F. <i>Cancellation of Notes, Certificates and Instruments</i> .....	36
G. <i>Cancellation of Existing Instruments Governing Security Interests</i> .....	36

	<u>Page</u>
H. Control Provisions .....	36
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	37
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases .....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases .....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases .....	39
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS .....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	40
C. Cash Distributions .....	41
D. Disputed Claims Reserve .....	41
E. Distributions from the Disputed Claims Reserve .....	41
F. Rounding of Payments .....	41
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims .....	42
I. General Distribution Procedures .....	42
J. Address for Delivery of Distributions .....	42
K. Undeliverable Distributions and Unclaimed Property .....	42
L. Withholding Taxes .....	43
M. Setoffs .....	43

	<u>Page</u>
N. Surrender of Cancelled Instruments or Securities .....	43
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
 ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	
44	
A. Filing of Proofs of Claim .....	44
B. Disputed Claims.....	44
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	44
D. Allowance of Claims and Equity Interests.....	44
1. <i>Allowance of Claims</i> .....	45
2. <i>Estimation</i> .....	45
3. <i>Disallowance of Claims</i> .....	45
 ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	
46	
A. Conditions Precedent to the Effective Date .....	46
B. Waiver of Conditions.....	47
C. Effect of Non-Occurrence of Conditions to Effectiveness	<b>Error! Bookmark not defined.</b>
D. Dissolution of the Committee .....	47
 ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	
48	
A. General.....	48
B. Discharge of Claims.....	48
C. Exculpation .....	48
D. Releases by the Debtor.....	49
E. Preservation of Rights of Action.....	50
1. <i>Maintenance of Causes of Action</i> .....	50
2. <i>Preservation of All Causes of Action Not Expressly Settled or Released</i> .....	50
F. Injunction .....	51

	<u>Page</u>
G. Term of Injunctions or Stays.....	52
H. Continuance of January 9 Order .....	52
ARTICLE X. BINDING NATURE OF PLAN .....	52
ARTICLE XI. RETENTION OF JURISDICTION.....	53
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	55
A. Payment of Statutory Fees and Filing of Reports .....	55
B. Modification of Plan .....	55
C. Revocation of Plan.....	55
D. Obligations Not Changed.....	56
E. Entire Agreement.....	56
F. Closing of Chapter 11 Case .....	56
G. Successors and Assigns.....	56
H. Reservation of Rights.....	56
I. Further Assurances.....	57
J. Severability .....	57
K. Service of Documents .....	57
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	58
M. Governing Law .....	59
N. Tax Reporting and Compliance .....	59
O. Exhibits and Schedules .....	59
P. Controlling Document .....	59

---

## **DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### **ARTICLE I.** **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

#### **A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns;



(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.



42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].



62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any



damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized

Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.



128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized

Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee

Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF  
CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the

Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

## **H. Classification and Treatment of Claims and Equity Interests**

### *1. Class 1 – Jefferies Secured Claim*

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

### *2. Class 2 – Frontier Secured Claim*

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.



- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.



- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

#### 11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor’s limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor’s current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be

cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust<sup>2</sup>**

*1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and



monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust



Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are

investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in



the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

#### **E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of

doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.



The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.  
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a

contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed

and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity

Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the

Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall



revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

#### **H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

#### **I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

#### **J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

#### **K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any



damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.**  
**PROCEDURES FOR RESOLVING CONTINGENT,**  
**UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH**

**LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding

upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

#### **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's

Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross



negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

#### **D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

## **E. Preservation of Rights of Action**

### *1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

### *2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final



Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or**

arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state,

Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or

expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such

orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII. MISCELLANEOUS PROVISIONS**

### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

### **B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

### **C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement



executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this

Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:



**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego

the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

**EXHIBIT 3**

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

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

*Counsel for the Debtor*

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

In re:

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

Debtor.

)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11  
)  
)  
)  
)  
)

**NOTICE OF OCCURRENCE OF EFFECTIVE DATE OF  
CONFIRMED FIFTH AMENDED PLAN OF REORGANIZATION  
OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

**PLEASE TAKE NOTICE** that on February 22, 2021, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1943] (the “Confirmation Order”) confirming the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as

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



amended, supplemented, or modified, the “Plan”). Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Plan and the Confirmation Order, as applicable.

**PLEASE TAKE FURTHER NOTICE** that the Effective Date of the Plan occurred on August 11, 2021.

**PLEASE TAKE FURTHER NOTICE** that, except with respect to Administrative Expense Claims that are Professional Fee Claims or as otherwise set forth in the Plan, requests for payment of an Administrative Expense Claim must be Filed with the Bankruptcy Court **no later than forty-five (45) days after the Effective Date** (the “Administrative Expense Claims Bar Date”). **HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE EXPENSE CLAIMS BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE THAT DO NOT FILE AND SERVE SUCH A REQUEST BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE EXPENSE CLAIMS AGAINST THE DEBTOR OR THE REORGANIZED DEBTOR.**

**PLEASE TAKE FURTHER NOTICE** that, unless otherwise ordered by the Bankruptcy Court, all final requests for payment of Professional Fee Claims must be Filed **no later than sixty (60) days after the Effective Date.**

**PLEASE TAKE FURTHER NOTICE** that the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtor or the Reorganized Debtor, as applicable, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan and Confirmation Order, including, without limitation: the injunction with respect to the commencement of claims and causes of action against Protected Parties set forth in Section IX.F of the Plan and Sections AA and BB of the Confirmation Order, the duration of injunction and stays set forth in Section IX.G of the Plan and Section AA of the Confirmation Order, and the continuance of the January 9 Order and July 16 Order set forth in Section IX.H of the Plan and Section CC of the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE** that on the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor’s formation documents, including the Limited Partnership Agreement.

**PLEASE TAKE FURTHER NOTICE** that the Confirmation Order and the Plan

are available for inspection. If you would like to obtain copies you may: (a) access the Debtor's restructuring website at <http://www.kccllc.net/hcmlp>; (b) call toll free: (877) 573-3984 or international: (310) 751-1829; or (c) email HighlandInfo@kccllc.com and reference "Highland" in the subject line. You may also obtain copies of any pleadings filed in this case for a fee via PACER at: [pacer.uscourts.gov](http://pacer.uscourts.gov).

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*



Dated: August 11, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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

-and-

**HAYWARD PLLC**

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

*Counsel for the Debtor*

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**  
The Charitable DAF Fund LP §

Appellant § 22-03052

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**  
**VOLUME 8**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

Vol. 1  
000001

000004

000032

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

Vol. 2

000040

000058

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>			<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3      5/25/22 (10/5/21)      9      (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4      5/25/22 (10/5/21)      10      (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>			<p>5      5/25/22 (10/5/21)      11      (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6      5/25/22 (10/5/21)      12      (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7      5/25/22 (10/5/21)      13      ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

Vol. 8

001349

001352

001359

001361

001369

001381

Thru Vol. 10

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>



				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				



001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

*/s/ Mazin A. Sbaiti*  
Mazin A. Sbaiti

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

THE CHARITABLE DAF FUND, LP.,

*Plaintiff,*

v.

HIGHLAND CAPITAL MANAGEMENT,

L.P.,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Cause No. 3:21-cv-01710-N

**PLAINTIFF’S RESPONSE TO MOTION  
FOR RECONSIDERATION OF STAY ORDER**

Highland’s *Motion for Reconsideration* should be denied.

For one thing, Highland Capital Management, L.P. (“Highland”) violated the conference requirement under Local Rule 7.1(a).

For another, Highland’s professed reason for wanting this Court to consider its 12(b)(6) Motion is pure casuistry. Plaintiff does not specifically disagree with the Defendant that the Permanent Injunction bars this action. In fact, that was *Plaintiff’s* point in support of the stay.

However, the reason(s) for not removing the stay are three-fold:

**First**, if this Court were to dismiss the action, then Plaintiff would appeal the dismissal and join it with the pending appeal in the Fifth Circuit regarding the Permanent Injunction. The Fifth Circuit will either (a) vacate the Permanent Injunction (if not the whole final order), or (b) affirm it. If (a) were to occur, then this Court’s dismissal would be likewise vacated and sent back to this Court. If (b) were to occur, this Court could take up dismissal at that time.

**Second**, Highland’s histrionics about “administering the estate” are belied by the fact that it has represented to the Fifth Circuit that the estate is so-far administered and almost done, that

the appeal of the Plan Injunction is “equitably mooted.” See *In the Matter of: Highland Capital Management, L.P.; NexPoint Advisors, L.P., et al. v. Highland Capital Management, L.P.*, No. 21-10449, in the United States Court of Appeals for the Fifth Circuit, Document 00516045149, filed on October 6, 2021. Moreover, Highland has invoked the same grounds for dismissing the claim(s) against it in the underlying Chapter 11 matter by the Charitable DAF Fund—except it has asked for the opposite relief: it has set before the Bankruptcy Court a hearing to oppose a stay of that proceeding, and then, at Highland’s insistence, to consider the pending Rule 12(b)(6) motions to dismiss *on the merits*. See *In re: Highland Capital Management, L.P.*, Case No. 19-34054-sgj11, Adversary Proceeding 21-03067-sgj [Doc. 66]. Highland did not do there what it has done here—which is to seek to enforce the Permanent Injunction and dismiss on that basis alone. For Highland to take diametrically opposite positions raises substantial doubts as to the veracity of the representation that this case laying idle until the appeal is over somehow harms the bankruptcy estate.

**Third**, Highland attempts to soften the harshness of the remedy by stating that Plaintiff is not completely foreclosed from a remedy, because it should have brought this case as an administrative expense claim. But this, too, is specious. The definition of an “Administrative Expense Claim” under the Fifth Amended Plan of Reorganization is:

[A]ny Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

See Appx. 0190. (Fifth Amended Plan of Reorganization p. 2, (§ B.2)). Highland cannot seriously contend that a lawsuit for breaches of fiduciary duty and breaches of the Federal Investment

Advisors Act, among other things, involves “costs and expenses incurred ... [for] preserving the Estate and operating the business of the Debtor.” The lawsuit is about the opposite—it is about the waste of third-party assets by the Debtor for its own benefit and at the expense of Plaintiff. Moreover, this lawsuit is not about “fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code[.]” Those code sections have nothing to do with the facts or circumstances, or transactions, at issue in this lawsuit. And nothing in Highland’s brief even attempts to show otherwise.

Highland offers no reason, and nothing in the way of urgency, for making this Court decide a motion that is, for all intents and purposes, moot at this juncture. **AT BEST**, Highland’s argument is one that would entail a litany of paperwork for lawyers to churn: briefs, appeals, remands, etc.

Presented with all of this legal sophistry, one has to wonder why the motion was ever filed at all and who has something to gain from unnecessary and inefficient litigation? The answer to that question, we respectfully submit, is quite obvious.

Dated: October 27, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Plaintiff**

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

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

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

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

---

THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

---

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**HIGHLAND CAPITAL MANAGEMENT, L.P.’S REPLY BRIEF IN SUPPORT OF ITS  
MOTION FOR RECONSIDERATION OF STAY ORDER**

Highland Capital Management, L.P. (“Highland”), the reorganized debtor and the putative defendant in the above-captioned action, submits this reply brief (the “Reply”) in support of *Highland Capital Management, L.P.’s Motion for Reconsideration of Stay Order* [D.I. 8] (the “Motion”)<sup>1</sup> and in opposition to *Plaintiff’s Response to Motion for Reconsideration of Stay Order* [D.I. 15] (the “Response”). In further support of its Motion, Highland states as follows:

## REPLY<sup>2</sup>

1. On February 22, 2021, the Bankruptcy Court entered the Confirmation Order confirming Highland’s Plan. Plaintiff never objected to the Plan and never appealed the Confirmation Order. Several entities (collectively, the “Appellants”) owned or controlled by James Dondero (who also owns and controls Plaintiff) did, however, and their appeals (collectively, the “Appeals”) are currently pending in the Fifth Circuit Court of Appeals (the “Fifth Circuit”).

2. The Bankruptcy Court, the District Court, and the Fifth Circuit each denied Appellants’ requests for a stay of the Confirmation Order pending appeal.

3. On August 11, 2021, the Plan became effective. Article IX.F of the Plan (the “Injunction”) “enjoin[s] [all Enjoined Parties] . . . from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor.” Ex. 4, Appx. 239. This aspect of the Injunction Provision is *not* the subject of any of the Appeals.

---

<sup>1</sup> All capitalized terms used but not defined herein have the meanings ascribed to them in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Motion for Reconsideration of Stay Order* [D.I. 9].

<sup>2</sup> All citations are to the *Appendix in Support of Highland Capital Management, L.P.’s Motion for Reconsideration of a Stay Order* [D.I. 10] (the “Appendix”). Citations to the Appendix are notated as follows: “Ex. \_\_, Appx. \_\_.”



4. Plaintiff clearly understood that the Injunction barred the continuation of its Action, so it filed the Stay Motion, which was granted before Highland filed a response.<sup>3</sup> Thereafter, Highland timely filed the Motion seeking reconsideration of the Stay Order. As set forth in the Motion, Plaintiff has not, and cannot, satisfy the four-pronged test routinely applied to requests for stays pending appeal in the Fifth Circuit.<sup>4</sup> Highland also moved to dismiss the Action, which motion is currently pending before this Court.<sup>5</sup>

5. Plaintiff asserts three “reasons” why the stay should remain in place.<sup>6</sup> Each of these reasons ignores or misinterprets the facts of this case and the law.

6. **First**, Plaintiff argues that the issues raised in the Action and the Appeals are the same and threatens that if the Court dismisses the Action, Plaintiff will appeal that decision and seek to join that appeal with the Appeals currently pending before the Fifth Circuit. Highland would object to any request to consolidate the appeals for multiple reasons, including that (a) the issues raised in the Appeals and the Injunction prohibiting Plaintiff from continuing the Action in this Court are unrelated, and (b) Plaintiff cannot join an appeal of an order they never objected to and never appealed.<sup>7</sup> More fundamentally, although Plaintiff never appealed the Confirmation

---

<sup>3</sup> In fact, Plaintiff never served Highland with the Complaint or the Stay Motion, and Highland had not even appeared in the Action at the time the Stay Motion was granted.

<sup>4</sup> A stay pending appeal is warranted only if a movant establishes the following four elements: (1) substantial likelihood of success on the merits of its appeal; (2) irreparable injury if the stay is not granted; (3) the stay will not substantially harm other parties; and (4) the stay would serve the public interest. *See Belcher v. Birmingham Trust Nat’l Bank*, 395 F.2d 685, 686-87 (5th Cir. 1968).

<sup>5</sup> *See Highland Capital Management, L.P.’s Motion to Dismiss* [D.I. 11] (the “Motion to Dismiss”). Highland served its Motion to Dismiss on October 5, 2021 [D.I. 14]. While Plaintiff filed its Response to the Motion, Plaintiff failed to file any opposition to the Motion to Dismiss.

<sup>6</sup> Plaintiff also argues that Highland “violated the conference requirement under Local Rule 7.1(a).” Response at 1. Plaintiff is mistaken. The Motion seeks relief under Rule 59 of the Federal Rules of Civil Procedure, which allows a party to seek a “new trial” under certain circumstances. *See* FED. R. CIV. P. 59(a) (“The court may, on motion, grant a new trial on all or some of the issues. . . .” Under Local Rule 7.1(h), a certificate of conference is not required for motions seeking a “new trial.”

<sup>7</sup> Highland reserves all its rights and arguments in the event another Dondero-related entity pursues further baseless and frivolous litigation.

Order, it is nevertheless asking this Court to stay its effect pending appeal. The Bankruptcy Court, the District Court, and the Fifth Circuit have each denied motions filed by Plaintiff’s affiliates – the actual Appellants – and Plaintiff cannot satisfy the Fifth Circuit standard for a stay pending appeal.

7. **Second**, Plaintiff challenges Highland’s assertion that the Stay Motion is part of James Dondero’s concerted effort to impede Highland’s wind-down pursuant to the Plan. Plaintiff argues that Highland’s position is inconsistent with a motion it has filed in the Fifth Circuit to dismiss the Appeals as equitably moot (the “Fifth Circuit Equitable Mootness Motion”) where it argues that the Plan has been substantially consummated. This argument evinces a misunderstanding of the law; Highland’s position is not inconsistent. The Fifth Circuit Equitable Mootness Motion establishes that the Plan has been “substantially consummated,” which is one of the three elements required to demonstrate equitable mootness in the Fifth Circuit. *Bank of New York Trust Co., NA v. Official Unsecured Creditors’ Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 240 (5th Cir. 2009). “Substantially consummated” does not mean that the Plan has been fully administered. Rather, “substantial consummation” is defined under the Bankruptcy Code as the “(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by . . . the successor to the debtor. . . of the business or of management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan.” 11 U.S.C. § 1101(2). Highland’s Plan has been “substantially consummated,” but there is still significant work to do to monetize assets and finish making distributions to prepetition creditors. Plaintiff’s effort to stay the Action, and litigate with Highland at every turn, seeks to derail the wind-down process.

8. Plaintiff also incorrectly argues Highland has taken inconsistent positions in the Motion and in *Charitable DAF Fund, L.P., et al, v. Highland Capital Management, L.P., et al*, Adv. Case No. 21-03067 (Bankr. N.D. Tex. Sept. 29, 2021) (the “DAF Proceeding”).<sup>8</sup> Like the Action, the DAF Proceeding was commenced in the District Court in April 2021 in an attempt to evade the Bankruptcy Court’s jurisdiction and to adjudicate a dispute arising out of a settlement previously approved by the Bankruptcy Court. Highland moved to have the DAF Proceeding referred to the Bankruptcy Court and the District Court granted that motion. Highland seeks prompt resolution of the DAF Proceeding in the Bankruptcy Court. The fact that the matter is proceeding in the Bankruptcy Court as an adversary proceeding, as opposed to part of the administrative claim resolution process is irrelevant. The important point is that Highland seeks prompt resolution of that matter – and of the Action – in the Bankruptcy Court, the required forum for the adjudication of both matters under the plain terms of the Confirmation Order.

9. **Third**, Plaintiff argues that Plan provisions detailing the procedures for asserting administrative claims against the Highland bankruptcy estate do not apply to its claims because of the nature of its claims. Plaintiff misunderstands the administrative claim process. An administrative claim is a claim arising after the filing of a bankruptcy petition as a result of actions taken by the debtor to operate its estate. *See Matter of Whistler Energy II, L.L.C.*, 931 F.3d 432, 441–42 (5th Cir. 2019); *see also* Ex. 4, Appx. 190. Plaintiff claims it was injured because Highland, then the debtor-in-possession, caused the sale of certain assets after the “Petition Date” but prior to the Effective Date in the ordinary course of its business pursuant to 11 U.S.C. § 363. Plaintiff, therefore, is asserting an administrative claim and is required to prosecute that claim in a

---

<sup>8</sup> The DAF Proceeding was filed by Plaintiff, and its wholly-owned subsidiary, CLO Holdco, Ltd. – Mr. Dondero’s family trusts who are also represented by the Sbaiti & Co. law firm.

manner consistent with the Plan, which sets forth the *exclusive* means for doing so. Ex. 4, Appx. 204-05. Whether, and to what extent, Plaintiff will be able to meet its burden of proving its administrative claim will be determined by the Bankruptcy Court. Neither the Confirmation Order, the Plan, nor the Bankruptcy Code provide Plaintiff with an alternative mechanism for asserting administrative claims. Plaintiff cannot simply “opt out” of the Plan to pursue claims against the “Debtor” and the “Debtor’s property” in another forum it hopes will be more hospitable.

### **CONCLUSION**

WHEREFORE, Highland respectfully requests the Court grant (i) the relief requested in the Motion, and (ii) such other and further relief as the Court deems just and proper.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Dated: November 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CHARITABLE DAF FUND, L.P.,

Plaintiff,

v.

HIGHLAND CAPITAL  
MANAGEMENT, L.P.,

Defendant.

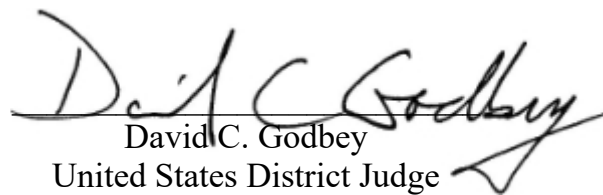
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 3:21-CV-1710-N

**ORDER**

This Order addresses Defendant Highland Capital Management, L.P.’s (“HCM”) motion for reconsideration of this Court’s earlier order staying this case [8]. This case challenges a transaction consummated in the course of a consolidated bankruptcy proceeding and names as the sole defendant the debtor in that bankruptcy. The Court therefore concludes that this case constitutes a matter “related to” a case in the bankruptcy court under the meaning of this District’s Miscellaneous Order No. 33. Accordingly, the Court grants Defendant’s motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 19-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case.

Signed May 19, 2022.

  
David C. Godbey  
United States District Judge



PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

HAYWARD PLLC  
Melissa S. Hayward (Texas Bar No. 24044908)  
Zachery Z. Annable (Texas Bar No. 24053075)  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

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

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

-----	§	
In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
	§	
Reorganized Debtor.	§	
-----	§	
THE CHARITABLE DAF FUND, L.P.,	§	
	§	Adversary Proceeding No.
Plaintiff,	§	
	§	22-03052-sgj
vs.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
-----	§	

**HIGHLAND CAPITAL MANAGEMENT, L.P.’S  
AMENDED MOTION TO DISMISS**

<sup>1</sup> The Reorganized Debtor’s last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. (“Highland”), the reorganized debtor and defendant in the above-captioned adversary proceeding (the “Adversary Proceeding”), by and through its undersigned counsel, files this amended motion (the “Motion”) to dismiss the Adversary Proceeding. In support of its Motion, Highland states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to sections 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a), Rules 12(b)(1), 12(b)(6), and 17(a) of the Federal Rules of Civil Procedure, and Rules 7012 and 7017 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **RELIEF REQUESTED**

4. Through this Motion, Highland requests that the Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a). This Motion amends *Highland Capital Management, L.P.’s, Motion to Dismiss* [Docket No. 11].
5. For the reasons set forth more fully in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Amended Motion to Dismiss* (the “Memorandum of Law”) filed contemporaneously with this Motion, Highland requests that the Court: (a) dismiss the Complaint with prejudice, and (b) grant such other and further relief as the Court deems just and proper.
6. In accordance with Rule 7007-1 of the *Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of the Motion Highland is filing: (a) its

Memorandum of Law, and (b) the *Appendix in Support of Amended Motion to Dismiss* (the “Appendix”), together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Appendix and the arguments contained in the Memorandum of Law, Highland is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties to the Adversary Proceeding. Highland submits that no other or further notice need be provided.

WHEREFORE, Highland respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Highland such other and further relief as the Court may deem proper.

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: May 27, 2022.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

**EXHIBIT A**

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

-----  
In re:

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

Reorganized Debtor.

-----  
THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.  
-----

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§  
§ Adversary Proceeding No.  
§  
§ 22-03052-sgj  
§  
§  
§  
§  
§  
§  
§

**ORDER GRANTING MOTION TO DISMISS**

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Before the Court is *Highland Capital Management L.P.’s Amended Motion to Dismiss* [Docket No. \_\_\_] (the “Motion”). Having considered: (a) the Motion; (b) *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Amended Motion to Dismiss* [Docket No. \_\_\_] (the “Memorandum of Law”);<sup>2</sup> and (c) the *Appendix in Support of Amended Motion to Dismiss* [Docket No. \_\_\_] (the “Appendix”) and the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that (a) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; (b) the Effective Date has occurred; (c) the purported claims asserted against Highland arise from transactions that took place post-petition and, to the extent valid, would constitute post-petition administrative expense claims; (d) the Plan provided a specific procedure through which holders of purported administrative expense claims, such as Plaintiff, could file an application with the Bankruptcy Court for allowance of administrative expense claims; (e) pursuant to the Plan and Confirmation Order, all administrative expense claims had to be filed no later than the Administrative Expense Claims Bar Date, which occurred on September 25, 2021; (f) Plaintiff did not file its administrative expense claims by the Administrative Expense Claim Bar Date; (g) Plaintiff is not an investor in Multi-Strat and (1) has not alleged or pleaded an injury in fact and (2) is not the “real party in interest” as required by Rule 17(a) of the FRCP made applicable to this case by Rule 7017 of the FRBP; and (h) based on the foregoing (1) under the Confirmation Order and Plan, Plaintiff’s claims are time-barred because Plaintiff failed to file them by the Administrative Expense Claims Bar Date, (2) Plaintiff lacks constitutional and prudential standing to bring the Complaint, and (3) amendment of the Complaint would be futile as Plaintiff cannot assert a claim upon which relief can be granted;

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Memorandum of Law.



and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. The Complaint is **DISMISSED** with prejudice.
3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

###END OF ORDER###

PACHULSKI STANG ZIEHL & JONES LLP  
 Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
 John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
 Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
 Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)  
 10100 Santa Monica Blvd., 13th Floor  
 Los Angeles, CA 90067  
 Telephone: (310) 277-6910  
 Facsimile: (310) 201-0760

HAYWARD PLLC  
 Melissa S. Hayward (Texas Bar No. 24044908)  
 Zachery Z. Annable (Texas Bar No. 24053075)  
 10501 N. Central Expy, Ste. 106  
 Dallas, TX 75231  
 Tel: (972) 755-7100  
 Fax: (972) 755-7110

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

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
Reorganized Debtor.	§	Case No. 19-34054-sgj11
THE CHARITABLE DAF FUND, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§	22-03052-sgj
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Defendant.	§	
	§	

**HIGHLAND CAPITAL MANAGEMENT, L.P.’S MEMORANDUM OF LAW  
IN SUPPORT OF ITS AMENDED MOTION TO DISMISS**

<sup>1</sup> The Reorganized Debtor’s last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Highland Capital Management, L.P. (“Highland”), the reorganized debtor and defendant in the above-captioned adversary proceeding (the “Adversary Proceeding”), submits this Memorandum of Law in support of its amended motion to dismiss the Adversary Proceeding (the “Motion”).<sup>2</sup> In support of its Motion, Highland states as follows:

### **PRELIMINARY STATEMENT**<sup>3</sup>

1. Seven months after this Court entered the Confirmation Order confirming Highland’s Plan, plaintiff, The Charitable DAF Fund, L.P. (“Plaintiff”), filed its Complaint in the District Court.<sup>4</sup> In its Complaint, Plaintiff alleged that Highland, during the ordinary course operation of its bankruptcy estate, breached its contractual and extra-contractual duties to Plaintiff as an investor in Multi-Strat and that Plaintiff was harmed by those breaches. The Complaint is fatally flawed and must be dismissed for at least two independent reasons.

2. First, as Plaintiff knew or should have known, the causes of action asserted in the Complaint—that Highland breached its contractual and extra-contractual duties to Plaintiff during the bankruptcy—are “administrative expense claims” and, under the clear terms of the Plan, were required to be filed with this Court and served on Highland no later than September 25, 2021. Despite these clear terms, and in a transparent attempt to evade this Court, Plaintiff gambled and asserted its claims in the District Court. That decision was fatal. Plaintiff’s claims are time-barred and must be disallowed.

---

<sup>2</sup> Concurrently herewith, Highland is filing the *Appendix in Support of the Amended Motion to Dismiss* (the “Appendix”). Citations to the Appendix are notated as follows: Ex. #, Appx. #.

<sup>3</sup> Capitalized terms used but not defined in this Preliminary Statement have the meanings given to them below.

<sup>4</sup> Plaintiff is a “charitable trust” under the control of James Dondero, Highland’s founder and former President and Chief Executive Officer, and which largely exists for Mr. Dondero’s personal benefit. The Complaint is Mr. Dondero’s third attempt to sue Highland for alleged mismanagement of Multi-Strat during this case. The Dugaboy Investment Trust, Mr. Dondero’s family trust (“Dugaboy”), filed a proof of claim with this Court (Ex. 1, Appx. 1-6) alleging substantially the same claims set forth in the Complaint. Dugaboy also filed a complaint in the District Court against Highland that was nearly identical to the Complaint and that asserted the same claims included in its proof of claim. Ex. 2, Appx. 7-18. After causing Highland to incur significant legal expense, Dugaboy withdrew its proof of claim and complaint.

3. Second, Plaintiff is not an investor in Multi-Strat. Plaintiff should know this, but, regardless of Plaintiff's reasons for filing the Complaint, the result is the same. Plaintiff lacks standing to assert the claims in the Complaint, and this Court accordingly lacks jurisdiction to adjudicate the claims asserted in the Complaint. The Complaint must be dismissed.

4. For the reasons set forth above and below, and pursuant to Rules 12(b)(1) and (b) of the Federal Rules of Civil Procedure (the "FRCP"), made applicable to this Adversary Proceeding by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure (the "FRBP"), Highland respectfully requests that the Court dismiss the Complaint with prejudice since the defects are not capable of being cured.

### **RELEVANT BACKGROUND**

#### **A. Background to the Adversary Proceeding**

5. On October 16, 2019 (the "Petition Date"), Highland commenced a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware. On December 4, 2019, the Delaware Court entered an order transferring venue of Highland's bankruptcy case to this Court [Bankr. Docket No. 186].<sup>5</sup>

6. On February 22, 2021, this Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Bankr. Docket No. 1943] (the "Confirmation Order") (Ex. 3, Appx. 19-180), which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P (as Modified)* [Bankr. Docket No. 1808] (the "Plan") (Ex. 4, Appx. 181-247).

---

<sup>5</sup> "Bankr. Docket No. \_\_\_" refers to the docket maintained in Case No. 19-34054-sgj11.

7. The Plan contained customary provisions regarding the filing and adjudication of “administrative expense claims.” All “administrative expense claims”<sup>6</sup> were required to be “Filed”<sup>7</sup> within 45 days of the “Effective Date” of the Plan.<sup>8</sup>

8. On July 22, 2021, seven months *after* entry of the Confirmation Order, Plaintiff commenced an action against Highland by filing an *Original Complaint* [Docket No. 1] (the “Complaint”) in the U.S. District Court for the Northern District of Texas (the “District Court”).<sup>9</sup> Ex. 5, Appx. 248-59. The Complaint alleged that Highland, under the direction of James P. Seery, Jr., violated the contractual and extra-contractual duties it owed to Plaintiff as an investor in Multi-Strat (defined below) and that Plaintiff was harmed thereby. Ex. 5, Appx. 252-58. Highland’s alleged misconduct occurred during the spring and summer of 2020, *i.e. after* the Petition Date while Highland was a debtor-in-possession. *Id.*, Appx. 251. The contracts allegedly breached were assumed by Highland pursuant to the Plan. Ex. 4, Appx. 224-25; Bankr. Docket No. 1875-5 (Ex. 6, Appx. 260-68).

9. For reasons known only to Plaintiff, Plaintiff never served the Complaint on Highland or its counsel.

10. On August 11, 2021, Highland filed the *Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Bankr. Docket No. 2700] (the “Notice of Effective Date”). Ex. 7, Appx. 269-73. The Notice of

---

<sup>6</sup> See Ex. 4, Appx. 203-04 (“If an Administrative Expense Claim ... is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable ... an application for allowance and payment of such Administrative Expense Claim.”)

<sup>7</sup> *Id.*, Appx. 196 (“‘Filed’ ... means ... filed ... with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.”)

<sup>8</sup> *Id.*, Appx. 189 (“Administrative Expense Claim Bar Date” means “with respect to any Administrative Expense Claim ... becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.”)

<sup>9</sup> While not relevant to this Motion, Highland disputes the absurd factual and legal allegations in the Complaint and reserves all rights.

Effective Date disclosed that the “Effective Date” (as defined in the Plan) had occurred on August 11, 2021.

11. Consistent with the Plan, the Notice of Effective Date also disclosed that all “administrative expense claims” were required to be filed no later than 45 days after the Effective Date (*i.e.*, September 25, 2021) (the “Administrative Expense Claim Bar Date”).

12. Highland served the Notice of Effective Date on Plaintiff [Bankr. Docket No. 2747]. Ex. 8, Appx. 310.

13. On August 26, 2021, Plaintiff filed *Plaintiff’s Motion to Stay All Proceedings* [Docket No. 6] (the “Stay Motion”), requesting a stay pending appeal of the Confirmation Order to the Fifth Circuit. Ex. 9, Appx. 450-56. Just as with the Complaint, Plaintiff did not serve the Stay Motion on Highland, and the District Court entered an order granting the unopposed Stay Motion [Docket No. 7] (the “Stay Order”). Ex. 10, Appx. 457-58.

14. In response to Plaintiff’s gamesmanship, Highland filed its *Motion for Reconsideration of Stay Order* [Docket No. 8] (the “Reconsideration Motion”) (Ex. 11, Appx. 459-67) and its *Motion to Dismiss* [Docket No. 11] (the “Motion to Dismiss”) (Ex. 12, 468-76) in the District Court. The Reconsideration Motion was fully briefed, but, because of the Stay Order, the Motion to Dismiss was not.

15. On May 19, 2022, the District Court granted the Reconsideration Motion finding the Complaint was “related to” Highland’s bankruptcy, lifted the stay, and referred this matter to the Bankruptcy Court for adjudication pursuant to the standing order of reference (Miscellaneous Order No. 33) [Docket No. 18]. Ex. 13, Appx. 477-79.

**B. Background to Multi-Strat**

16. Multi-Strat is a pooled investment fund structured as a “mini master” and consists of Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “Master”

Fund”), and Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “Feeder Fund”).<sup>10</sup> The Master Fund and the Feeder Fund are collectively referred to as “Multi-Strat.”

17. Multi-Strat’s investors include both the limited partners in the Master Fund and the shareholders of the Feeder Fund (which itself is a limited partner of the Master Fund). The ultimate investors, whether direct or through the Feeder Fund, are commonly referred to as Multi-Strat’s limited partners. Multi-Strat’s current limited partners are:

<b>Limited Partner</b>	<b>Ownership %<sup>11</sup></b>
Highland	58.70%
CLO Holdco, Ltd. (“ <u>CLOH</u> ”)	4.06%
The Dugaboy Investment Trust	1.71%
Highland Capital Management Services, Inc.	35.10%
Mark Okada	0.43%

*Declaration of James. P. Seery, Jr, in Support of Amended Motion to Dismiss.* (Ex. 17, Appx. 592-93. In addition to the limited partners, there are a number of former “redeemed” limited partners of Multi-Strat. *Id.*, Appx. 593.

18. Although Plaintiff, on information and belief, is the parent of CLOH, Plaintiff is not a Multi-Strat limited partner, investor, or “redeemed” limited partner. *Id.*

---

<sup>10</sup> The Master Fund’s governing document is the *Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P.*, dated November 1, 2014 (the “LPA”). The Feeder Fund’s governing document is the *Amended and Restated Memorandum and Articles of Association of Highland Multi Strategy Credit Fund, Ltd.*, as adopted on 1 November 2014 (the “Articles”). Highland’s obligations as investment manager are set forth in the *Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P.*, dated November 1, 2013 (the “IMA”). The LPA, Articles, and IMA are attached hereto as Ex. 14, Appx. 480-534, Ex. 15, Appx. 535-77, and Ex. 16, Appx. 578-89, respectively.

<sup>11</sup> Ownership is on a consolidated basis without regard to whether a party is invested in the Master or Feeder Fund. Highland reserves the right to challenge the purported Dondero- and/or Okada-controlled interests.



## ARGUMENT

### **A. The Complaint Asserts a Time-Barred Administrative Expense Claim and Must Be Dismissed**

19. In the Complaint, Plaintiff contends it was injured when Highland caused the sale of Multi-Strat’s assets during the spring and summer of 2020—*after* the Petition Date, before the Effective Date, and while Highland was a debtor-in-possession—in violation of Highland’s alleged contractual and extra-contractual duties to Plaintiff. Plaintiff’s claim, therefore, constitutes an “administrative expense claim” against Highland. *Matter of Whistler Energy II, L.L.C.*, 931 F.3d 432, 441-42 (5th Cir. 2019) (finding post-petition breach of assumed contract creates an administrative claim) (citing *In re Airlift Int’l, Inc.*, 761 F.2d 1503, 1509 (11th Cir. 1985)).

20. Article II of the Plan dictates the procedures for the filing and allowance of “administrative expense claims.” Pursuant to Article II of the Plan, parties seeking “administrative expense claims” were required to (i) file those claims with this Court specifically (not the District Court) *and* (ii) serve those claims on Highland no later than the Administrative Expense Claim Bar Date (*i.e.*, September 25, 2021). *See* Ex. 4, Appx. 189, 196, 203-04. Any “administrative expense claim” not filed by the Administrative Expense Claim Bar date is time-barred. *See In re Taco Bueno Rests., Inc.*, 606 B.R. 289 (Bankr. N.D. Tex. 2019) (claim barred as late-filed when claimant failed to file an application for administrative expense by applicable bar date).<sup>12</sup>

---

<sup>12</sup> *See also In re Maxus Energy Corp.*, 2022 Bankr. LEXIS 706, at \*20-21 (Bankr. D. Del. Mar. 22, 2022) (claim barred because it was not filed by administrative claim bar date and “a claims bar date ‘operates as a federally created statute of limitations, after which the claimant loses all of [its] rights to bring an action against the debtor’) (citations omitted); *Houbigant, Inc. v. ACB Mercantile (In re Houbigant, Inc.)*, 190 B.R. 185, 188 (Bankr. S.D.N.Y. 1995) (administrative claim barred despite claimant asserting it in district court because it was not filed with the bankruptcy court before the bar date).

21. Here, despite having notice of the Administrative Expense Claim Bar Date and the Plan,<sup>13</sup> Plaintiff chose to file (but not serve) its Complaint in the District Court rather than filing an “administrative expense claim” in this Court as required by the Plan. Plaintiff’s decision to disregard this Court’s orders is fatal. The Administrative Expense Claim Bar Date passed nearly eight months ago, and Plaintiff is time-barred from asserting the claims raised in the Complaint.

**B. Plaintiff Lacks Prudential and Constitutional Standing to Assert the Claims**

22. The Complaint alleges Plaintiff was injured because Highland mismanaged the sale of certain of Multi-Strat’s assets and, in doing so, breached its contractual and extra-contractual duties to Plaintiff as an investor in Multi-Strat. But Plaintiff is not a limited partner or investor in Multi-Strat and lacks standing to assert the claims in the Complaint.

**Plaintiff Has Failed to Plead Constitutional Standing to Assert the Claims**

23. Plaintiff has the burden of proving constitutional standing and must show (i) it suffered an “injury in fact;” (ii) that injury was “fairly traceable” to defendant’s conduct; and (iii) the injury can be “redressed” by the court. *See, e.g., Bennett v. Spear*, 520 U.S. 154, 162 (1996). Constitutional standing cannot be waived and must be assessed at every point in a proceeding. *See, e.g., Smith v. Detroit Indep. Sch. Dist.*, 2009 U.S. Dist. LEXIS 152749, at \*3 (Bankr. E.D. Tex. Mar. 31, 2009) (citing *U.S. v. Hays*, 515 U.S. 737, 742-43 (1995)) (“It is the Court’s obligation to address the issue of standing, which is *always* necessary and cannot be waived.”) (emphasis in original).

24. As set forth above, Highland and Plaintiff were not contract counterparties and Plaintiff was not an investor in Multi-Strat. Highland therefore owed Plaintiff no duty of any

---

<sup>13</sup> Appx. 8. By filing the Stay Motion on August 26, 2021, Plaintiff also admitted to knowledge of the Plan and its terms well in advance of the Administrative Expense Claim Bar Date.

kind with respect to its management of Multi-Strat, and Plaintiff has not alleged how it could have suffered a legally cognizable “injury-in-fact” resulting from Highland’s management of Multi-Strat.

25. While Plaintiff arguably could have constitutional standing if it is the parent of CLOH (a Multi-Strat investor), Plaintiff would have had to plead its relationship to CLOH, that CLOH was injured, and that the injury to CLOH caused injury to Plaintiff. *See BCC Merch. Solutions, Inc. v. Jet Pay, LLC*, 129 F.Supp.3d 440, 449-50 (N.D. Tex. 2015) (finding plaintiff parent company had constitutional standing when it pled injury it suffered arising from breach of contract to which its subsidiary was a counterparty). Plaintiff, however, has not done this nor could it. Plaintiff lacks constitutional standing.

#### **Plaintiff Lacks Prudential Standing to Assert the Claims**

26. Plaintiff lacks prudential standing because it is not the “real party in interest” as required by Rule 17(a) of the FRCP, made applicable by Rule 2017 of the FRBP. Prudential standing is a “fundamental restriction on [federal judicial] authority” and requires “a litigant [to] assert his or her own legal rights... and [n]ot rest a claim to relief on the legal rights or interests of third parties.” *Id.* at 450 (citations omitted). Prudential standing is a separate requirement from constitutional standing, and, if a plaintiff lacks prudential standing, the action must be dismissed regardless of whether the plaintiff has constitutional standing. *Id.*

27. This prudential standing requirement is embodied in Rule 17(a) of the FRCP, which mandates that a claim be brought by the “real party in interest,” *i.e.*, the party “with the right to sue under ... the controlling state or federal substantive laws.” *Id.* at 450, 453. The substantive law governing this dispute is either (i) Cayman Islands law (Plaintiff is a Cayman Islands exempted partnership and the Articles are governed by Cayman law) or (ii) Delaware law (the LPA and the IMA are governed by Delaware law).

28. Here, Plaintiff is not an investor in Multi-Strat and has no right to assert the actual investors' contractual or other rights under applicable substantive law.<sup>14</sup> See *Cayman Hotel and Golf Inc. v. Resort Gems Ltd. Grand Court* (Ex. 18, Appx. 604) (“[D]efendant was not a party who ought to have been joined in the contractual claim ... such amendment would have been contrary to the principles of privity of contract, the additional defendant not having been a party to the contract ...”); THE CONTRACTS (RIGHTS OF THIRD PARTIES) LAW, 2014, § 4, Ex. 19, Appx. 620 (holding that third party may enforce a contract only if it is identified by name and the contract expressly provides in writing that it may); *Browne v. Robb*, 583 A.2d 949, 954-55 (Del. 1990) (applying Delaware law and finding plaintiff lacked standing to assert breach of a contract to which it was neither a party nor an intended third-party beneficiary).<sup>15</sup>

29. That Plaintiff is the parent of CLOH, a Multi-Strat investor, changes nothing. A parent cannot assert the contractual rights of its subsidiaries or pierce its own corporate veil to do

---

<sup>14</sup> The result is the same if federal common law applies. *Hillside Metro Assocs., LLC v. JPMorgan Chase Bank*, 747 F.3d 44, 49 (2d Cir. 2014) *cert denied* 2015 U.S. LEXIS 1370 (U.S. Feb. 23, 2015) (applying federal common law and finding plaintiff lacked prudential standing to assert breach of contract when it was neither a party nor an intended third-party beneficiary).

<sup>15</sup> See also *Carroll v. JPMorgan Chase Bank*, 575 Fed. Appx. 260, 260-61 (5th Cir. 2014) (finding plaintiff lacked standing and was not the “real party in interest” when it had no right to sue under contract); *Farrell Constr. Co. v. Jefferson Parish*, 896 F.2d 136, 140 (5th Cir. 1990) (finding plaintiff was not a “real party in interest” when it was neither a party to the contract nor a third party beneficiary); *BCC Merch.*, 129 F.Supp.3d at 460 (holding plaintiff was not a “real party in interest” and lacked prudential standing when it sought to assert the contract rights of its wholly-owned subsidiary); see also *Hillside Metro*, 747 F.3d 48-49 (“We conclude that Hillside does not have prudential standing in this case because it cannot enforce the terms of the [contract], as to which it is neither a party nor a third-party beneficiary, but the enforcement of which is a necessary component of its claim”); *Williams v. Bd. of Educ. of Chicago*, 506 Fed. Appx. 517, 520 (7th Cir. 2013) (“Neither situation describes the federal lawsuit filed by Williams, whose indefinite, inchoate claims arise entirely from a dispute between two business entities whose contracts granted him no direct or incidental benefit and thus leave him without standing to bring these claims); *Pelletier v. Rodriguez*, 2021 U.S. Dist. LEXIS 131898, at \*13 (D. Nev. July 15, 2021) (“[B]ecause there is no given reason that Clover Valley Ranch LLC could not pursue a breach of contract claim in its own name, the Court declines to confer prudential standing on Plaintiff to bring this claim on behalf of a third-party.”); *Cumming v. Felder*, 2018 U.S. Dist. LEXIS 82081, at \*5 (D. Conn. May 16, 2018) (“[A]n individual who is neither a party to an agreement nor an intended beneficiary of the agreement lacks prudential standing to sue under the agreement” (citing cases); *Alexander v. DLJ Mortg. Cap., Inc.*, 2016 U.S. Dist. LEXIS 198193, at \* 8-14 (S.D. Miss. Jul. 5, 2016) (finding non-party to a contract lacked standing under FRCP 17(a) to bring breach of contract claims); *Henderson v. Benchmark Strategy, LLC*, 2011 U.S. Dist. LEXIS 90988, at \*10-11 (D. Colo. Aug. 15, 2011) (“Mr. Henderson is not a party to the Consulting Agreement and is not the real party in interest to assert the rights (if any) of Henderson LLP.”).

so. *See Wenske v. Blue Bell Creameries, Inc.*, 2018 Del. Ch. LEXIS 530, at \*9 (Del. Ch. Nov. 13, 2018) (“[T]he separate legal existence of juridical entities is fundamental to Delaware law.” Thus, there exists a presumption of corporate separateness, even when a parent wholly owns its subsidiary and the entities have identical officers and directors.”); *Ebbw Vale Urban DC v. South Wales Traffic Area*, Ex. 20, Appx. 628 (“Under the ordinary rules of law, a parent company and a subsidiary company, even a 100 per cent subsidiary company, are distinct legal entities, and in the absence of an agency contract between the two companies one cannot be said to be the agent of the other”); *see also BCC Merch.*, 129 F. Supp. 3d at 460 (“[W]hile BCC may have Article III standing, the Court finds that it lacks prudential standing and is not the real party in interest entitled to enforce the ISO Agreement, which BCC’s subsidiary, BankCard, undisputedly entered into alone.”)

30. For the foregoing reasons, Plaintiff is not a “real party in interest” as required by Rule 17(a) and lacks prudential standing to assert the claims in the Complaint.

**C. Granting Leave to Amend the Complaint Would Be Futile**

31. Because the administrative expense claims asserted in the Complaint are time-barred and because Plaintiff lacks standing, granting Plaintiff leave to amend its Complaint would be futile. *See, e.g., Stripling v. Jordan Prod. Co.*, 234 F.3d 863, (5th Cir. 2000) (finding amendment “futile” when the “amendment complaint would fail to state a claim upon which relief could be granted.”)

**CONCLUSION**

WHEREFORE, Highland respectfully requests that the Court (a) grant the Motion and dismiss the Complaint with prejudice and (b) grant such other and further relief as the Court deems just and proper.

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: May 27, 2022.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

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

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

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

In re:	§ Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§ Case No. 19-34054-sgj11
Reorganized Debtor.	§
THE CHARITABLE DAF FUND, L.P.,	§ Adversary Proceeding No.
Plaintiffs,	§ 22-03052-sgj
vs.	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§
Defendant.	§

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



**APPENDIX IN SUPPORT OF HIGHLAND  
 CAPITAL MANAGEMENT, L.P.'S AMENDED MOTION TO DISMISS**

<b>Ex.</b>	<b>Description</b>	<b>Appx. #</b>
1.	<i>Proof of Claim 177</i> , filed in Case No. 19-34054-sgj by The Dugaboy Investment Trust	1-6
2.	<i>Original Complaint</i> , Case No. 21-cv-01479-S, D.I. 1 (N.D. Tex. June 23, 2021)	7-18
3.	<i>Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief</i> , Case No. 19-34054-sgj, D.I. 1943 (Bankr. N.D. Tex. Feb. 22, 2021)	19-180
4.	<i>Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> , Case No. 19-34054-sgj, D.I. 1808 (Bankr. N.D. Tex. Jan. 22, 2021)	181-247
5.	<i>Original Complaint</i> , Adv. Proceeding No. 22-03052, D.I. 1-1 (Bankr. N.D. Tex. May 25, 2022)	248-259
6.	<i>Schedule of Contracts and Leases to Be Assumed</i> , Case No. 19-34054-sgj, D.I. 1875-5 (Bankr. N.D. Tex. Feb. 1, 2021)	260-268
7.	<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> , Case No. 19-34054-sgj, D.I. 2700 (Bankr. N.D. Tex. Aug. 11, 2021)	269-273
8.	<i>Certificate of Service of Vincent Trang re: Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> , Case No. 19-34054-sgj, D.I. 2747 (Bankr. N.D. Tex. Aug. 19, 2021)	274-449
9.	<i>Plaintiff's Motion to Stay All Proceedings</i> , Adv. Proceeding No. 22-03052, D.I. 6 (Bankr. N.D. Tex. May. 25, 2022)	450-456
10.	<i>Electronic Order</i> , Adv. Proceeding No. 22-03052, D.I. 7 (Bankr. N.D. Tex. May. 25, 2022)	457-458
11.	<i>Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order</i> , Adv. Proceeding No. 22-03052, D.I. 8 (Bankr. N.D. Tex. May. 25, 2022)	459-467
12.	<i>Plaintiff's Motion to Dismiss</i> , Adv. Proceeding No. 22-03052, D.I. 11 (Bankr. N.D. Tex. May. 25, 2022)	468-476
13.	<i>Order</i> , Adv. Proceeding No. 22-03052, D.I. 18 (Bankr. N.D. Tex. May. 25, 2022)	477-479
14.	<i>Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P.</i> , dated November 1, 2014	480-534
15.	<i>Amended and Restated Memorandum and Articles of Association of Highland Multi Strategy Credit Fund, Ltd.</i> , as adopted on 1 November 2014	535-577
16.	<i>Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P.</i> , dated November 1, 2013	578-589

17.	<i>Declaration of James. P. Seery, Jr., in Support of Amended Motion to Dismiss</i>	590-594
18.	<i>Cayman Hotel and Golf Incorporated v. Resort Gems Limited Grand Court</i>	595-615
19.	The Contracts (Rights of Third Parties) Law, 2014	616-624
20.	<i>Ebbw Vale Urban DC v. South Wales Traffic Area</i>	625-633

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Dated: May 27, 2022.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

## **EXHIBIT 1**

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** The Dugaboy Investment Trust  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
The Dugaboy Investment Trust 300 Crescent Court, Ste. 700 Dallas, TX 75201  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)  Contact phone _____ Contact email <u>gscott@myersbigel.com</u>	Contact phone _____ Contact email _____  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

---

7. How much is the claim? \$ See attached Exhibit "A". Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
  
See attached Exhibit "A"

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?  No  Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?  No  Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/23/2020  
MM / DD / YYYY

/s/Grant Scott  
Signature

**Print the name of the person who is completing and signing this claim:**

Name Grant Scott  
First name Middle name Last name

Title Trustee

Company The Dugaboy Investment Trust  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 4140 Park Lake Ave., Suite 600, Raleigh, NC, 27612

Contact phone 919-854-1407

1α}HV4\$7 #^«  
 10216mainescott@myensdgen.com



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> The Dugaboy Investment Trust 300 Crescent Court, Ste. 700  Dallas, TX, 75201 <b>Phone:</b> <b>Phone 2:</b> <b>Fax:</b> <b>Email:</b> gscott@myersbigel.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See attached Exhibit "A"	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See attached Exhibit "A"	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Grant Scott on 23-Apr-2020 5:01:59 p.m. Eastern Time <b>Title:</b> Trustee <b>Company:</b> The Dugaboy Investment Trust		
<b>Optional Signature Address:</b> Grant Scott 4140 Park Lake Ave., Suite 600  Raleigh, NC, 27612 <b>Telephone Number:</b> 919-854-1407 <b>Email:</b> gscott@myersbigel.com		

### **Exhibit A**

The Dugaboy Investment Trust (“Claimant”), an investor in certain funds managed by the Debtor, including Highland Multi-Strategy Credit Fund, L.P. and Highland Multi-Strategy Credit Fund, Ltd., may have claims against the Debtor relating to the post-petition actions or inactions of the fund investment manager in managing these funds pursuant to Debtor’s Fourth Amended and Restated Limited Partnership Agreement and that certain Third Amended and Restated Investment Management Agreement by and between Highland Multi-Strategy Credit Fund, L.P., Highland Multi-Strategy Credit Fund, Ltd., and the Debtor, as amended from time to time. While the potential claims relate to the post-petition actions or inactions of the fund investment manager, Claimant is filing this claim to preserve all potential rights, claims, and causes of action it may have against the Debtor under these prepetition agreements relating to the investment manager’s actions or inactions in managing these funds.

## EXHIBIT 2

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

**THE DUGABOY INVESTMENT TRUST,**

*Plaintiff,*

v.

**HIGHLAND CAPITAL MANAGEMENT,  
LP,**

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Cause No. \_\_\_\_\_

**ORIGINAL COMPLAINT**

This matter concerns grave accounts of self-dealing and deception and seeks redress for violation of federal law including, but not limited to, violations of the Advisers Act of 1940, and other state causes of action.

**I.**

**PARTIES**

1. Plaintiff, The Dugaboy Investment Trust (“Plaintiff”), is a Delaware perpetual non-revocable trust with its principal place of business in Dallas County, Texas.
2. Defendant Highland Capital Management LP (“Highland” or “HCMLP”) is a Delaware limited partnership, whose principal place of business is in Dallas, Texas.

**II.**

**JURISDICTION AND VENUE**

3. Subject matter jurisdiction is proper in this court under 28 U.S.C. § 1331, and under 28 U.S.C. § 1334 because the suit arises out of post-petition acts or omissions of the debtor and certain of its principals.

4. This Court has general personal jurisdiction over Defendant Highland Capital Management, LP, because it has continuously done business in this state, and the causes of action arise from the acts or omissions committed in this state.

5. Venue is proper in this Court because a substantial number of the acts or omissions giving rise to this lawsuit and the causes of action asserted herein occurred in Dallas County.

### III.

#### **FACTUAL BACKGROUND**

6. HCMLP is a registered investment advisor (“RIA”) subject to the regulations of the Securities Exchange Commission.

7. HCMLP is both the advisor of and investor in Highland Multi Strategy Credit Fund, LP (“Multistrat”), a Delaware limited partnership. Highland Multi Strategy Credit Fund GP, L.P., itself a Delaware limited partnership, is the general partner of Multistrat, and HCMLP is the sole member of the general partner of Highland Multi Strategy Credit Fund GP, L.P.

8. HCMLP’s advisory capacity is governed, or at all relevant times was governed, by the Third Amended and Restated Investment Management Agreement, effective November 1, 2013 (the “IMA”).

9. The purpose of Multistrat as a vehicle was stated as such: “The Fund's investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.”

10. The Confidential Private Placement Memorandum for Multistrat disclosed that “[t]he Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the ‘Advisers Act’).

Each prospective investor will be required to make a representation to indicate that it is a 'qualified client' as defined in the Advisers Act.”

11. Because of these agreements and roles as the General Partner and RIA, Highland owed contractual and fiduciary duties to Plaintiff, as an investor in Multistrat.

12. James Seery, the principal, CEO, and CRO of HCMLP in its capacity as a debtor, admitted under oath that HCMLP owes fiduciary duties to the investors of the funds HCMLP manages—which would include Multistrat—and therefore, has admitted under oath that HCMLP and its governed persons owe fiduciary duties to the investors in Multistrat, which includes Plaintiff, the Charitable DAF Fund, Ltd., and Highland Capital Management Services, Inc., among others.

13. As an investment vehicle advised at all times and controlled at all times by HCMLP, Multistrat purchased and owned a pool of viaticals—investments in life insurance policies keyed to the lives of other persons. When a person passes away, the life insurance money is paid to the owner of the policy—in this case, Multistrat.

14. The notional value of the viatical pool was approximately \$145 million.

15. In or around August 2020, HCMLP sold the entire viatical pool for approximately \$35,000,000 – less than one quarter of the insured value.

16. The policies insured people aged 90 on average, suggesting that the policies were highly likely to pay off in the ensuing few years given the age and life expectancies of the insureds, as well as considering the actuarial impact of the COVID pandemic.

17. In the spring of 2020, Multistrat raised funds specifically for the purpose of paying the premiums on the viatical pool—amounts raised, borrowing availability, and liquid securities provided enough cash to pay the premiums. But HCMLP did not pursue this path as promised.

Instead, it sold the assets. To this day it is unclear why the policies were sold, and why, just prior to a planned mediation.

18. Furthermore, the process of selling was severely flawed. For example, the health assessments used to determine the likelihood and timeline for the payout were two years old. HCMLP did not cause new, up-to-date health assessments to be performed, and instead was content to rely on stale information or worse, no information at all.

19. Furthermore, HCMLP made no effort to adjust the projected life expectancies due to the increasing age of the insureds during a process that stretched over seven months, nor for the potential impact of COVID on people over the age of 90, which would have impacted the price..

20. Equally troubling is that Multistrat obtained the funds to pay the premiums from another investor—yet, it apparently did not use the funds for that purpose.

21. HCMLP apparently used the proceeds of the sale to pay itself, notwithstanding the fact that there were redeemed interests waiting to be paid—interests to whom HCMLP also owed fiduciary duties.

22. In short, HCMLP caused Multistrat to sell the viatical pool at a substantially discounted amount to curry favor with the brokers and buyers in the marketplace for no apparent benefit to Multistrat’s investors or the debtor’s estate.

### III.

#### **CAUSES OF ACTION**

##### **First Cause of Action** **Breach of Fiduciary Duty**

23. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

24. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.



25. The contracts set forth above—the subscription agreement and the IMA—impose and incorporate the duties and obligations of the Investment Advisers Act of 1940.

26. Under this federal law, an investment adviser is a fiduciary.<sup>1</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.

27. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules, but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”

28. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>2</sup> In order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

---

<sup>1</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. IA2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”).

<sup>2</sup> *SEC v. Capital Gains*, *supra*, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, *supra*, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

29. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>3</sup>

30. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

31. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

32. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

33. HCMLP’s CEO testified under oath that he and HCMLP were aware of these duties and had to comply with them.

34. Section 204 of the Advisers Act requires HCMLP to carry written policies and procedures that must be followed in order to adhere to its federal obligations.

35. Section 206 of the Advisers Act prohibits transactions by an adviser that were accomplished via a “deceit” on a client or prospective client, e.g., by concealing the role and

---

<sup>3</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *SEC v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

interest the adviser has in the transaction, or via engaging in a course of conduct that has a tendency to mislead a client or which is manipulative.

36. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

37. The Advisors Act declares any contract that was made in violation of its provisions or regulations, or any contract that has been performed in violation of the Advisors Act, **void**.

38. The Advisors Act created a private right of action to void unlawful agreements and acts and to seek such equitable relief as accompanies such claims.

39. Texas law allows a fiduciary plaintiff to seek damages for breaches of fiduciary duty and to seek disgorgement of all ill-gotten gains obtained by a fiduciary.

40. Plaintiff has been damaged due to the breaches of fiduciary duty outlined herein, and it is entitled to recover damages, punitive damages, and attorneys' fees.

41. To the extent this claim must be brought as a derivative action, it is plain that the demand requirement under Delaware law could not be met because serving a demand on Highland or to sue Highland would have been futile.

**Second Cause of Action**  
**Breach of Contract**

42. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

43. The contracts set forth above—the subscription agreement and the IMA—impose a duty of prudent investment management for the benefit of the investors in Multistrat and incorporate the duties and obligations of the Investment Advisers Act of 1940.

44. The violations set forth above constitute a breach of each or both of these agreements.

45. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

46. Plaintiff has been damaged by the breaches of contract outlined herein.

47. Plaintiff is entitled to recover damages and attorneys' fees.

**JURY DEMAND AND PRAYER**

48. Plaintiff demands trial by jury.

49. Plaintiff respectfully requests judgment and an order:

- Disgorging all ill-gotten gains in an amount to be determined at trial;

- Voiding the IMA agreements herein with HCMLP pursuant to the Advisers Act;
- Awarding damages in an amount to be determined at trial;
- Awarding punitive damages in an amount to be determined at trial;
- Awarding attorneys' fees and costs in an amount to be determined at trial;
- Awarding all interim and final relief to which Plaintiff is legally or equitably entitled under the facts and circumstances raised herein.

Dated: June 23, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

/s/ Mazin A. Sbaiti

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Plaintiff**

JS 44 (Rev. 10/20) - TXND (10/20)

**CIVIL COVER SHEET**

Case 3:21-cv-01479-S Document 1-1 Filed 06/23/21 Page 1 of 2 PageID 10

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>The Dugaboy Investment Trust</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Dallas County</u>  <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small></p> <p><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number)                  Sbaiti &amp; Company PLLC, 2200 Ross Avenue, Suite 4900W,                  Dallas, TX 75201 (T: 214-432-2899)</p>	<p><b>DEFENDANTS</b></p> <p>Highland Capital Management, LP</p> <p>County of Residence of First Listed Defendant <u>Dallas County</u>  <small>(IN U.S. PLAINTIFF CASES ONLY)</small></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
---	---

<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td><b>PTF</b></td> <td><b>DEF</b></td> <td></td> <td><b>PTF</b></td> <td><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input checked="" type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. § 80b-1

Brief description of cause:  
Adviser's Act

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    **DEMAND \$** \_\_\_\_\_    CHECK YES only if demanded in complaint:  
**JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE Stacey G. Jernigan    DOCKET NUMBER 19-34054-sgi11 NDTX BK

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

001-4017

Case 3:21-cv-01479-S Document 1-1 Filed 06/23/21 Page 2 of 2 PageID 11  
**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

APP-4012



## **EXHIBIT 3**



CLERK, U.S. BANKRUPTCY COURT  
 NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
 THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

*Henry G. C. George*  
 \_\_\_\_\_  
 United States Bankruptcy Judge

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

**ORDER (I) CONFIRMING THE FIFTH AMENDED  
 PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
 MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court<sup>2</sup> having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.



*Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

*Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

*Certificate of Service* dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed<sup>3</sup> pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;<sup>4</sup> (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

---

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

<sup>4</sup> The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor’s Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an “asset monetization plan” because it involves the orderly wind-down of the Debtor’s estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor’s economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the



bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.<sup>5</sup> As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,<sup>6</sup> and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

---

<sup>5</sup> This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

<sup>6</sup> See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was



much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.<sup>7</sup> The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

---

<sup>7</sup> See Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

#### 17. **Questionability of Good Faith as to Outstanding Confirmation**

**Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and



Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors



will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the



Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

**46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

**47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the "Liquidation Analysis") to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, un rebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.



- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R. 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.<sup>8</sup> Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

---

<sup>8</sup> See Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith [Docket No. 1876]



creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15<sup>th</sup> Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.<sup>9</sup>

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

---

<sup>9</sup> The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan’s release, discharge and release provisions (the “Injunction Provision”). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor’s assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor’s assets and those assets could be monetized for less money to the detriment of the Debtor’s creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a “third-party release.” The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms “implementation” and “consummation” are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the “Gatekeeper Provision”). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to



as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5<sup>th</sup> Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5<sup>th</sup> Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5<sup>th</sup> Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots<sup>10</sup> – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

---

<sup>10</sup> As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**A. Confirmation of the Plan.** The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.<sup>11</sup>

**B. Findings of Fact and Conclusions of Law.** The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

**C. Objections.** Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

**D. Plan Supplements and Plan Modifications.** The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

---

<sup>11</sup> The Plan is attached hereto as **Exhibit A**.



sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**E. Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

**F. Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

**G. Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

**H. Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

**I. Preservation of Causes of Action.** Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**J. Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

**K. Cancellation of Equity Interests and Issuance of New Partnership**

**Interests.** On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

**L. Transfer of Assets to Claimant Trust.** On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

**M. Transfer of Estate Claims to Litigation Sub-Trust.** On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

**N. Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

**O. Objections to Claims.** The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

**P. Assumption of Contracts and Leases.** Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

**Q. Rejection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

**R. Assumption of Issuer Executory Contracts.** On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the



Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers<sup>12</sup> a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples”) and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

**S. Release of Issuer Claims.** Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

---

<sup>12</sup> The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

**T. Release of Debtor Claims against Issuer Released Parties.** Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Feronia Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

**U. Authorization to Consummate.** The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

**V. Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

**W. Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

**X. Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**Y. Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

*provided, however,* the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

**Z. Releases by the Debtor.** On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

**AA. Injunction.** Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,



**in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in**

**Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.**

**BB. Duration of Injunction and Stays.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

**CC. Continuance of January 9 Order and July 16 Order.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

**DD. No Governmental Releases.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

**EE. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**FF. Cancellation of Notes, Certificates and Instruments.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

**GG. Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

**HH. Post-Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

**II. Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**JJ. Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

**KK. Notice of Effective Date.** As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

**LL. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

**MM. Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

**NN. References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

**OO. Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

**PP. Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

**QQ. Resolution of Objection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under



applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

**RR. Resolution of Objections of Scott Ellington and Isaac Leventon.**

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

**SS. No Release of Claims Against Senior Employee Claimants.** For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

**TT. Resolution of Objection of Internal Revenue Service.** Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

**UU. IRS Proof of Claim.** Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

**VV. CLO Holdco, Ltd. Settlement** Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

**WW. Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

**XX. Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**YY. Dissolution of the Committee.** On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

**ZZ. Miscellaneous.** After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

**###END OF ORDER###**



**Exhibit A**

**Fifth Amended Plan (as Modified)**

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

---

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

---

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

---

**PACHULSKI STANG ZIEHL & JONES LLP**

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

**HAYWARD & ASSOCIATES PLLC**

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

Counsel for the Debtor and Debtor-in-Possession

---

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

001495

ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
 GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law..... 1

    B. Defined Terms ..... 2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 17

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
 AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
 Equity Interests ..... 18

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes ..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests..... 19

    I. Special Provision Governing Unimpaired Claims..... 24

    J. Subordinated Claims ..... 24

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN ..... 24

    A. Summary ..... 24

    B. The Claimant Trust ..... 25

        1. Creation and Governance of the Claimant Trust and Litigation  
 Sub-Trust..... 25

        2. Claimant Trust Oversight Committee..... 26

	<u>Page</u>
3. Purpose of the Claimant Trust. ....	27
4. Purpose of the Litigation Sub-Trust.....	27
5. Claimant Trust Agreement and Litigation Sub-Trust Agreement. ....	27
6. Compensation and Duties of Trustees. ....	29
7. Cooperation of Debtor and Reorganized Debtor. ....	29
8. United States Federal Income Tax Treatment of the Claimant Trust. ....	29
9. Tax Reporting. ....	30
10. Claimant Trust Assets. ....	30
11. Claimant Trust Expenses. ....	31
12. Trust Distributions to Claimant Trust Beneficiaries.....	31
13. Cash Investments. ....	31
14. Dissolution of the Claimant Trust and Litigation Sub-Trust. ....	31
C. The Reorganized Debtor.....	32
1. Corporate Existence.....	32
2. Cancellation of Equity Interests and Release.....	32
3. Issuance of New Partnership Interests.....	32
4. Management of the Reorganized Debtor.....	33
5. Vesting of Assets in the Reorganized Debtor.....	33
6. Purpose of the Reorganized Debtor.....	33
7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets.....	33
D. Company Action.....	34
E. Release of Liens, Claims and Equity Interests.....	35
F. Cancellation of Notes, Certificates and Instruments.....	35

	<u>Page</u>
G. Cancellation of Existing Instruments Governing Security Interests.....	35
H. Control Provisions .....	35
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	36
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	38
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	39
C. Cash Distributions.....	40
D. Disputed Claims Reserve.....	40
E. Distributions from the Disputed Claims Reserve .....	40
F. Rounding of Payments.....	40
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	41
I. General Distribution Procedures.....	41
J. Address for Delivery of Distributions.....	41
K. Undeliverable Distributions and Unclaimed Property.....	41
L. Withholding Taxes.....	42

	<u>Page</u>
M. Setoffs .....	42
N. Surrender of Cancelled Instruments or Securities .....	42
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	43
A. Filing of Proofs of Claim.....	43
B. Disputed Claims.....	43
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	43
D. Allowance of Claims and Equity Interests.....	44
1. Allowance of Claims.....	44
2. Estimation .....	44
3. Disallowance of Claims .....	44
ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	45
A. Conditions Precedent to the Effective Date .....	45
B. Waiver of Conditions.....	46
C. Dissolution of the Committee .....	46
ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	47
A. General.....	47
B. Discharge of Claims.....	47
C. Exculpation .....	47
D. Releases by the Debtor.....	48
E. Preservation of Rights of Action.....	49
1. Maintenance of Causes of Action.....	49
2. Preservation of All Causes of Action Not Expressly Settled or Released .....	49

	<u>Page</u>
F. Injunction .....	50
G. Duration of Injunctions and Stays.....	51
H. Continuance of January 9 Order .....	51
ARTICLE X. BINDING NATURE OF PLAN .....	51
ARTICLE XI. RETENTION OF JURISDICTION.....	52
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	54
A. Payment of Statutory Fees and Filing of Reports .....	54
B. Modification of Plan .....	54
C. Revocation of Plan.....	54
D. Obligations Not Changed.....	55
E. Entire Agreement .....	55
F. Closing of Chapter 11 Case .....	55
G. Successors and Assigns.....	55
H. Reservation of Rights.....	55
I. Further Assurances.....	56
J. Severability .....	56
K. Service of Documents .....	56
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	57
M. Governing Law .....	58
N. Tax Reporting and Compliance .....	58
O. Exhibits and Schedules .....	58
P. Controlling Document .....	58



---

**DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

**ARTICLE I.**  
**RULES OF INTERPRETATION, COMPUTATION OF TIME,**  
**GOVERNING LAW AND DEFINED TERMS**

**A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.



42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized



Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder



of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.



117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## ARTICLE II.

### ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

#### A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.



4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6



Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

### **ARTICLE IV.** **MEANS FOR IMPLEMENTATION OF THIS PLAN**

#### **A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### *1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:



- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;



(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

### **C. The Reorganized Debtor**

#### **1. Corporate Existence**

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

#### **2. Cancellation of Equity Interests and Release**

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

#### **3. Issuance of New Partnership Interests**

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.



**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.



**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

## ARTICLE V.

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.



Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.



**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trust, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**

**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.**  
**EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

#### **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation



Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### **1. Maintenance of Causes of Action**

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### **2. Preservation of All Causes of Action Not Expressly Settled or Released**

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,



without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court**

**(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.**

**G. Duration of Injunctions and Stays**

**ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.**

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrance of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

**ARTICLE XII.**  
**MISCELLANEOUS PROVISIONS**

**A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the



Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700



Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

Case 19-34054-sgj11 Doc 1943 Filed 02/22/21 Entered 02/22/21 16:48:16 Page 157 of 161

**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.



51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 9**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

Vol. 1  
000001

000004

000032

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

Vol. 2

000040

000058

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>			<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3      5/25/22 (10/5/21)      9      (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4      5/25/22 (10/5/21)      10      (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>			<p>5      5/25/22 (10/5/21)      11      (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6      5/25/22 (10/5/21)      12      (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7      5/25/22 (10/5/21)      13      ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

Vol. 8

001349

001352

001359

001361

001369

001381

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Thru Vol. 10



				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				



001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

*/s/ Mazin A. Sbaiti*  
Mazin A. Sbaiti

## **EXHIBIT 4**



ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
 GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law..... 1

    B. Defined Terms .....2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 18

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
 AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
     Equity Interests ..... 19

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes ..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests.....20

    I. Special Provision Governing Unimpaired Claims.....24

    J. Subordinated Claims .....25

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN .....25

    A. Summary .....25

    B. The Claimant Trust .....26

        1. *Creation and Governance of the Claimant Trust and Litigation Sub-  
         Trust.* .....26

        2. *Claimant Trust Oversight Committee* .....27

	<u>Page</u>
3. <i>Purpose of the Claimant Trust</i> .....	27
4. <i>Purpose of the Litigation Sub-Trust</i> .....	28
5. <i>Claimant Trust Agreement and Litigation Sub-Trust Agreement</i> .....	28
6. <i>Compensation and Duties of Trustees</i> .....	29
7. <i>Cooperation of Debtor and Reorganized Debtor</i> .....	30
8. <i>United States Federal Income Tax Treatment of the Claimant Trust</i> .....	30
9. <i>Tax Reporting</i> .....	30
10. <i>Claimant Trust Assets</i> .....	31
11. <i>Claimant Trust Expenses</i> .....	31
12. <i>Trust Distributions to Claimant Trust Beneficiaries</i> .....	31
13. <i>Cash Investments</i> .....	31
14. <i>Dissolution of the Claimant Trust and Litigation Sub-Trust</i> .....	32
C. <i>The Reorganized Debtor</i> .....	32
1. <i>Corporate Existence</i> .....	32
2. <i>Cancellation of Equity Interests and Release</i> .....	33
3. <i>Issuance of New Partnership Interests</i> .....	33
4. <i>Management of the Reorganized Debtor</i> .....	33
5. <i>Vesting of Assets in the Reorganized Debtor</i> .....	34
6. <i>Purpose of the Reorganized Debtor</i> .....	34
7. <i>Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets</i> .....	34
D. <i>Company Action</i> .....	34
E. <i>Release of Liens, Claims and Equity Interests</i> .....	35
F. <i>Cancellation of Notes, Certificates and Instruments</i> .....	36
G. <i>Cancellation of Existing Instruments Governing Security Interests</i> .....	36

	<u>Page</u>
H. Control Provisions .....	36
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	37
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	39
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	40
C. Cash Distributions.....	41
D. Disputed Claims Reserve.....	41
E. Distributions from the Disputed Claims Reserve .....	41
F. Rounding of Payments.....	41
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	42
I. General Distribution Procedures.....	42
J. Address for Delivery of Distributions.....	42
K. Undeliverable Distributions and Unclaimed Property.....	42
L. Withholding Taxes.....	43
M. Setoffs .....	43



	<u>Page</u>
N. Surrender of Cancelled Instruments or Securities .....	43
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
 ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	
A. Filing of Proofs of Claim .....	44
B. Disputed Claims.....	44
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	44
D. Allowance of Claims and Equity Interests.....	44
1. Allowance of Claims .....	45
2. Estimation .....	45
3. Disallowance of Claims .....	45
 ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	
A. Conditions Precedent to the Effective Date .....	46
B. Waiver of Conditions.....	47
C. Effect of Non-Occurrence of Conditions to Effectiveness	<b>Error! Bookmark not defined.</b>
D. Dissolution of the Committee .....	47
 ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	
A. General.....	48
B. Discharge of Claims.....	48
C. Exculpation .....	48
D. Releases by the Debtor.....	49
E. Preservation of Rights of Action.....	50
1. Maintenance of Causes of Action .....	50
2. Preservation of All Causes of Action Not Expressly Settled or Released.....	50
F. Injunction .....	51

	<u>Page</u>
G. Term of Injunctions or Stays.....	52
H. Continuance of January 9 Order .....	52
ARTICLE X. BINDING NATURE OF PLAN .....	52
ARTICLE XI. RETENTION OF JURISDICTION.....	53
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	55
A. Payment of Statutory Fees and Filing of Reports .....	55
B. Modification of Plan .....	55
C. Revocation of Plan.....	55
D. Obligations Not Changed.....	56
E. Entire Agreement.....	56
F. Closing of Chapter 11 Case .....	56
G. Successors and Assigns.....	56
H. Reservation of Rights.....	56
I. Further Assurances.....	57
J. Severability .....	57
K. Service of Documents .....	57
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	58
M. Governing Law .....	59
N. Tax Reporting and Compliance .....	59
O. Exhibits and Schedules .....	59
P. Controlling Document .....	59

---

## **DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### **ARTICLE I.** **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

#### **A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.



24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold



Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.



81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.



101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any

damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized

Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized

Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

#### **B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee



Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF  
CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the



Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

## **H. Classification and Treatment of Claims and Equity Interests**

### *1. Class 1 – Jefferies Secured Claim*

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

### *2. Class 2 – Frontier Secured Claim*

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

#### 11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.**  
**MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor’s limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor’s current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be



cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust**<sup>2</sup>

*1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.



Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and

monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust

Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are

investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.



2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.



5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in

the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

#### **E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of

doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a

contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed



and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity

Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the



Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.**  
**PROCEDURES FOR RESOLVING CONTINGENT,**  
**UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH**



**LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding

upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

#### **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's



Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross

negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### *1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### *2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final

Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or**

arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state,



Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or

expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such



orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

#### **B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

#### **C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement

executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this

Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego

the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

## **EXHIBIT 5**



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

**THE CHARITABLE DAF FUND, LP.,**

*Plaintiff,*

v.

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

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Cause No. \_\_\_\_\_

**ORIGINAL COMPLAINT**

This matter concerns self-dealing and seeks redress for violation of state and federal law, including, but not limited to, violations of the Advisers Act of 1940, and other state causes of action.

**I.**

**PARTIES**

1. Plaintiff The Charitable DAF Fund, L.P. ("Plaintiff" or "DAF") is a limited partnership formed under the laws of the Cayman Islands.

2. Defendant Highland Capital Management L.P. ("Highland" or "HCMLP") is a Delaware limited partnership, whose principal place of business is in Dallas, Texas, at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

**II.**

**JURISDICTION AND VENUE**

3. Subject matter jurisdiction is proper in this Court under 28 U.S.C. § 1331 and under 28 U.S.C. § 1334 because the suit arises out of post-petition acts or omissions of the debtor and certain of its principals.

4. This Court has personal jurisdiction over Defendant Highland Capital Management, L.P. because it has continuously done business in this state, and the causes of action arise from the acts or omissions committed in this state.

5. Venue is proper in this Court because a substantial number of the acts or omissions giving rise to this lawsuit and the causes of action asserted herein occurred in Dallas County.

### III.

#### **FACTUAL BACKGROUND**

6. HCMLP is a registered investment advisor (“RIA”) subject to the regulations of the Securities Exchange Commission.

7. HCMLP is both the advisor of and investor in Highland Multi Strategy Credit Fund, L.P. (“Multistrat”), a Delaware limited partnership. Highland Multi Strategy Credit Fund GP, L.P., itself a Delaware limited partnership, is the general partner of Multistrat, and HCMLP is the sole member of the general partner of Highland Multi Strategy Credit Fund GP, L.P.

8. HCMLP’s advisory capacity is governed, or at all relevant times was governed, by the Third Amended and Restated Investment Management Agreement, effective November 1, 2013 (the “IMA”).

9. The purpose of Multistrat as a vehicle was stated as such: “The Fund's investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.”

10. The Confidential Private Placement Memorandum for Multistrat disclosed that “[t]he Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the ‘Advisers Act’).

Each prospective investor will be required to make a representation to indicate that it is a ‘qualified client’ as defined in the Advisers Act.”

**11.** Because of these agreements and roles as the General Partner and RIA, Highland owed contractual and fiduciary duties to Plaintiff as an investor in Multistrat.

**12.** James Seery, the principal, CEO, and CRO of HCMLP, in its capacity as a debtor, admitted under oath that HCMLP owes fiduciary duties to the investors of the funds HCMLP manages—which would include Multistrat—and therefore, has admitted under oath that HCMLP and its governed persons owe fiduciary duties to the investors in Multistrat, which include Plaintiff, The Charitable DAF Fund, and Highland Capital Management Services, Inc., among others.

**13.** As an investment vehicle advised at all times and controlled at all times by HCMLP, Multistrat purchased and owned a pool of viaticals—investments in life insurance policies keyed to the lives of other persons. When a person passes away, the life insurance money is paid to the owner of the policy—in this case, Multistrat.

**14.** The notional value of the viatical pool was approximately \$145 million.

**15.** In or around August 2020, HCMLP sold the entire viatical pool for approximately \$35,000,000—less than one quarter of the insured value.

**16.** The policies insured people aged 90 on average, suggesting that the policies were highly likely to pay off in the ensuing few years given the age and life expectancies of the insureds, as well as considering the actuarial impact of the COVID pandemic.

**17.** In the spring of 2020, Multistrat raised funds specifically for the purpose of paying the premiums on the viatical pool—amounts raised, borrowing availability, and liquid securities provided enough cash to pay the premiums. But HCMLP did not pursue this path as promised.

Instead, it sold the assets. To this day, it is unclear why the policies were sold, and why, just prior to a planned mediation.

18. Furthermore, the process of selling was severely flawed. For example, the health assessments used to determine the likelihood and timeline for the payout were two years old. HCMLP did not cause new, up-to-date health assessments to be performed, and instead was content to rely on stale information or worse, no information at all.

19. Furthermore, HCMLP made no effort to adjust the projected life expectancies due to the increasing age of the insureds during a process that stretched over seven months, nor for the potential impact of COVID on people over the age of 90, which would have impacted the price..

20. Equally troubling is that Multistrat obtained the funds to pay the premiums from another investor—yet, it apparently did not use the funds for that purpose.

21. HCMLP apparently used the proceeds of the sale to pay itself, notwithstanding the fact that there were redeemed interests waiting to be paid—interests to whom HCMLP also owed fiduciary duties.

22. In short, HCMLP caused Multistrat to sell the viatical pool at a substantially discounted amount to curry favor with the brokers and buyers in the marketplace for no apparent benefit to Multistrat’s investors or the debtor’s estate.

### III.

#### **CAUSES OF ACTION**

##### **First Cause of Action** **Breach of the Advisers Act**

23. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

24. Highland’s actions violate the Advisers Act.

25. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.

26. The IMA imposes and incorporates the duties and obligations of the Investment Advisers Act of 1940.

27. Under this federal law, an investment adviser is a fiduciary.<sup>1</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.

28. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”

29. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>2</sup> In order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

---

<sup>1</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s “references to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. 2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”).

<sup>2</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

30. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>3</sup>

31. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

32. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

33. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

34. Therefore, Plaintiff seeks to declare the sale of the viaticals void because they were accomplished in violation of the Advisers Act.

35. Plaintiff further seeks to declare the agreement(s) between Highland and Multistrat void because they were continued in violation of the Advisers Act.

### **Second Cause of Action** **Breach of Fiduciary Duty**

36. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

---

<sup>3</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *Sec. & Exch. Commission v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

37. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.
38. The IMA imposes and incorporates the duties and obligations of the Investment Advisers Act of 1940.
39. Under this federal law, an investment adviser is a fiduciary.<sup>4</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.
40. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules, but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”
41. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>5</sup> In order for disclosure to be full and fair, it should be

---

<sup>4</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. IA2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”).

<sup>5</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).



sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

42. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>6</sup>

43. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

44. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

45. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

46. HCMLP’s CEO testified under oath that he and HCMLP were aware of these duties and had to comply with them.

47. Section 204 of the Advisers Act requires HCMLP to carry written policies and procedures that must be followed in order to adhere to its federal obligations.

---

<sup>6</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *SEC v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

48. Section 206 of the Advisers Act prohibits transactions by an adviser that were accomplished via a “deceit” on a client or prospective client, e.g., by concealing the role and interest the adviser has in the transaction, or via engaging in a course of conduct that has a tendency to mislead a client or which is manipulative.

49. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

50. The Advisers Act declares any contract that was made in violation of its provisions or regulations, or any contract that has been performed in violation of the Advisers Act, **void**.

51. The Advisers Act created a private right of action to void unlawful agreements and acts and to seek such equitable relief as accompanies such claims.

52. Texas law allows a fiduciary plaintiff to seek damages for breaches of fiduciary duty and to seek disgorgement of all ill-gotten gains obtained by a fiduciary.

53. Plaintiff has been damaged due to the breaches of fiduciary duty outlined herein, and it is entitled to recover damages, punitive damages, and attorneys’ fees.

54. To the extent this claim must be brought as a derivative action, it is plain that the demand requirement under Delaware law could not be met because serving a demand on Highland or to sue Highland would have been futile.

**Third Cause of Action**  
**Breach of Contract**

55. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

56. The IMA imposes a duty of prudent investment management for the benefit of the investors in Multistrat and incorporate the duties and obligations of the Investment Advisers Act of 1940.

57. The violations set forth above constitute a breach of each or both of these agreements.

58. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

59. Plaintiff has been damaged by the breaches of contract outlined herein.

60. Plaintiff is entitled to recover damages and attorneys' fees.

**JURY DEMAND AND PRAYER**

61. Plaintiff demands trial by jury.
62. Plaintiff respectfully requests judgment and an order:
- Disgorging all ill-gotten gains in an amount to be determined at trial;
  - Voiding the sale and other relevant agreements herein with HCMLP pursuant to the Advisers Act;
  - Awarding damages in an amount to be determined at trial;
  - Awarding punitive damages in an amount to be determined at trial;
  - Awarding attorneys' fees and costs in an amount to be determined at trial;
  - Awarding all interim and final relief to which Plaintiff is legally or equitably entitled under the facts and circumstances raised herein.

Dated: July 22, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: [mas@sbautilaw.com](mailto:mas@sbautilaw.com)

[jeb@sbautilaw.com](mailto:jeb@sbautilaw.com)

**Counsel for Plaintiff**

## **EXHIBIT 6**

### Schedule of Contracts and Leases to Be Assumed

1. Advisory Services Agreement, dated November 21, 2011, effective June 20, 2011, by and between Carey International, Inc., and Highland Capital Management, L.P.
2. Amended and Restated Advisory Services Agreement, dated March 4, 2013, by and between Trussway Holdings, Inc., and Highland Capital Management, L.P.
3. Reference Portfolio Management Agreement, dated March 4, 2004, by and between Highland Capital Management, L.P., and Citibank N.A.
4. Advisory Services Agreement, dated May 25, 2011, by and between CCS Medical, Inc., and Highland Capital Management, L.P.
5. Amended and Restated Advisory Services Agreement, dated February 28, 2013, by and between Cornerstone Healthcare Group Holding, Inc., and Highland Capital Management, L.P.
6. Prime Brokerage Agreement by and between Jefferies LLC and Highland Capital Management, L.P., dated May 24, 2013.
7. Amended and Restated Shared Services Agreement, dated August 21, 2015, by and between Highland Capital Management, L.P., and Falcon E&P Opportunities GP, LLC.
8. Amended and Restated Administrative Services Agreement, effective as of August 21, 2015, by and between Highland Capital Management, L.P., and Petrocap Partners II GP, LLC.
9. Office Lease, between Crescent Investors, L.P., and Highland Capital Management, L.P.
10. Paylocity Corporation Services Agreement, between Highland Capital Management, L.P., and Paylocity Corporation, dated November 19, 2012.
11. Electronic Trading Services Agreement, between SunTrust Robinson Humphrey Inc., and Highland Capital Management, L.P., dated February 6, 2019.
12. Letter Agreement, between FTI Consulting, Inc., and Highland Capital Management, L.P., dated November 19, 2018.
13. Administrative Services Agreement, dated January 1, 2018, between Highland Capital Management, L.P., and Liberty Life Assurance Company of Boston.
14. Electronic Communications: Customer Authorization & Indemnification, between Highland Capital Management, L.P., and The Bank of New York Mellon Corporation, dated August 9, 2016.
15. Letter Agreement, dated August 9, 2016, Electronic Access Terms and Conditions, by and between The Bank of New York Mellon Trust Company, N.A., and Highland Capital Management, L.P.
16. Shared Services Agreement by and between Highland HCF Advisor, Ltd., and Highland Capital Management, L.P., dated effective October 27, 2017.

17. Sub-Advisory Agreement, by and between Highland HCF Advisors, Ltd., and Highland Capital Management, dated effective October 27, 2017.
18. Collateral Management Agreement, dated November 2, 2006, by and between Highland Credit Opportunities CDO Ltd. and Highland Capital Management, L.P.
19. Management Agreement, dated November 15, 2007, between Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Partners Master L.P., Highland Restoration Capital Partners GP, LLC, and Highland Capital Management, L.P.
20. Investment Management Agreement, between Highland Capital Multi-Strategy Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
21. Investment Management Agreement, between Highland Capital Multi-Strategy Master Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
22. Management Agreement, dated August 22, 2007, between and among Highland Capital Management, L.P., and Walkers Fund Services Limited, as trustee of Highland Credit Opportunities Japanese Unit Trust.
23. Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013.
24. Investment Management Agreement, dated March 31, 2015, by and among Highland Select Equity Master Fund, L.P., Highland Select Equity Fund GP, L.P., and Highland Capital Management, L.P.
25. Amended and Restated Investment Management Agreement, dated February 27, 2017, by and among Highland Prometheus Master Fund L.P., Highland Prometheus Feeder Fund I, L.P., Highland Prometheus Feeder Fund II, L.P., Highland SunBridge GP, LLC, and Highland Capital Management, L.P.
26. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
27. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
28. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
29. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
30. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
31. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jasper CLO Ltd., and Highland Capital Management, L.P.
32. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.



33. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
34. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
35. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
36. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
37. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
38. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
39. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
40. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
41. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
42. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
43. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.
44. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
45. AT&T Managed Internet Service, between Highland Capital Management, L.P. and AT&T Corp., dated February 24, 2015.
46. ViaWest, Master Service Agreement, dated October 3, 2011, between Highland Capital Management, L.P. and ViaWest
47. Stockholders' Agreement, dated April 15, 2005, by and between American Banknote Corporation and Highland Capital Management, L.P.
48. Stockholders' Agreement and Amendment No. 1, dated January 25, 2011, by and between Carey Holdings, Inc. and Highland Capital Management, L.P.
49. Stockholders' Agreement and Amendment, dated March 24, 2010, by and between Cornerstone Healthcare Group Holding, Inc. and Highland Capital Management, L.P.
50. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
51. Stock Purchase and Sale Agreement and Amendment, dated January 16, 2013, by and between Progenics Pharmaceuticals, Inc. and Highland Capital Management, L.P.

52. Stockholders' Agreement and Amendments, dated October 24, 2008, by and between JHT Holdings, Inc. and Highland Capital Management, L.P.
53. Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P., dated February 25, 2013, by and between Highland Dynamic Income Fund GP, LLC and Highland Capital Management, L.P.
54. Highland Multi-Strategy Fund, L.P. Limited Partnership Agreement, dated July 6, 2006, by and between Highland Multi-Strategy Fund GP, L.P. and Highland Capital Management, L.P.
55. Operating Agreement of HE Capital, LLC (as amended), dated September 27, 2007, by and between ENA Capital, LLC Ellman Management Group, Inc. and Highland Capital Management, L.P.
56. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund II, LLC, dated February 27, 2007, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
57. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund, LLC, dated July 19, 2006, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
58. Highland Capital Management, L.P., Limited Liability Company Agreement of Highland Receivables Finance 1, LLC, by and between Highland Capital Management, L.P. and Highland Capital Management, L.P.
59. Agreement of Limited Partnership of Highland Restoration Capital Partners, L.P. and Amendments, dated November 6, 2007, by and between Highland Restoration Capital Partners GP, LLC and Highland Capital Management, L.P.
60. Agreement of Limited Partnership of Highland Select Equity Fund GP, L.P., dated October 2005, by and between Highland Select Equity Fund GP, LLC and Highland Capital Management, L.P.
61. Agreement of Limited Partnership of Penant Management LP, dated December 12, 2012, by and between Penant Management GP, LLC and Highland Capital Management, L.P.
62. Agreement of Limited Partnership of Petrocap Incentive Partners III, LP, dated April 12, 2018, by and between Petrocap Incentive Partners III GP, LLC, Petrocap Incentive Holdings III, LP and Highland Capital Management, L.P.
63. Amended and Restated Agreement of Limited Partnership of Petrocap Partners II, LP, dated October 30, 2014, by and between Petrocap Partners II GP, LLC, Petrocap Incentive Partners II, LP and Highland Capital Management, L.P.
64. Agreement of Limited Partnership of Highland Credit Opportunities CDO GP, L.P., dated December 29, 2005, by and between Highland Credit Opportunities CDO GP, LLC and Highland Capital Management, L.P.
65. Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P., dated November 1, 2014, by and between Highland Multi Strategy Credit Fund GP, L.P. and Highland Capital Management, L.P.

66. DUO Security, 2 factor authentication, by and between DUO Security and Highland Capital Management, L.P.
67. GoDaddy Domain Registrations, by and between GoDaddy and Highland Capital Management, L.P.
68. Highland Loan Fund, Ltd. et al, Investment Management Agreement, dated July 31, 2001, by and between Highland Loan Fund, Ltd. et al and Highland Capital Management, L.P.
69. E Mailflow Monitoring, by and between Mxtoolbox and Highland Capital Management, L.P.
70. Cloud single sign on for HR related employee login, by and between Onelogin and Highland Capital Management, L.P.
71. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
72. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
73. Order Addenda, dated January 28, 2020, by and between CenturyLink Communications, LLC and Highland Capital Management, L.P.
74. Service Agreement (as amended), dated April 1, 2005, by and between Intex Solutions, Inc. and Highland Capital Management, L.P.
75. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
76. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
77. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
78. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
79. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
80. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
81. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
82. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

83. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
84. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
85. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
86. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
87. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.
88. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
89. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
90. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
91. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
92. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
93. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
94. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
95. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
96. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
97. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

98. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
99. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
100. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
101. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
102. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
103. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
104. Securities Account Control Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Highland CDO Opportunity Fund, Ltd.; JPMorgan Chase Bank, National Association
105. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
106. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
107. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
108. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
109. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
110. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
111. Extension/Buy-Out Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Citigroup Financial Products Inc.; Citigroup Global Markets Inc.
112. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
113. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
114. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

115. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery
116. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel
117. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms
118. Colocation Service Order dated October 14, 2019 between Highland Capital Management and Dawn US Holdings, LLC d/b/a Evoque Date Center Solutions
119. Tradesuite Web Module Services/Agreement between Highland Capital Management and DTCC ITP LLC
120. Bloomberg (Terminal) Agreement No. 306371 between Highland Capital Management and Bloomberg Finance, L.P.<sup>1</sup>
121. Master Service Agreement between Highland Capital Management and Via West
122. Amendment to Bloomberg Order Management System Addendum and Bloomberg Order Management System Schedule of Services Account No. 167969 between Highland Capital Management and Bloomberg Finance, L.P.
123. Fourth Amendment to Software License and Services Agreement between Highland Capital Management and Markit WSO Corporation
124. Master Services Agreement, First Amendment to Master Services Agreement, Second Amendment and Restatement of Master Services Agreement between Highland Capital Management and Siepe Services, LLC
125. Internet Agreement Account No. 831-000-7888-651 between Highland Capital Management and AT&T
126. Landline Fax Agreement Account No. 831-000-2532-176 between Highland Capital Management and AT&T
127. Amazon Web Services Account No. 353534426569 between Highland Capital Management and Amazon Web Service, Inc.
128. Website Hosting Agreement Account No. 325667 between Highland Capital Management and WP Engine

---

<sup>1</sup> The Debtor is currently in discussions with Bloomberg regarding the assumption of this agreement.

## **EXHIBIT 7**



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

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

*Counsel for the Debtor*

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	
	)	Case No. 19-34054-sgj11
Debtor.	)	
	)	

**NOTICE OF OCCURRENCE OF EFFECTIVE DATE OF  
 CONFIRMED FIFTH AMENDED PLAN OF REORGANIZATION  
 OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

**PLEASE TAKE NOTICE** that on February 22, 2021, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1943] (the “Confirmation Order”) confirming the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as

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



amended, supplemented, or modified, the “Plan”). Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Plan and the Confirmation Order, as applicable.

**PLEASE TAKE FURTHER NOTICE** that the Effective Date of the Plan occurred on August 11, 2021.

**PLEASE TAKE FURTHER NOTICE** that, except with respect to Administrative Expense Claims that are Professional Fee Claims or as otherwise set forth in the Plan, requests for payment of an Administrative Expense Claim must be Filed with the Bankruptcy Court **no later than forty-five (45) days after the Effective Date** (the “Administrative Expense Claims Bar Date”). **HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE EXPENSE CLAIMS BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE THAT DO NOT FILE AND SERVE SUCH A REQUEST BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE EXPENSE CLAIMS AGAINST THE DEBTOR OR THE REORGANIZED DEBTOR.**

**PLEASE TAKE FURTHER NOTICE** that, unless otherwise ordered by the Bankruptcy Court, all final requests for payment of Professional Fee Claims must be Filed **no later than sixty (60) days after the Effective Date.**

**PLEASE TAKE FURTHER NOTICE** that the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtor or the Reorganized Debtor, as applicable, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan and Confirmation Order, including, without limitation: the injunction with respect to the commencement of claims and causes of action against Protected Parties set forth in Section IX.F of the Plan and Sections AA and BB of the Confirmation Order, the duration of injunction and stays set forth in Section IX.G of the Plan and Section AA of the Confirmation Order, and the continuance of the January 9 Order and July 16 Order set forth in Section IX.H of the Plan and Section CC of the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE** that on the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor’s formation documents, including the Limited Partnership Agreement.

**PLEASE TAKE FURTHER NOTICE** that the Confirmation Order and the Plan

are available for inspection. If you would like to obtain copies you may: (a) access the Debtor's restructuring website at <http://www.kccllc.net/hcmlp>; (b) call toll free: (877) 573-3984 or international: (310) 751-1829; or (c) email HighlandInfo@kccllc.com and reference "Highland" in the subject line. You may also obtain copies of any pleadings filed in this case for a fee via PACER at: [pacer.uscourts.gov](http://pacer.uscourts.gov).

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: August 11, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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

-and-

**HAYWARD PLLC**

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

*Counsel for the Debtor*

## **EXHIBIT 8**

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054 (SGJ)
Debtor.	)	

**CERTIFICATE OF SERVICE**

I, Vincent Trang, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On August 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit A**; and via First Class Mail upon the service lists attached hereto as **Exhibit B** and **Exhibit C**:

- **Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.** [Docket No. 2700]

Furthermore, on August 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via First Class Mail upon “Highland Capital Management LP, For Further Delivery to Addressed Parties, 300 Crescent Ct, Ste 700, Dallas, TX 75201,” for distribution in individually addressed envelopes to each party on the service list attached hereto as **Exhibit D**; and via First Class Mail upon “Highland Capital Management LP, For Further Delivery to Addressed Parties, 13455 Noel Rd, Ste 800, Dallas, TX 75240,” for distribution in individually addressed envelopes to each party on the service list attached hereto as **Exhibit E**:

- **Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.** [Docket No. 2700]

Dated: August 19, 2021

/s/ Vincent Trang  
Vincent Trang  
KCC  
222 N Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

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

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 2 of 175

## **EXHIBIT A**



Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	ctimmons@abernathy-law.com; bankruptcy@abernathy-law.com; ehahn@abernathy-law.com
Counsel for NexBank	Alston & Bird LLP	Jared Slade	jared.slade@alston.com
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	jonathan.edwards@alston.com
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandeneau	debra.dandeneau@bakermckenzie.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	michelle.hartmann@bakermckenzie.com
Counsel for NWCC, LLC	Barnes & Thornburg LLP	Thomas G. Haskins, Jr.	thomas.haskins@btlaw.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	mintz@blankrome.com; jubilioni@blankrome.com
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	John Y. Bonds, III, Bryan C. Assink	john@bondsellis.com; bryan.assink@bondsellis.com
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	schristianson@buchalter.com
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	c Carlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel for BH Equities, L.L.C.	Dentons US LLP	Casey Doherty	Casey.doherty@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Counsel to Acis Capital Management, LP and Acis Capital Management GP, LLC ("Creditors") and Joshua N. Terry and Jennifer G. Terry	Forshey & Prostok LLP	Jeff P. Prostok, J. Robert Forshey, Suzanne K. Rosen	jprostok@forsheyprostok.com; bforshey@forsheyprostok.com; srosen@forsheyprostok.com
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	selliot@frontier-ok.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	ddraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	Jhonis@RandAdvisors.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
IRS	Internal Revenue Service	Centralized Insolvency Operation	Mimi.M.Wong@irscounsel.treas.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Secured Creditor	Jefferies LLC	Director of Compliance	cbianchi@jefferies.com
Secured Creditor	Jefferies LLC	Office of the General Counsel	cbianchi@jefferies.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	asrush@jonesday.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	jbain@joneswalker.com; aanderson@joneswalker.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	artoush.varshosaz@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	james.wright@klgates.com

Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	stephen.topetzes@klgates.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	pbessette@kslaw.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	Andrew.Clubok@lw.com; Sarah.Tomkowiak@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala, Kathryn K. George	asif.attarwala@lw.com; Kathryn.George@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	jeff.bjork@lw.com; kim.posin@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Zachary F. Proulx	Zachary.Proulx@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Counsel for Jack Yang and Brad Borud	Loewinsohn Flegle Deary Simon LLP	Daniel P. Winikka	danw@lfdslaw.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnlp.com
Equity Holders	Mark K. Okada		mokadadallas@gmail.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsh & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Bank	NexBank	John Danilowicz	john.holt@nexusbankcapital.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD, Plano ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslough@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	judith.ross@judithwross.com; frances.smith@judithwross.com; eric.soderlund@judithwross.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	david.karp@srz.com; jay.williams@srz.com
SEC Regional Office	Securities & Exchange Commission	Richard Best, Regional Director	bankruptcynoticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
Counsel to Patrick Daugherty	Spencer Fane LLP	Jason P. Kathman	jkathman@spencerfane.com

Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel for NexPoint Real Estate Partners, LLC F/K/A HCRE Partners, LLC	Wick Phillips Gould & Martin, LLP	Brant C. Martin, Jason M. Rudd, Lauren K. Drawhorn	brant.martin@wickphillips.com; jason.rudd@wickphillips.com; lauren.drawhorn@wickphillips.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 6 of 175

## **EXHIBIT B**

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	1700 Redbud Blvd, Ste. 300			McKinney	TX	75069
Counsel for NexBank	Alston & Bird LLP	Jared Slade	Chase Tower	2200 Ross Avenue		Dallas	TX	75201
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	One Atlantic Center	1201 West Peachtree Street		Atlanta	GA	30309
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	500 Delaware Avenue, 8th Floor	PO Box 1150		Wilmington	DE	19899-1150
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Ave			New York	NY	10018
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500		Dallas	TX	75201
Counsel for NWCC, LLC	Barnes & Thornburg LLP	Thomas G. Haskins, Jr.	2121 North Pearl Street, Suite 700			Dallas	TX	75201
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800			Wilmington	DE	19801
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	John Y. Bonds, III, Bryan C. Assink	420 Throckmorton Street, Suite 1000			Fort Worth	TX	76102
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	55 Second Street, 17th Floor			San Francisco	CA	94105-3493
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	2911 Turtle Creek Blvd.	Suite 1400		Dallas	TX	75219
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd. Cole, LLP	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	265 E. Warm Springs Road, Suite 107			Las Vegas	NV	89119
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosselliers	Hercules Plaza	1313 North Market Street, Suite 5400		Wilmington	DE	19801
Creditor	& Leonard, P. A.		301 Commerce Street, Suite 1700			Fort Worth	TX	76102
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	8080 Park Lane, Suite 700			Dallas	TX	75231
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	1105 N. Market Street, Suite 901			Wilmington	DE	19801
Counsel for BH Equities, L.L.C.	Dentons US LLP	Casey Doherty	1221 McKinney Street, Suite 1900			Houston	TX	77010
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	1221 Avenue of the Americas			New York	NY	10020-1089
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	233 South Wacker Drive	Suite 5900		Chicago	IL	60606-6361
Counsel to Acis Capital Management, LP and Acis Capital Management GP, LLC ("Creditors") and Joshua N. Terry and Jennifer G. Terry	Forshey & Prostok LLP	Jeff P. Prostok, J. Robert Forshey, Suzanne K. Rosen	777 Main Street, Suite 1550			Fort Worth	TX	76102
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	5100 South I-35 Service Road			Oklahoma City	OK	73129

001-8031

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	100 Crescent Court, Suite 350			Dallas	TX	75201
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	200 Park Avenue			New York	NY	10066
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	3161 Michelson Drive			Irvine	CA	92612
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	650 Poydras Street, Suite 2500	87 Railroad Place Ste 403		New Orleans	LA	70130
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	John Honis			Saratoga Springs	NY	12866
IRS	Internal Revenue Service	Altn Susanne Larson	31 Hopkins Plz Rm 1150			Baltimore	MD	21201
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	2323 Ross Avenue, Suite 600			Dallas	TX	75201
Secured Creditor	Jefferies LLC	Director of Compliance	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Secured Creditor	Jefferies LLC	Office of the General Counsel	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	919 Third Avenue			New York	NY	10022-3908
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	2727 N. Harwood Street			Dallas	TX	75201
Counsel to the issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	811 Main Street, Suite 2900			Houston	TX	77002
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	1717 Main Street, Suite 2800			Dallas	TX	75201
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	1 Lincoln Street			Boston	MA	02110
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	1601 K Street, NW			Washington	DC	20006-1600
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	901 Main Street, Suite 5200			Dallas	TX	75242-1699
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	500 West 2nd St., Suite 1800			Austin	TX	78701-4684
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	401 S. 2nd Street, Suite 200			Philadelphia	PA	19147
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000			Washington	DC	20004

001-6082

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attanwala, Kathryn K. George	330 N. Wabash Avenue, Ste. 2800			Chicago	IL	60611
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100			Los Angeles	CA	90071
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Zachary F. Proulx	1271 Avenue of the Americas			New York	NY	10020
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207
Counsel for Jack Yang and Brad Borud	Loewensohn Flegle Deary Simon LLP	Daniel P. Winiikka	12377 Merit Drive, Suite 900			Dallas	TX	75251
Creditor Equity Holders	Lynn Plinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	2100 Ross Avenue, Ste 2700			Dallas	TX	75201
	Mark K. Okada		300 Crescent Court	Suite 700		Dallas	TX	75201
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arshnt & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	1201 North Market Street, Suite 1600			Wilmington	DE	19801
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	909 Third Avenue			New York	NY	10022
Counsel to California Public Employees' Retirement System ("CalPERS")	NexBank	John Danilowicz	2515 McKinney Ave	Ste 1100		Dallas	TX	75201
SEC Headquarters	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	One Embarcadero Center, 32nd Floor			San Francisco	CA	94111
Texas Attorney General	Office of General Counsel	Securities & Exchange Commission	100 F St NE			Washington	DC	20554
Attorney General of the United States	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
US Attorneys Office for Northern District of TX	Office of the Attorney General	Erin Nealy Cox, Esq	Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Trustee for District of DE	Office of the United States Attorney	Linda Casey	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	844 King St Ste 2207	Lockbox 35		Wilmington	DE	19801
US Trustee for District of DE	Office of the United States Trustee Delaware Pension Benefit Guaranty Corporation ("PBGC")	Jane M. Leamy	1100 Commerce Street, Room 976	Earle Cabell Federal Building		Dallas	TX	75242
Counsel to City of Garland, Garland ISD, Wylie ISD, Plano ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Michael I. Baird	J. Caleb Boggs Federal Building	844 King St Ste 2207	Lockbox 35	Wilmington	DE	19801
Delaware counsel to Alvarez & Marsal CRF Management LLC	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	Office of the General Counsel	1200 K Street, N.W.		Washington	DC	20005-4026
Secured Creditor	Prime Brokerage Services	Jefferies LLC	1919 S. Shiloh Rd., Suite 310			Garland	TX	75042
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	1313 North Market Street, 6th Floor			Wilmington	DE	19801
			520 Madison Avenue			New York	NY	10022
			One Rodney Square	920 North King Street		Wilmington	DE	19801

APP-60289



**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	325 North St. Paul Street, Suite 4500			Dallas	TX	75201
Counsel for Scott Ellington, Thomas Sargent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610			Dallas	TX	75201
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	919 Third Avenue			New York	NY	10022
SEC Regional Office	Securities & Exchange Commission	Richard Best, Regional Director	New York Regional Office	Brookfield Place, Suite 400	200 Vesey Street	New York	NY	10281
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	Philadelphia Regional Office	One Penn Center, Suite 520	1617 JFK Boulevard	Philadelphia	PA	19103
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	One South Dearborn Street			Chicago	IL	60603
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	2021 McKinney Avenue Suite 2000			Dallas	TX	75201
Counsel to Patrick Daugherty	Spencer Fane LLP	Jason P. Kathman	5700 Granite Parkway, Suite 650			Plano	TX	75024
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division- Bankruptcy Section	PO Box 13258			Austin	TX	78711
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	401 Federal Street	PO Box 898		Dover	DE	19903
Equity Holders	Strand Advisors, Inc.		300 Crescent Court	Suite 700		Dallas	TX	75201
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	919 North Market Street, Suite 420			Wilmington	DE	19801
TX AG Office	Texas Attorney Generals Office	Bankruptcy-Collections Division	PO Box 12548			Austin	TX	78711-2548
Equity Holders	The Dugaboy Investment Trust		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		300 Crescent Court	Suite 700		Dallas	TX	75201
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	717 N. Harwood St., Suite 400			Dallas	TX	75201
United States Attorney General	United States Attorney General	U.S. Department of Justice	William Barr, Esquire	950 Pennsylvania Avenue, NW	Room 4400	Washington	DC	20530-0001
United States Bankruptcy Court	United States Bankruptcy Court	Honorable Stacey G. Jernigan	Northern District of Texas - Dallas Division	Earle Cabell Federal Building	1100 Commerce St., Rm. 1254	Dallas	TX	75242-1496
U.S. Department of the Treasury	US Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
Counsel for NexPoint Real Estate Partners, LLC F/K/A HCRE Partners, LLC	Wick Phillips Gould & Martin, LLP	Brant C. Martin, Jason M. Rudd, Lauren K. Drawhorn	3131 McKinney Avenue, Suite 500			Dallas	TX	75204

APP-60284

**Exhibit B**  
Core/2002 Service List  
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P., (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Harwood Street, Suite 500			Dallas	TX	75201
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: David Neier	200 Park Avenue			New York	NY	10166-4193
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	800 Capitol Street, Suite 2400			Houston	TX	77002
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	2121 N. Pearl Street, Suite 900			Dallas	TX	75201
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

APP-00285  
001669

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 12 of 175

## **EXHIBIT C**

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
13D Global Strategy and Research		491 N Main Street			Ketchum	ID	83340-0000	
13D RESEARCH, INC		PO BOX 2087	109 BOULDER VIEW LANE		Ketchum	ID	83340	
13D RESEARCH, INC		6115 Estate Smith Bay	Box 2/Suite 333		St. Thomas	VI	00802-1304	
1564 Entertainment, LLC		391 E. Las Colinas Blvd.	#130-428		Irving	TX	75039	
1st AMERICAN FIRE PROTECTION, INC		PO BOX 2123			Mansfield	TX	76063-2123	
1st Partners & Co		PO Box 141629			Dallas	TX	75222	
2011 PCDC Teachers Cup		25 Highland Park Village	#100-188		Dallas	TX	75205	
2-10 HOME BUYERS		10375 E HARVARD AVE			Denver	CO	80231	
2905 Maple LLC		2905 Maple Avenue			Dallas	TX	75201	
299 Credit Finance Holdings LLC		875 Third Avenue	10th Floor		New York	NY	10022	
300 Inc.		3805 Beltline Rd			Addison	TX	75001	
4CAST Inc		420 Lexington Avenue, Suite 2147			New York	NY	10170	
4th Bin, Inc.		703 3rd Avenue	6th Floor		New York	NY	10017	
A. Dean Jenkins		Address on File						
A.S.A.P. Advisor Services		5000 Olde Towne Parkway	Suite 100		Marietta	GA	30068	
AA GMT		4700 AMERICAN BLVD			Ft. Worth	TX	76155	
Aaron, Philip B.		Address on File						
ABALON BUSINESS MACHINES & SERVICES		60 E 42ND ST			New York	NY	10167	
Abayarathna, Sahan		Address on File						
Abbit Stonecypther		Address on File						
Aberdeen Loan Funding, Ltd.		Walker House 87 Mary Street	George Town		Grand Cayman		KY1-9002	Cayman Islands
Aberdeen Loan Funding, Ltd.		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Aberdeen Loan Funding, Ltd. and State Street Bank and Trust Company		87 Mary Street	George Town		Grand Cayman	KY	1-9902	Cayman Islands
Aberdeen Loan Funding, Ltd. and State Street Bank and Trust Company		200 Clarendon St	Mail Code EUC 108		Boston	MA	02116	
Ableco, LLC		299 Park Avenue	Floor 21-23		New York	NY	10171	
Ablon and Co., PLLC		10000 N. Central Expy #1400			Dallas	TX	75231	
ABM		PO Box 419860			Boston	MA	02241-9860	
ABM Janitorial Services		P.O. Box 951864			Dallas	TX	75395	
ABM Texas General Services, Inc.		2020 Westridge Drive			Irving	TX	75038-0000	
About Faces Entertainment, LLC		5092 Dorsey Hall Drive	Suite 202		Ellicott City	MD	21042	
AboveNet Communications Inc.		PO Box 79006			City of Industry	CA	91716-9006	
Abraham Rondina		Address on File						

APP-60787

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Abrams & Bayliss LLP	John M. Seaman	20 Montchanin Road, Suite 200			Wilmington	DE	19807	
Abrams Mediation		7616 Burns Run Suite 180			Dallas	TX	75248	
Abrams Mediation		4901 LBJ Fwy	#150		Dallas	TX	75244-6179	
Absolute Entertainment		1517 Prudential Drive			Dallas	TX	75235	
ACA Compliance Group		8403 Colesville Road	Suite 870		Silver Spring	MD	20910	
Academy Engraving Inc		271 Madison Avenue	Suite 207		New York	NY	10016	
Accessibility Today		PO Box 1757			Roanoke	TX	76262	
Accountant General	Appleby Services (Bermuda) Ltd.	PO Box HM 1179			Hamilton		HM EX	BERMUDA
Accountant General	ATTN Lorna Phillips	M Q Services Limited Victoria Place			Hamilton		HM 10	BERMUDA
ACCOUNTEMPS		PO Box 743295			Los Angeles	CA	90074-3295	
ACCOUNTEMPS		FILE 73484	PO BOX 60000		San Francisco	CA	94160-3484	
Acuity Inc. dba NRS		PO Box 7247-8077			Philadelphia	PA	19170-8077	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al		3110 Webb Ave., Suite 203			Dallas	TX	75205	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Attn Annmarie Chiarello, Rakhee V. Patel	c/o Winstead PC	500 Winstead Building	2728 N. Harwood Street	Dallas	TX	75201	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Brian P. Shaw	Rogge Dunn Group PC	500 N. Akard St. Suite 1900		Dallas	TX	75201	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	James T. Bently	Schulte Roth & Zabel LLP	919 Third Avenue		New York	NY	10022	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Joseph E. Bain	Jones Walker LLP	811 Main St. Suite 2900		Houston	TX	77002	
Ackerman McQueen Inc.		1601 Northwest Expressway	Suite 1100		Oklahoma City	OK	73118	
ACMLP Claim, LLC		4514 Cole Ave., Suite 600			Dallas	TX	75205	
Action Fire Pros		3709 S IH 35			Waxahachie	TX	75165	
Action Shred of Texas		2835 Congressman Lane			Dallas	TX	75220	
Action Shred of Texas		1420 S. Barry Ave			Dallas	TX	75223	
Act-On Software, Inc.		121 SW Morrison Street, Ste 1600			Portland	OR	97204	
Ada Hsieh		Address on File						
ADAM DYBALA		Address on File						
Adam Energy Forum		PO Box 802511			Dallas	TX	75380-2511	
ADAM FALCON		Address on File						
Adam Hanson		Address on File						
Adam Kneller		Address on File						
Adam Ostermiller		Address on File						
ADAM PETERSON		Address on File						
Adam-Permian Energy Network		1439 Wakefield Dr.			Houston	TX	77018	
ADAM-Tulsa	Attn Melissa Turgeon	3500 One Williams Center, MD 2600			Tulsa	OK	74172-0135	

001-60788

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Addleshaw Goddard LLP		Sovereign House, PO Box 8	Sovereign Street Leeds		West Yorkshire		LS1 1HQ	United Kingdom
Adeo Internet Marketing Inc.		2501 East Charleston Rd			Island Pond	VT	05846	
Adesso Process Service		PO BOX 12621			Albany	NY	12212	
Adeyemi Ogunkoya		Address on File						
ADISA		10401 North Meridian Street	Suite 202		Indianapolis	IN	46290	
AdMaster Compliance		1101 Arrow Point Drive	Suite 301		Cedar Park	TX	78613	
ADMIN .U.C.			Employment Security Division					
Admiral Communications	State of Connecticut	Department of Labor			Hartford	CT	06104-2940	
ADP		4505 Excel Pkwy, Ste 300			Addison	TX	75001	
ADP		2735 Stemmons Fwy			Dallas	TX	75207	
ADP		PO BOX 78415			Phoenix	AZ	85062-8415	
ADP		PO Box 31001-1568			Pasadena	CA	91110-1568	
ADSUAR MUNIZ GOYCO SEDA & PEREZ-OCHOA		PO BOX 70294			San Juan	PR	00936-8294	
ADT SECURITY SERVICES, INC	ATTN M MALDONADO	335 W 16th ST			New York	NY	10011	
ADT SECURITY SERVICES, INC		PO BOX 371956			Pittsburgh	PA	15250-7956	
Advanced Business Group, Inc.		520 Eighth Ave, 15th Flr			New York	NY	10018	
Advanced Discovery, Inc.		13915 N Mopac Expy	Suite 400		Austin	TX	78728	
Advanced Discovery, Inc.		PO Box 102242			Atlanta	GA	30368-2242	
Advanced Discovery, Inc.		PO Box 3173			Wichita	KS	67201-3173	
Advantage Data Inc.		PO Box 961210			Boston	MA	02196-1210	
Advent Software Inc	Attn Bill Hall	600 Townsend St., Suite 4000			San Francisco	CA	94103	
Advent Software, Inc.		PO BOX 823374			Philadelphia	PA	19182-3374	
Advent Software, Inc.		Three Lincoln Centre	5430 LBJ Freeway Site 800		Dallas	TX	75240-0000	
Advent Software, Inc.		Dept 33096 PO Box 39000			San Francisco	CA	94139-3096	
ADVENTURE PHOTO TOURS, INC.		3111 S VALLEY VIEW BLVD	X-106		Las Vegas	NV	89102	
ADVISOR CONSULTANT NETWORK INC		600 SUPERIOR AVE	SUITE 1300		Cleveland	OH	44114	
Advisor Group, Inc.		PO Box 978516			Dallas	TX	75397-8516	
Advisory Group Equity Services, Ltd.		444 Washington Street	Suite 407		Woburn	MA	01801	
Advocates Professional Services, Inc		119 North Park Ave, Suite 303			Rockville Centre	NY	11570	
AERIAL FOCUS		4885 ALPHA RD	STE 155		Dallas	TX	75244-4633	
AeroIndustry Jobs, Inc		PO Box 215			Oxford	ME	04270	
Aetna	AETNA-MIDDLETOWN	PO BOX 88863			Chicago	IL	60695-1863	
Aetna	Attn Lockbox No 804735	350 East Devon Avenue	Suite 500		Itasca	IL	60143	
Aetna		10275 W. Higgins Rd			Rosemont	IL	60018	
Aetna		PO Box 804735			Chicago	IL	60680-4108	
Aetna		PO Box 88860			Chicago	IL	60695-1860	
Aetna-COBRA		COBRA/Special Plans	PO Box 13050		Secaucus	NJ	07188-0050	
Aetna-FSA Payment Remittance		PO Box 13504			Newark	NJ	07188-0504	

001-60789

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Afshan Mohammed		Address on File						
Agio, LLC		201 David L Boren Blvd	Ste 250		Norman	OK	73072	
Agren Blando Court Reporting Video Inc.		216 16th Street	Suite 650		Denver	CO	80202	
Aguilar Movers, Inc.		1206 Edwards Circle			Dallas	TX	75224	
AHLUWALIA, SANJIV		Address on File						
AI Insight		P.O. Box 639250			Cincinnati	OH	45263-9250	
AICPA		PO BOX 10069			Newark	NJ	07101-3069	
AICPA		Multiple Member Payment	PO Box 2219		Jersey City	NJ	07303-2219	
AIG Advisor Group, Inc.		PO Box 978516			Dallas	TX	75397-8516	
AIMSE		12100 Sunset Hills Road	Suite 130		Reston	VA	20190	
Aimware, Inc		16 Olde Taverne Lane			Amesbury	MA	01913	
AIQ, Inc.	ATTN Joyce Welsh	270 Rutherford Blvd	2nd Floor		Clifton	NJ	07014	
AIQ, Inc.		1500 Broadway	Suite 2900		New York	NY	10036	
Air Graffiti Dallas		4901 Harbor Ct			Flower Mound	TX	75022	
AIRBAND								
COMMUNICATIONS, INC		75 Remittance Drive	Suite 6566		Chicago	IL	60675-6566	
Aire Dynamics		2305 E BELTLINE RD	STE 190		Carrollton	TX	75006	
Aire Dynamics		305 E Beltline Rd Ste 190			Carrollton	TX	75006	
Aire Dynamics		3250 WEST STORY RD #102			Irving	TX	75038	
AirWatch, LLC		931 Monroe Drive NE	Ste 102-303		Atlanta	GA	30308	
AirWatch, LLC		PO Box 742332			Atlanta	GA	30374-2332	
Akerman Senterfitt & Edison, PA		P.O. Box 4906			Orlando	FL	32802	
AKF Reporters, Inc.		436 Blvd of the Allies			Pittsburgh	PA	15219-1314	
Akin, Gump, Strauss, Hauer & Feld LLP		1333 New Hampshire Ave, NW			Washington	DC	20036	
Akin, Gump, Strauss, Hauer & Feld LLP		DEPT. 7247-6827			Philadelphia	PA	19170-6827	
Akin, Gump, Strauss, Hauer & Feld LLP		Dept 7247-6838			Philadelphia	DE	19170-6838	
Akin, Gump, Strauss, Hauer & Feld LLP		Dept. 2909			Carol Stream	IL	60132-2909	
Akin, Gump, Strauss, Hauer & Feld LLP		2300 N Field St Ste 1800			Dallas	TX	75201-2481	
Alabama Department of Revenue	Individual and Corporate Tax Division	Corporate Income Tax Section	PO Box 327435		Montgomery	AL	36132-7435	
Alabama Power Service Organization	c/o Katrina Haynes	PO Box 1209			Eufaula	AL	36072	
Alabama Sheriffs Youth Ranches		200 Crescent Ct Ste 1900			Dallas	TX	75201	
Alan Adams		Address on File						
ALAN WELCH		Address on File						
Albion Computer Services		49 Barkely Square			London			United Kingdom
A-Legal		1201 Elm Street	Suite 2560		Dallas	TX	75270	
Alejandro Vargas		Address on File						
Alex Kanji		Address on File						
ALEX SOMERS		Address on File						

001-80720



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Alexanders Mobility Services		2750 Miller Park N Ste 300			Garland	TX	75042-7751	
ALEXIS ZHOU		Address on File						
ALFERMANN, NICHOLAS		Address on File						
ALICE WANG		Address on File						
All American Entertainment		5790 Fayetteville Rd.	Ste. 200		Durham	NC	27713	
All Star Group, Inc		3835 E. Thousand Oaks Blvd	Suite 282		Westlake Village	CA	91362	
ALL SYSTEMS SERVICES		7901 WHISPERS WOODS LN.			N. Richland Hills	TX	75240	
Allan Huffman		Address on File						
ALLAN PAPPWORTH		Address on File						
Allen ISD	Attn Elizabeth Weller	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Allen ISD	c/o Laurie A. Spindler, Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
ALLEN KIM		Address on File						
ALLEN, MICAELA S.		Address on File						
ALLEN, TARA		Address on File						
Aliens Arthur Robinson		GPO Box 50			Sydney	NSW	02001	AUSTRALIA
Alliance Legal Staffing		PO Box 670534			Dallas	TX	75367	
ALLIANCE REPORTING LLC		3500 OAK LAWN AVE	SUITE 400		Dallas	TX	75219	
Allied Capital Partners		PO BOX 676649			Dallas	TX	75267-6649	
Allied Electronics Inc.		PO Box 2325			Fort Worth	TX	76113-2325	
Allison Lam	Accts Receivable Dept. c/o Frederik Michel	Address on File						
Allison Taylor		PO Box 187			Dingmans Ferry	PA	18328	
ALPHA ELECTRICAL SERVICES INC		3727 HWY 138			Stockbridge	GA	30281	
AlphaLit		8201 Greensboro Drive	Suite 717		McLean	VA	22102	
Alphasense, Inc.		PO Box 37176			San Francisco	CA	94137-0176	
Alpine Macro		1130 Sherbrooke St West PH1			Montreal	QC	H3A2M8	Canada
Alston & Bird LLP		1201 W. Peachtree Street			Atlanta	GA	30309-3424	
Alternative Asset Investment Mgmt LLC		PO Box 5274			New York	NY	10185	
Altex Electronics, Ltd.		11342 HI 35 North			San Antonio	TX	78233	
Altus Network Solutions, Inc.		dba nFront Security	4920 Atlanta Highway, Suite 313		Alpharetta	GA	30004-2921	
Alvarez & Marsal Global Forensic and Dispute Services		555 Thirteenth Street NW, 5th Floor West			Washington	DC	20004	
Alvarez & Marsal North America, LLC		2029 Century Park East, Suite 2060			Los Angeles	CA	90067	
Alvarez and Marsal CRF Management, LLC		2029 Century Park East, Suite 2060			Los Angeles	CA	90067	
ALVAREZ, ADRIANA		Address on File			San Juan	PR	00911	
Alvaro Idoate Photographer		18 Tapia Street						
Alvaro Magalhaes		Address on File						
AM Linen Rental		1611B Tantor Rd			Dallas	TX	75229	
Amanda Coussens		Address on File						
AMANDA RUDOLPH		Address on File						
Amazon Web Services, Inc.	Attn AWS Legal	410 Terry Avenue North			Seattle	WA	98109-5210	

0071-60793

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
AMB Janitorial Services	American Building Maintenance	PO Box 97292			Dallas	TX	75397	
Ambassador Funds Management Services		Level 8, 3 Spring St			Sydney	N8W	02000	AUSTRALIA
Ambassador Funds Management Services		STE 1202, LEVEL 12	3 SPRING ST		SYDNEY	NSW	02000	AUSTRALIA
Amber Electrical Contractors		2251 Century Center Blvd			Irving	TX	75062	
Ambridge Partners LLC		Due Diligence Services	520 Eighth Ave, 25th Floor		New York	NY	10018	
AMC Theaters		13731 Collections Center Drive			Chicago	IL	60693	
American Airlines		4255 Amon Carter Blvd	MD 4106		Fort Worth	TX	76155	
American Airlines, Inc.		PO Box 619616 MD4106			Ft Worth	TX	76155-0000	
AMERICAN APPRAISAL CANADA, INC		310 FRONT ST WEST Suite 710			TORONTO	ON	M5V 3B5	CANADA
American Arbitration Association	ATTN Kathleen Cantrell	1750 Two Galleria Tower	13455 Noel Road		Dallas	TX	75240	
American Arbitration Association		120 Broadway, 21st Floor			New York	NY	10271	
American Arbitration Association		Lackey Hershman, LLP	3102 Oak Lawn Avenue, Suite 777		Dallas	TX	75219	
American Arbitration Association		13455 Noel Road, Suite 1750			Dallas	TX	75240	
AMERICAN BANK NOTE COMPANY		PO BOX 1931			Columbia	TN	38402	
American Banknote Corporation	Attention Patrick J. Gentile	560 Sylvan Avenue			Englewood Cliffs	NJ	07632	
American Bar Association		PO Box 4745			Carol Stream	IL	60197-4745	
American Bldg. Maintenance Co.		PO Box 951864			Dallas	TX	75395-1864	
American Cancer Society	ATTN JAMIE SLOAN	1199 S Belt Line Rd Ste 160			Coppell	TX	75019-4656	
American Cancer Society	Attn Sharyn Klumb	1199 S Belt Line Rd Ste 160			Coppell	TX	75019-4656	
American Chamber of Commerce Resources		65 East Wacker Place	Suite 1804		Chicago	IL	60601	
American Express National Bank	c/o Becket & Lee LLP	PO Box 3001			Malvern,	PA	19355-0701	
American Federation of the Arts		305 East 47 St.	10 th Floor		New York	NY	10017	
American Furniture Rental		3201 E. Arkansas Lane	Suite 101		Arlington	TX	76010	
American Global Wealth Management		1600 Pennsylvania Avenue			McDonough	GA	30253	
American Heart Assoc. National Center	Attn SouthWest Affiliate-A/R	PO Box 4002903			Des Moines	IA	50340-2903	
American Heart Association	c/o Cotes du Coeur	Attn Gabbi Sikes	105 Decker Ct, Ste 200		Irving	TX	75062	
American Heart Association		2550 US Highway 1			North Brunswick	NJ	08902	
American Heart Association		Greater Kansas City Community Found	1055 Broadway Blvd., Suite 130		Kansas City	MO	64105	
American Heart Association		Southwest Affiliate	105 Decker Court, Suite 200		Irving	TX	75062	
American Heart Association		7272 Greenville Avenue			Dallas	TX	75231	

APP-60792

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
American Heart Association		8200 Brookriver Dr	Suite N-100		Dallas	TX	75247	
American Heart Association		SouthWest Affiliate - Acct Rec.	PO Box 4002031		Des Moines	IA	50340-2031	
AMERICAN IDENTITY Technologies		PO BOX 219189			Kansas City	MO	64121-9189	
American Language Technologies		3941 Legacy Drive, #204	PMB 199A		Plano	TX	75023	
AMERICAN LOCKSMITHS		830 THIRD AVE			New York	NY	10022	
American Metal Market LLC		Subscription Department	PO Box 15127		North Hollywood	CA	91615-5127	
American National Bank & Trust	Attention Commercial Lending	2732 Midwestern Parkway			Wichita Falls	TX	76308	
American National Bank & Trust		2732 Midwestern Parkway			Wichita Falls	TX	76308	
American Portfolios - Kollinsky W/Itm Mgt		4250 Veterans Memorial Hwy	Ste 420 E		Holbrook	NY	11741	
American Portfolios Financial Svcs Inc.	Attn Ann Antunovich	4250 Veterans Memorial Hwy			Holbrook	NY	11741	
American Program Bureau, Inc.		One Gateway Center	Suite 751		Newton	MA	02458	
American Red Cross		PO Box 4002018			Des Moines	IA	50340-2018	
AMERICAN RESEARCH BUREAU		2386 HERITAGE WAY			Salt Lake City	UT	84109-1808	
American Restaurant Association		2907 126th Ter E			Parrish	FL	34219-1629	
American Solutions for Business		NW#7794	PO Box 1450		Minneapolis	MN	55485-7794	
American Solutions for Business		PO Box 218			Glenwood	MN	56334-0218	
American Solutions for Business		8479 Solution Center			Chicago	IL	60677-8004	
American Stock Exchange		PO Box 11181A			New York	NY	10286-1181	
American Stock Exchange		BOX 757510			Philadelphia	PA	19175-7510	
Ameriprise Financial Services, Inc.		50798 Ameriprise Financial Center			Minneapolis	MN	55474	
Amicus Search Group		700 N. Pearl St	Suite # 1640		Dallas	TX	75201	
AMIR RAO		1020 MEDFORD RD			Pasadena	CA	91107	
AMX Environmental Ltd		2351 W Northwest HWY-STE 2118			Dallas	TX	75220-8406	
Amy Nguyen		Address on File						
Analysis Group		111 Huntington Ave, 14th Floor			Boston	MA	02199	
ANAND DESAI		Address on File						
Anchor Advisory Services Corporation		4 Court St.	Ste 207		Plymouth	MA	02360	
ANDERSEN, DEREK C.		Address on File						
ANDERSON, KIRK		Address on File						
ANDREI DORENBAUM		Address on File						
ANDREI DORENBAUM		Address on File						
Andrew Hayton		Address on File						
Andrew Hilgenbrink		Address on File						
Andrew Lieberman		Address on File						

APP-80799

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Andrew Mangin		Address on File						
Andrew Merrick Homes LLC		13455 NOEL RD	STE 1330		Dallas	TX	75240	
Andrew Parmentier		Address on File						
Andrew Rosemore		Address on File						
ANDREW STONE		Address on File						
ANDREW YACENDA		Address on File						
Andrews Kurth	Scott A. Brister, Esq.	Address on File						
Andrews Kurth		Address on File						
Andrews Kurth LLP		600 Travis St., Suite 4200			Houston	TX	77002	
Andrews Kurth LLP		PO Box 301276			Dallas	TX	75303-1276	
Andrius Balta		Address on File			San Antonio	TX	78217-2318	
Animal Defense League		11300 Nacogdoches Rd						
Anish Tailor		Address on File						
Anna Englert		Address on File			Chicago	IL	60606	
Ansarada Pty Limited		30 South Wacker Dr	22 Floor					
ANTONOVICH, THOMAS G.		Address on File						
Aon Consulting, Inc.		445 Hutchinson Ave	Ste 900		Columbus	OH	43235-0000	
Aon Consulting, Inc.		29695 Network Place			Chicago	IL	60673-1296	
APIR Systems Ltd.		PO Box 5446			Kingston	ACT	02604	AUSTRALIA
APKE & KIMBRELL, LLP		1650 HIGHWAY 6	STE 100		Sugar Land	TX	77478	
Appleby Corpooate Services (Bermuda) Ltd.		PO Box HM 1179			Hamilton	HM EX		BERMUDA
Appliance Fixx Air & Heat		PO Box 271258			Flower Mound	TX	75027-1258	
Aptiviti, Inc.		145 W 28th St Fl 9			New York	NY	10001-6114	
Aramark		2120 Hutton Dr	Suite 100		Carrollton	TX	75006	
ARCHON SOLICITORS		MARTIN HOUSE	5 MARTIN LANE		London			United Kingdom
ARPoint Labs of Irving		8925 Sterling Street	Suite 255		Irving	TX	75063	
ARGENTIC REAL ESTATE FINANCE LLC		40 WEST 57TH STREET	29TH FLOOR		New York	NY	10019	
Argo Partners		12 West 37th Street, 9th Floor			New York	NY	10018	
Argonaut Insurance Company		225 W Washington Street	24th floor		Chicago	IL	60606-0000	
Argosy Group		PO Box 5094			Brentwood	TN	37024	
Argosy Group		Two Washingtonian Center	9737 Washingtonian Blvd., Ste. 200		Gaithersburg	MD	20878-7364	
Argosy Group LLC		9737 Washingtonian Blvd.	Ste. 100		Gaithersburg	MD	20878	
Argus Software		PO BOX 671591			Dallas	TX	75267	
Argus Software		3050 Post Oak Blvd	Suite 900		Houston	TX	77056	
Ari L. Faneuil		Address on File						
Arizona Baltimore Resort & Hotel		PO Box 740949			Los Angeles	CA	90074-0949	
Arizona Corporation Commission		Z Corp Commission - Securities DIV	1300 West Washington Street, 3rd Floor		Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		ATTN Collections Division			Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		1600 West Monroe St			Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		PO BOX 29079			Phoenix	AZ	85038	

0016794

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ARIZONA DEPARTMENT OF REVENUE		PO Box 29085			Phoenix	AZ	85038-9085	
Arizona Land Management Services, LLC		4900 North Scottsdale Rd	Suite 3000		Scottsdale	AZ	85251	
Arizona Land Management Services, LLC		PO Box 13303			Scottsdale	AZ	85267-3303	
Arizona Outback Adventures		17465 N 93rd St	Suite 200		Scottsdale	AZ	85255-6324	
Arizona PSPRS Trust		E Camelback Road	Collection Center Dr		Phoenix	AZ	85016	
Arkadin, Inc.		Lockbox #32726			Chicago	IL	60693-0726	
Arkansas Secretary of State	Business & Commercial Services Division	PO Box 8014			Little Rock	AR	72203	
Arkansas Securities Department		201 E. Markham, Rm 300	Heritage West Bldg		Little Rock	AR	72201	
Arnold, Connor		Address on File						
Arnold, Jeffrey		Address on File						
Arnstein & Lehr LLP		120 South Riverside Plaza	Ste 1200		Chicago	IL	60606-3910	
Amitzen de Besche		Address on File						
ARORA, SANDEEP		Address on File						
Airredondo, Alba M.		Address on File						
Ariss Western Corp.		718 N Buckner #316			Dallas	TX	75218	
Arthouse Design		2373 Central Park Blvd	Suite 204		Denver	CO	80238	
Arthur Klausner		Address on File						
Article 1		Rua Eugen Germer, 86	Blumenau		Santa Catarina	TX	89015-140	BRAZIL
Artografx, Inc.		2611 Anojon			Dallas	TX	75220	
AS&K Services Limited		PO Box HM 1179			Hamilton		HM EX	BERMUDA
Asante Phase I Community Association		1600 W Broadway	Suite 200		Tempe	AZ	85282	
Ashby & Geddes		PO Box 1150			Wilmington	DE	19899	
Ashley Van Hoef		Address on File						
Ashton Consulting Limited		9F, Atago East Building	3-16-11 Nishishinbashi		Minato-ku	Tokyo	105-0003	JAPAN
Ashurst LLP		Time Square Tower	7 Time Square		New York	NY	10036	
ASI Business Solutions		820 W Sandy Lake Rd Ste 100			Coppell	TX	75019-4108	
ASI Business Solutions		12801 N Stemmons Frwy Ste 710			Dallas	TX	75234-5881	
ASI, Corporate		8181 Jetstar Drive	Suite 100		Irving	TX	75063	
ASI, Corporate		3860 W. Northwest Hwy	Suite 350		Dallas	TX	75220	
Asociacion Suzuki de Violin de PR		Villa Nevarez	1026 calle 18		San Juan	PR	00927	
Aspen Publishers Inc.		7201 McKinney Circle			Frederick	MD	21704	
Aspen Publishers Inc.		PO Box 64054			Baltimore	MD	21264-4054	
Aspen Publishers Inc.		4829 INNOVATION WAY			Chicago	IL	60682-0048	
ASSAR, VATSAL		Address on File						
Asset Communications, Inc.		1764 Prospector Ave	Suite 1		Park City	UT	84060	
Asset-Backed Alert		5 Marine View Plaza #400			Hoboken	NJ	07030-5795	
ASSIST THE OFFICER FOUNDATION		1412 GRIFFIN STE			Dallas	TX	75215	
Asn of Asian American Invest Managers	Attn Amy Gee	50 California Street	Suite 2320		San Francisco	CA	94111	

001-80795

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Assoc. Asian American Investment Mgrs	c/o V. Lau, Leading Edge Invest Advisors	50 california Street, Suite 2320			San Francisco	CA	94111	
Assoc. for American Innovation, Inc.		2200 Wilson Blvd	Suite 102-533		Arlington	VA	22201	
Assoc. of Asian America Investment Mgrs		1045 N. Utah St., Suite 512			Arlington	VA	22201	
Assured Environments		45 Broadway	10th Floor		New York	NY	10019	
AST Equity Plan Solutions		123 S. Broad Street	Suite 1160		Philadelphia	PA	19109	
AST Equity Plan Solutions		PO Box 12893			Philadelphia	PA	19176-0893	
ASTRON SOLUTIONS		535 W 34TH ST	STE 407		New York	NY	10001	
ASW Law Limited		Crawford House	50 Cedar Avenue		Hamilton		0HM11	Bermuda
ASW Law Limited		Crawford House	PO Box HM2879		Hamilton		0HMLX	Bermuda
AT&T	c/o Bankruptcy	4331 Communications Dr	Fir 4W		Dallas	TX	75211	
AT&T		PO BOX 5012			Carol Stream	IL	60197	
AT&T		PO BOX 5019			Carol Stream	IL	60197	
AT&T		PO BOX 78045			Phoenix	AZ	85062	
AT&T		PO BOX 13128			Newark	NJ	07101-5628	
AT&T		PO BOX 13146			Newark	NJ	07101-5646	
AT&T		PO BOX 105068			Atlanta	GA	30348-5068	
AT&T		PO Box 105414			Atlanta	GA	30348-5414	
AT&T		PO BOX 5001			Carol Stream	IL	60197-5001	
AT&T		PO BOX 5020			Carol Stream	IL	60197-5020	
AT&T		PO Box 9005			Carol Stream	IL	60197-9005	
AT&T		PO BOX 630047			Dallas	TX	75263-0047	
AT&T		PO BOX 650661			Dallas	TX	75265-0661	
AT&T		PO BOX 660324			Dallas	TX	75266-0324	
AT&T		PO Box 660921			Dallas	TX	75266-0921	
AT&T		PO BOX 930170			Dallas	TX	75393-0170	
AT&T		PO BOX 940012			Dallas	TX	75394-0012	
AT&T		PO BOX 78225			Phoenix	AZ	85062-8225	
AT&T Internet Services	ATTN HIPCS	PO BOX 650040			Dallas	TX	75265-0040	
AT&T Internet Services		PO BOX 5016			Carol Stream	IL	60197-5016	
AT&T Internet Services		PO Box 650396			Dallas	TX	75265-0396	
AT&T Long Distance		PO Box 5017			Carol Stream	IL	60197-5017	
AT&T MOBILITY		PO Box 105773			Atlanta	GA	30348-5773	
AT&T MOBILITY		PO BOX 538695			Atlanta	GA	30353-8695	
AT&T MOBILITY		PO BOX 31287			Tampa	FL	33631-3287	
AT&T MOBILITY		PO BOX 31488			Tampa	FL	33631-3488	
AT&T MOBILITY		PO BOX 6428			Carol Stream	IL	60197-6428	
AT&T MOBILITY		PO Box 6444			Carol Stream	IL	60197-6444	
AT&T MOBILITY		PO BOX 6463			Carol Stream	IL	60197-6463	
AT&T MOBILITY		PO Box 8229			Aurora	IL	60572-8229	
AT&T MOBILITY		208 South Akard Street			Dallas	TX	75202-0000	
AT&T MOBILITY		PO Box 650553			Dallas	TX	75265-0553	
AT&T MOBILITY		PO BOX 650574			Dallas	TX	75265-0574	
AT&T Performing Arts Center	Attn Development	700 N. Pearl Street, Suite N1800			Dallas	TX	75201	
Atlas IDF, LP	c/o Atlas IDF GP, LLC	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Attia Medical, PC		5820 Oberlin Dr., Suite 205			San Diego	CA	92121	

APP-60296

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Attorney General of South Carolina	Securities Division	1000 Assembly St Address on File	Rembert C. Dennis Office Bldg		Columbia	SC	29201	
Atul Kavthekar								
Audio Visual Innovations, Inc.		P.O. Box 62251			Baltimore	MD	21264-2251	
AURORA BOREALIS	ATTN GEORGE WHITE	101 BARCLAY ST 13W			New York	NY	10286	
AUSHRIF JAVEED		Address on File						
Austin Brown		Address on File						
AUSTIN TRANTHAM		Address on File						
AUSTIN, TIMOTHY		Address on File						
Automotive News		DRAWER #7718	PO BOX 79001		Detroit	MI	48279	
Automotive News		Subscriber Services Department 77940			Detroit	MI	48277-0940	
Avalon Synergy		One Galleria Tower	13355 Noel Rd, Suite 1100		Dallas	TX	75240	
AvePoint, Inc		3 Second Street Suite 803			Jersey City	NJ	07311	
Avi Levine		Address on File						
AVIATION SERVICES ELITE		4502 CLAIRE CHENNAULT			Addison	TX	75001	
Aviation Services Group		14001 Dallas Pkwy			Dallas	TX	75240	
Aviation Week		PO Box 505			Hightstown	NJ	08520-9897	
AVIDITY PARTNERS		180 N STETSON	STE 1310		Chicago	IL	60601	
AVI-SPL		13859 Diplomat Drive	Suite 180		Dallas	TX	75234	
AVI-SPL		PO Box 844612			Boston	MA	02284-4612	
AVI-SPL		PO BOX 62251			Baltimore	MD	21264-2251	
Avitar Technologies, Inc.		65 Dan Rd			Canton	MA	02021	
Avtech	ATTN Accounts Receivable	PO Box 394			Newport	RI	02840-0004	
AWAIS SHAIKH		Address on File						
AWARE		2828 Hood Street	Residence 1705		Dallas	TX	75219	
Axicon Partners, LLC	ATTN Robert T. Scott	1325 Avenue of the Americas	27th floor		New York	NY	10019	
Axios Institute		PO Box 457			Edinburg	VA	22824	
Axis Global Systems		PO Box 831			North Bergen	NJ	07047	
A-Z Cleaning Services		1729 Crosby Rd.			Carrollton	TX	75006	
B&H Photo - Video, Inc.		420 Ninth Avenue			New York	NY	10001	
B3 Entertainment Productions, Inc.		1509 Schooner Bay Dr.			Wylie	TX	75098	
Badge of Honor Memorial Fund		Executive Office	3131 Maple Ave 7E		Dallas	TX	75201	
Bailey Kennedy, LLP		8984 Spanish Ridge Ave			Las Vegas	NV	89148	
Bailey, Connor		Address on File						
Baker & Daniels		111 E Wayne Ste 800			Fort Wayne	IN	46802	
Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Avenue			New York	NY	10018	
Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500		Dallas	TX	75201	
Baker Botts LLP		901 Louisiana Street			Houston	TX	77002	
Baker Botts LLP		PO BOX 201626			Houston	TX	77216	
Baker Botts LLP		PO Box 301251			Dallas	TX	75303-1251	
Baker McKenzie LLP		100 New Bridge Street			London	United Kingdom		
Baker McKenzie LLP		2300 Trammell Crow Center	2001 Ross Ave		Dallas	TX	75201	
Baker McKenzie LLP		815 Connecticut Ave, NW			Washington	DC	20006-4078	

APP-60297



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Baker Tilly Virchow Krause, LLP		1050 Crown Pointe Parkway, Ste 1650			Atlanta	GA	30338	
Baker Tilly Virchow Krause, LLP		205 N Michigan Ave			Chicago	IL	60601-5927	
Baker, Lauren		Address on File						
BAKER, SCOTT		Address on File						
Baker, Stephen		Address on File						
Balch & Bingham LLP		P.O. Box 306			Birmingham	AL	35201	
BALFOUR ASSOCIATES, INC	ATTN DAVID VANWALKENBURG	5350 PRESERVE DR			Greenwood Village	CO	80121	
Ballard Spahr LLP		1735 Market Street	51st Floor		Philadelphia	PA	19103	United Kingdom
BALLS BROTHERS		313 CAMBRIDGE HEATH RD	BETHNAL GREEN		London		E2 9LQ	
Bancroft Associates PLLC		500 New Jersey Avenue	Seventh Floor		Washington	DC	20001	
Bank Director		201 Summit Drive	Suite 250		Brentwood	TN	37027	
Bank Director		5110 Maryland Way	Ste 250		Brentwood	TN	37027-9501	
BANK OF AMERICA		335 MADISON AVE			New York	NY	10017	
Bannon, Lucy		Address on File						
Baradach, Artsiom		Address on File						
BARANSI, SAMER		Address on File						
Barbera, Angela		Address on File						
Bamdollar Investment Advisory Services		2719 Letap Ct	Ste 101		Land O Lakes	FL	34638	
BARNES & ROBERTS, LLC		2701 Canton St.			Dallas	TX	75226	
BARNES & ROBERTS, LLC		2816 COMMERCE ST			Dallas	TX	75226	
Barnes and Noble College		2943 SMU Blvd			Dallas	TX	75205	
BARNES&THORNBURG LLP		11 South Meridian Street			Indianapolis	IN	46204	
Barri, Pearson		Address on File						
Barrier Advisors		13455 Noel Rd, Ste 2200			Dallas	TX	75240	
Barrington Financial Group, LLC		77 Franklin Street	Suite 802		Boston	MA	02110	
Barrister Books, Com		615 Florida St.			Lawrence	KS	66044	
Barristers & Attorneys		PO Box HM 26			Hamilton		HM LX	BERMUDA
Barrons		200 Burnett Rd	PO Box 7031		Chicopee	MA	01021-7031	
BARTH GROSS ELECTRIC CO, INC		110 W 26th ST			New York	NY	10001	
BARTLIT BECK HERMAN PALENCHAR SCOTT		COURTHOUSE PLACE	54 W HUBBARD ST	Suite 300	Chicago	IL	60610	
Bass, Berry & Sims PLC		150 Third Ave South, Ste 2800			Nashville	TN	37201	
BATCHWORK MANAGEMENT LTD		HOME PARK ESTATE	STATION RD		KINGS LANGLEY		WD4 8DH	United Kingdom
BATEMAN, JACK		Address on File						
Bates Group, LLC		5005 S.W. Meadows Rd, Ste 300			Lake Oswego	OR	97035	
Bates White, LLC	Karen Goldberg, Esq.	Bates White, LLC	2001 K Street NW, North Bldg Suite 500		Washington	DC	20006	
Bates White, LLC		2001 K Street, NW	North Building, Suite 500		Washington	DC	20006	

001682

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BAUER, WILLIAM		Address on File						
Bayard, P.A.		222 Delaware Avenue, 9th Floor			Wilmington	DE	19801	
Baynard, Cameron		Address on File						
Bazooka Search Ltd		115 Coventry Rd			London			United Kingdom
BB&T Securities, LLC		2619 N Oak Street, 3rd Floor			Myrtle Beach	SC	E2 6GG	
BBD, LLP		1835 Market Street	3rd Floor		Philadelphia	PA	19103	
BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206	
BCA Publications Ltd.		1002 Sherbrooke St West Ste 1600			Montreal	QC	H3A 3L6	CANADA
BCA Research Inc		1002 Sherbrooke St. W	Suite 1600		Montreal	QC	H3A 3L6	CANADA
BDC Review, LLC		407 East Maple Street	Ste 305		Cumming	GA	30040	
BDO USA, LLP		700 North Pearl	Suite 2000		Dallas	TX	75201	
BDO USA, LLP		P.O. Box 31001-0860			Pasadena	CA	91110-0860	
BEALL-SARRIS, ASHLEY E.		Address on File						
BEARD, MATTHEW		Address on File						
Beauchamp, Thomas		Address on File						
Becky Bowler		Address on File						
Bedell Cristin		Address on File						
BEEF SLABS OF TEXAS LLC		2000 N HWY 157	STE 112		Mansfield	TX	76063	
Behind the Numbers LLC		8140 Walnut Hill Ln #300			Dallas	TX	75231	
BELINGER & DEWOLF, LLP		10000 N CENTRAL EXPWY	STE 900		Dallas	TX	75231	
Bell Nunnally and Martin, LP	Russell W. Mills	2323 Ross Avenue Suite 1900			Dallas	TX	75201	
Bell, Boyd & Lloyd		Three First National Plaza	70 West Madison S, Ste 3300		Chicago	IL	60602	
Bella Flora of Dallas		118 Oak Lawn Ave.			Dallas	TX	75207	
BEN ASARE		Address on File						
Ben E. Keith		Address on File						
Ben Greenfield, Human Wellness Sol. LLC		8515 N Argonne Rd			Spokane	WA	99217	
BEN VONDERHAAR		Address on File						
Benefit Data		2220 San Jacinto Blvd, Ste 345			Denton	TX	76205	
Benesch	LouAnne Molinaro	222 Delaware Avenue, Suite 801			Wilmington	DE	19801-1611	
BENJAMIN FINGER		Address on File						
Benjamin Sarly		Address on File						
Benson Hlavaty Architects		3141 Hood St Ste 420			Dallas	TX	75219	
Bent Tree Country Club, Inc.		5201 Westgrove Drive			Dallas	TX	75248	
Bent Tree Country Club, Inc.		PO Box 204795			Dallas	TX	75320-4795	
BERIHUN, ELIZABETH		Address on File						
Berkeley Research Group, LLC	Emily Kirksey	1800 M Street NW	Second Floor		Washington	DC	20036	
Berkeley Research Group, LLC	Valerie Riva	2200 Powell Street Suite 1200			Emeryville	CA	94608	

APP-60299  
 001683

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Berkeley Research Group, LLC	Valerie Riva	2200 Powell Street Suite 1200			Emeryville	CA	94608	
Berkeley Research Group, LLC		2200 Powell Street 701 N Green Valley Pkwy Ste 200	Suite 1200		Emeryville	CA	94608	
Berkeley Square Advisors LLC		535 Madison Avenue			Henderson	NV	89074	
Berkshire Capital Securities, LLC		Address on File			New York	NY	10022	
Bernard DeMeo		Address on File						
Bernard Peperstraete		Address on File						
Berry Appleman & Leiden LLP		3355 W. Alabama Street	Suite 1050		Houston	TX	77098	
Berry Appleman & Leiden LLP		353 Sacramento Street	Suite 1300		San Francisco	CA	94111	
Berthel Fisher & Company	Attn Connie Allard	701 Tama Street	8090 N 85th Way, Ste 101		Marion	IA	52302	
Berthel Fisher & Company	Attn Dan Barnard	Berthel Fisher & Company 16100 Chesterfield Parkway West	Suite 150		Scottsdale	AZ	85258	
Berthel Fisher & Company		1500 Paxton Street			Chesterfield	MO	63017	
Best Companies Group		8700 Ambassador Row			Harrisburg	PA	17104	
Beyond		2544 West Commerce Street			Dallas	TX	75247	
Beyond the Box		Address on File			Dallas	TX	75212	
Bhavani Jaroff		Address on File						
BHIL Distributors, Inc.		325 John H. McConnell Blvd	Suite 200		Columbus	OH	43215	
Bickel & Brewer		1717 Main St			Dallas	TX	75201	
Bifferato Gentilotti LLC		100 Biddle Avenue	Springside Plaza	Suite 100	Newark	DE	19702	
Big Brother Big Sister		450 E. John Carpenter Fwy, Ste 300			Irving	TX	75062	
Big Brothers Big Sisters of Mass Bay	Attn Erin DeMarco	75 Federal Street, 8th Floor			Boston	MA	02110	
Big Honkin Ideas		1424 Lincoln Blvd			Santa Monica	CA	90401	
Big Thought		2501 Oak Lawn	Ste 550, LB-42		Dallas	TX	75219	
BILL CRISPIN		Address on File			Chalston	WV	25314	
Bill J Crouch & Associates		210 MacCorkle Ave SE						
BILL MITENBERGER		Address on File						
BILL WALLISCH		Address on File						
Bill Wilton		Address on File						
BILLINGHURST, MINDY		Address on File						
BIMAL KALVANI		Address on File						
Bingham McCutchen LLP		P.O. Box 3486			Boston	MA	02241-3486	
BioCentury Publications		PO Box 1246			San Carlos	CA	94070	
Bison Coolers, LLC		5113 Commercial Drive			North Richland Hills	TX	76180	
BISYS		PO Box 19468A			Newark	NJ	07195-0468	
BKM Total Office of Texas		9755 Clifford Drive #100			Dallas	TX	75220	
Black Box Network Services		PO Box 890699			Dallas	TX	75389-0699	
Black Mountain Systems, LLC		12520 High Bluff Dr	Ste 340		San Diego	CA	92130	
BLACK, WINSTON		Address on File						
Blackberry Wireless		12432 Collections Center Dr			Chicago	IL	60693	

APP-6839

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BLACKBURN, MICHAEL		Address on File			Saint Louis	MO	63179	
BLACKWELL SANDERS PEPER MARTIN LLP		PO BOX 795135						
Blair Roeber		Address on File						
BLAKE DEXTER		Address on File						
Blake Morrell		Address on File						
Blank Rome LLP		Lockbox #8586	PO Box 8500		Philadelphia	PA	19178-8500	
Blast Creative		2703 Poly Drive			Billings	MT	59102	
Blast Creative		3036 Hunters Ridge Loop			Billings	MT	59102	
Block Garden & McNeill, LLP		Sterling Plaza	5949 Sherry Lane, Suite 900		Dallas	TX	75225	
BLOMBERG FINANCE L.P.		731 LEXINGTON AVE			New York	NY	10022	
Blondies Treehouse, Inc.		431 Fayette Avenue			Mamaroneck	NY	10543	
Bloom Strategic Consulting, Inc.		4514 Cole Ave.	Suite 600		Dallas	TX	75205	
Bloomberg		PO Box 30244			Hartford	CT	06150-2044	
Bloomberg Businessweek		PO Box 37531			Boone	IA	50037-0531	
Bloomberg Finance LP		PO BOX 30244			Hartford	CT	06150	
Bloomberg Finance LP		731 Lexington Ave.			New York	NY	10022	
Bloomberg Finance LP		PO Box 416604			Boston	MA	02241-6604	
Blue Cross Blue Shield of Texas		1001 East Lookout Drive			Richardson	TX	75082	
Blue Cross Blue Shield of Texas		PO Box 731428			Dallas	TX	75373-1428	
Blue Ribbon Advantage		7020 Portwest Drive, Suite 150			Houston	TX	77024	
Blue Ribbon Advantage		P.O. Box 79487			Houston	TX	77279-9487	
Blue Ribbon Industries		408 Singleton Blvd			Dallas	TX	75212	
Blue Vault Partners, LLC		407 E Maple St	Suite 305		Cumming	GA	30040	
Blueprint for Prosperity		500 North Akard St, Suite 2600			Dallas	TX	75201	
Blumberg/Excelsior		62 White St			New York	NY	10013	
BLUMER, JENNIFER		Address on File						
BMC Software, Inc.		2101 Citywest Blvd			Houston	TX	77042	
BMC Software, Inc.		PO Box 301165			Dallas	TX	75303-1165	
BMZ Discovery Services LLC		1400 Biscaya Drive			Miami Beach	FL	33154	
BNA		PO BOX 17009			Baltimore	MD	21297-1009	
BNY Mellon		525 Penn Place			Pittsburgh	PA	15219-0000	
Bob Grier		Address on File						
Bob Marx		Address on File						
Bochetto & Lentz, P.C.		1524 Locust Street			Philadelphia	PA	19102	
BOCK, MARIA		Address on File						
BODRON, MICHAEL		Address on File						
Boies, Schiller & Flexner LLP		Boies, Schiller & Flexner LLP NW	5301 Wisconsin Ave.		Washington	DC	20015	
Boies, Schiller & Flexner LLP		5301 Wisconsin Ave NW			Washington	DC	20015-2015	
BOK Financial Asset Management		The Lyric Centre	440 Louisiana, Suite 2500		Houston	TX	77002	

001-6891

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BOK Financial Asset Management		PO Box 1270			Tulsa	OK	74101-1270	
BOK Financial Securities, Inc.	Attn Leslie Swafford	1 Williams Center, 16th Flr			Tulsa	OK	74172	
Bonahoom & Associates		10850 Switzer Ave #101			Dallas	TX	75238	
Bonnie Murray		Address on File			New York	NY	10007	
Boom Global Media Inc		295 Greenwhich St. # 296			Tulsa	OK	74172	
BOSC, Inc.	Attn Chelle Davidson	One Williams Center, 9 NE						
BOSE, ROHAN		Address on File						
Boston Financial Data Services		PO Box 74008640	Lockbox 008640		Chicago	IL	60674-8640	
Boston Financial Data Services		330 W. 9th Street			Kansas City	MO	64105-1514	
Boston Properties, L.P.		800 Boylston Street	Suite 1900		Boston	MA	02199	
Boston Properties, L.P.		599 Lexington Ave			New York	NY	10022-6004	
Boundless Network		200 E. 6th Street	Suite 300		Austin	TX	78701	
Bow Line Media		1809 Thale Drive			Dallas	TX	75228	
Bowman Dahl, LLC		120 West 28th Street	#3C		New York	NY	10001	
Bowne		PO BOX 6081			Church Street Station	NY	10277-2706	
Bowne		PO Box 951060			Dallas	TX	75247-1060	
BOX.com		900 Jefferson Ave			Redwood City	CA	94063-0000	
BOYCE, PATRICK		Address on File						
Boyce-Field, Mollie		Address on File						
Boys & Girls Clubs of Greater Fort Worth	Attn Christi Langas	3218 East Belknap			Fort Worth	TX	76111	
BRACEWELL & GIULIANI LLP		PO BOX 848566			Dallas	TX	75284-8566	
Bracewell & Patterson		PO Box 848566			Dallas	TX	75284-8566	
Brad Berman		Address on File						
Brad Borud	Daniel P Winikka	Loewinsohn Flegle Deary Simon LLP	12377 Merit Drive, Suite 900		Dallas	TX	75251	
BRAD BORUD		Address on File						
BRAD BORUD		Address on File						
BRAD DAVEY		Address on File						
BRAD GUY		Address on File						
Brad Mendenhall		Address on File						
BRAD VOSS		Address on File						
Braden Bair		Address on File						
Bradfield Elementary	Attn Jackie Tilden, VP of Development	4300 Southern Avenue			Dallas	TX	75205	
Bradford K Borud		Address on File						
BRADLEY MACK		Address on File						
BRADY, CHARLA		Address on File						
Bragalone Conroy PC		Chase Tower	2200 Ross Avenue	Suite 4500W	Dallas	TX	75201-7924	
Branda Fanning		Address on File						
Brandywine Process Servers, Ltd.		PO Box 1360			Wilmington	DE	19899	
BRANER, PHILIP		Address on File						

APP-60382

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BRE/ITZ TX PROPERTIES LP		PO Box 842530			Dallas	TX	75284-2530	
Breault, Evan		Address on File						
Breault, Evan		Address on File						
Breazeale, Sachse & Wilson LLP		One American Place	Suite 2300		Baton Rouge	LA	70821-3197	
Breezy Higa		Address on File						
Brenda Samples, Tax Assessor		Kaufman County Tax Office	PO Box 339		Kaufman	TX	75142	
Brennan, Kieran		Address on File						
Brennan, Michael		Address on File						
Brent Gregoire		Address on File						
Brentwood CLO Ltd., et al.	Joseph E. Bain	Jones Walker LLP	811 Main St., Suite 2900		Houston	TX	77002	
Brentwood CLO Ltd., et al.	Schulte Roth & Zabel LLP	James T. Bentley	919 Third Avenue		New York	NY	10022	
Brentwood CLO, Ltd.	MaplesFS	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman		KY1-1104	Cayman Islands
Brentwood CLO, Ltd.		Maples Finance Limited, PO Box 1093GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Brentwood CLO, Ltd. Investors Bank & Trust Company	Brentwood CLO, Ltd. c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Brentwood CLO, Ltd. Investors Bank & Trust Company	Investors Bank & Trust Company	200 Claredon Street	CDO Services - Brentwood CLO, Ltd		Boston	MA	02116	
Bressler, Amery & Ross, P.C.		325 Columbia Turnpike			Florham Park	NJ	07932	
Brett Benjamin		Address on File						
Brett H. McCloskey		Address on File						
Brett Hoge		Address on File						
Brett Pope		Address on File						
Bretton Advisors, Inc.		Address on File						
Brian Andrusin		Address on File						
Brian Broadbent		Address on File						
Brian Collins	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
BRIAN COX		Address on File			New York	NY	10004	
Brian D. Glueckstein	Sullivan Cromwell LLP	125 Broad Street						
Brian Fitzsimmons		Address on File						
Brian G Albert Esq.		Address on File						
Brian Goehl		Address on File						
Brian Hochhauser		Address on File						
Brian Home		Address on File						
BRIAN JONES		Address on File						
Brian Jones.		Address on File						
Brian Josephson		Address on File						
Brian Lauten, PC		Address on File						
Brian Li		Address on File						
BRIAN LOHRDING		Address on File						
Brian Malizia		Address on File						

APP-60309

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Brian P. Shaw		Address on File						
BRIAN PRICE		Address on File						
BRIAN TILTON		Address on File						
Bridge Title Company, LLC		8150 N. Central Expwy	Ste 650		Dallas	TX	75205	
BrightHouse Financial		PO Box 371310			Pittsburgh	PA	15250-7310	
BrightHouse Life Insurance Company		PO Box 371487			Pittsburgh	PA	15250-7487	
Brighton House Associates, LLC		2 Park Central Drive	Suite 300		Southborough	MA	01772	
BRIGHTWORK	ATTN JOYCE WELSH	16 OLDE TAVERNE LANE			Amesbury	MA	01913	
Brian Enterprises, Inc.		1545 Prudential Dr.			Dallas	TX	75235-4111	
Brittain, William		Address on File						
BRITAIN, WILLIAM L.		Address on File						
Brittain, Mark		Address on File						
BRITTNEE WOOLDRIDGE		2201 WOLF ST	#6106		Dallas	TX	75201	
BRITTNEY CUNNINGHAM		Address on File						
BROADCASTING & CABLE		PO BOX 5655			Harlan	IA	51593-1155	
Broadus, Paul		Address on File						
Broadridge Customer Communications		5516 Collection Ctr Dr			Chicago	IL	60693	
Broadridge Customer Communications		2600 Southwest Blvd.			Kansas City	MO	64108	
Broadridge ICS		PO Box 416423			Boston	MA	02241-6423	
Broadridge Investor Communication Soluti		One Park Ave			New York	NY	10016-0000	
Broadridge Output Solutions, Inc.		PO Box 15788			Chicago	IL	60693	
BROADVIEW NETWORKS		PO Box 9242			Uniondale	NY	11555-9242	
Brodeur, Steven		Address on File						
BRODRICK NORMAN		456 9th St	#8		Hoboken	NJ	07030	
Broker Dealer Financial Services Corp.		6775 Booneville Rd			WDM	IA	50266-8093	
Broker Educational Sales Training, Inc.		7137 Congress Street			New Port Richey	FL	34653-6464	
Brook Lane Partners, LLC		330 East 75th Street	Suite 10H		New York	NY	10021	
Brook Lane Partners, LLC		445 Park Avenue	10th Floor		New York	NY	10022	
Brookmont Capital Management, LLC		2000 McKinney Avenue	Suite 1230		Dallas	TX	75201	
Brookover, Steven		Address on File						
Brosier & Buchanan Partners		320 W. 7th			Amarillo	TX	79101	
Brown & Hofmeister LLP		740 E Campbell	Suite 800		Richardson	TX	75081	
Brown & Sikes, Inc.		325 N St Paul St Ste 1280			Dallas	TX	75201	
Brown Pruitt Peterson & Wambsganss, P.C.		201 Main St			Fort Worth	TX	76102	
Brown Rudnick Berlack Israels LLP		One Financial Center			Boston	MA	02111	
Brown Rudnick LLP	Robert J. Stark	7 Times Square			New York	NY	10036	
Brown, Austin		Address on File						
Brown, Austin		Address on File						
Brown, Austin		Address on File						

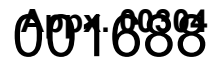




Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BROWN, BLAKE		Address on File						
BROWN, BRITTON		Address on File						
BROWN, LEE		Address on File						
Brown, Rachel		Address on File						
BROWNELL, JESSE R.		Address on File						
Brownstein Hyatt Farber Schreck LLP		100 City Parkway	suite 1600		Las Vegas	NV	89106	
Brownstein Hyatt Farber Schreck, LLP		100 North City Parkway, Suite 1600			Las Vegas	NV	89106	
Bruce Beetz	Samuel A. Schwartz, Esq.	Address on File						
BRUCE CHAPIN		Address on File						
BrucePac		811 N First St			Silverton	OR	97381	
Bruchou Fernandez Madero & Lombardi		BFM y L S.R.L., Ing. Butty 275, PISO 12			Buenos Aires		C1001AFA	Argentina
BRUMLEY, ANGELA		Address on File						
Brumley, Angela K.		Address on File						
Bryan Cave LLP		PO Box 503089			Saint Louis	MO	63150-3089	
BRYAN CLARK		Address on File						
Brynteson Reporting, Inc.		2404 Belle Haven Meadows Ct			Alexandria	VA	22306	
BT Video Inc		PO Box 540365			Dallas	TX	75354-0365	
Buchhalter Nemer		1000 Wilshire Blvd	Suite 1500		Los Angeles	CA	90017	
BUCKLES BY JIM		PO BOX 1885			Mabank	TX	75147-1885	
Budget Blinds		4012 Daniel Way			Frisco	TX	75035	
Bulk Books		Address on File						
Buntz, Jennifer		Address on File						
BURKE HANSEN LLC		1601 N 7TH ST, STE 200			Phoenix	AZ	85006	
Burkey, John		Address on File						
Burns Transcription Service		11311 N Central Expwy Ste 216			Dallas	TX	75243	
Burns, Nathan		Address on File						
Bury Street Capital Ltd		Devonshire House	1 Devonshire Street		London		W1W 5DR	United Kingdom
BUSH, ALBERT		Address on File						
Business Essentials		PO BOX 37			Grapevine	TX	76099	
Business Essentials		PO Box 292696			Lewisville	TX	75029-2696	
Business Executives National Security		1030 15th Street NW	Suite 200 East		Washington	DC	20005	
Business Flooring Specialists		7341 Dogwood park			Fort Worth	TX	76118	
Business Intelligence Advisors		One Washington Mall One8th Flr			Boston	MA	02108	
Business Real Estate		PO Box 15216			Scottsdale	AZ	85267	
Business Technologies, Inc.		16060 Ventura Blvd Ste 105-505			Encino	CA	91436	
Business Week		PO Box 8419			Red Oak	IA	51591-1419	
Business Wire		Department 34182	PO Box 39000		San Francisco	CA	94139	
Business Wire		PO Box 45348			San Francisco	CA	94145-0348	
Butler Burgher Group		4300 Alexander Dr.	Suite 200		Alpharette	GA	30022	
Byron Wilson		Address on File						

APP-6889

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
C.J. Martin		Address on File			Costa Mesa	CA	92626	
C2 Imaging		3180 Pullman Street			Dallas	TX	75201	
C2 LEGAL OF DALLAS		2001 BRYAN ST	STE 3025		Dallas	TX	75219	
C5 Texas	Attn Rachel Jenkins	PO Box 191129			New York	NY	10281	
Cabot Lodge Securities LLC		200 Vesey St.			Honolulu	HI	96813	
Cades Schutte LLP		1000 Bishop Street, 12th floor			New York	NY	10087-5929	
Cadwalader, Wickersham, & Taft LLP		General Post Office	PO Box 5929		San Francisco	CA	94105	
CALAPRS		575 Market Street	Suite 2125					
Caleb Dorfman		Address on File						
Caleb Moore		Address on File						
Caledonian Directors Limited		PO Box 1043	George Town		Grand Cayman		KY1-1002	Cayman Islands
Caledonian Directors Limited		PO Box 1043			George Town		KY1-1102	Cayman Islands
California Department of Insurance	Attn Name Reservation Unit	45 Fremont Street, 24th Floor			San Francisco	CA	94105	
California Dept. of Business Oversight		Securities Registration Division	1515 K Street, Suite 200		Sacramento	CA	95814	
California Public Employees Retirement System		One Embarcadero Center, 32nd Floor			San Francisco	CA	94111	
CALLAN, BENTLEY	c/o Louis J. Cisz, III	Nixon Peabody LLP						
Cambridge International Partners, Inc.		Address on File						
Cambridge Investment Research, Inc.	c/o Premier Wealth Management	780 Third Ave 25th Flr			New York	NY	10017	
Cambridge Investment Research, Inc.		5004 Lenker Street, Suite 200			Mechanicsburg	PA	17050	
Cambridge Investment Research, Inc.	Przewlocki James, Inc.	2030 E Speedway	Suite 220		Tucson	AZ	85719	
Cambridge Investment Research, Inc.		1776 Pleasant Plain Rd			Fairfield	IA	52556	
Cambridge Investment Research, Inc.		fbo Jimmy J. Williams, Rep #GM6			Fairfield	IA	52556	
Cameron Baynard		Address on File	1776 Pleasant Plain Rd					
CAMP CUTHRELL		Address on File			Wilton	CT	06897-0370	
Campano & Associates		PO Box 370						
CAMPBELL, JIM		Address on File						
CAMPBELL, JIM		Address on File						
Canadian Imperial Bank of Commerce		425 Lexington Avenue			New York	NY	10017	
Candidates on Demand Group, Inc.		433 Fifth Ave, 6th Flr			New York	NY	10016	
Canon Solutions America, Inc		15004 Collections Center Dr			Chicago	IL	60693	
Canteen Vending Services		PO Box 417632			Boston	MA	02241-7632	
Cantor Fitzgerald & Co.	Attn McKenzie Campbell	110 East 59th Street			New York	NY	10022	
CAPE RANKEN		Address on File						
Cape Securities, Inc.		1600 Pennsylvania Ave.			McDonough	GA	30253	
CAPITAL FOR KIDS	ATTN Susan Nichol	2807 Allen St. #816			Dallas	TX	75204	

APP-8906

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Capital Hedge, LLC		145 Washington Street, Suite 16			Norwell	MA	02061	
Capital Investment Group, Inc.		PO Box 32249			Raleigh	NC	27622	
Capital Link Forum, Inc.		230 Park Ave, Ste 1536			New York	NY	10169	
Capital Royalty LP	ATTN Mary Logan	1000 Main St	Suite 2500		Houston	TX	77002	
Capitalize for Kids		01-208-Adelaide Street West			Toronto	ON	M5H 1W7	CANADA
Capitol Service Inc		PO Box 1831			Austin	TX	78767	
CAPITOL SERVICES, INC		PO BOX 1831	#C6		Austin	TX	78767	
Caplin Photography		50 W 90th Street			New York	NY	10024	
Caprock Court Reporting, Inc.		1112 Texas Avenue, Suite 200			Lubbock	TX	79401	
Capstone Advisory Group		Park 80 West	Plaza I-Plaza Level		Saddle Brook	NJ	07663	
Capstone LLC		1400 Eye Street, NW Suite 1115			Washington	DC	20005	
Captain Hopes Kids		10480 Shady Trail	Suite 104		Dallas	TX	75220	
CAREER BLAZERS		PO BOX 414050			Boston	MA	02241-4050	
CAREER BLAZERS		GLOBAL EMPLOYMENT SOLUTIONS, INC	PO BOX 842595		Boston	MA	02284-2595	
Career Group Inc		PO Box 203654			Dallas	TX	75320-3654	
CAREERBUILDER, LLC		200 N. LaSalle St	Suite 1100		Chicago	IL	60601	
CAREERBUILDER, LLC		13047 COLLECTION CTR DR			Chicago	IL	60693-0130	
Carey Holdings, Inc.	Attention General Counsel	4530 Wisconsin Avenue, N.W., 5th Floor			Washington	DC	20016	
Carey International, Inc.	Attn Diane Ennist	7445 New Technology Way			Frederick	MD	21703	
Carey International, Inc.	Attn Thomas McKee, Jr	Greenberg Traurig, LLP	1750 Tysons Blvd., #1000		McLean	VA	22102	
Carey International, Inc.		Billing Department	PO Box 842350		Boston	MA	02284-2350	
Carey International, Inc.	Gary Kessler	4530 Wisconsin Ave. NW	Suite 500		Washington	DC	20016	
Carey Olsen	attn Sam Dawson	Willow House Cricket Square			Grand Cayman		KY1-1001	Cayman Islands
Carey Olsen		Address on File						
Carey Olsen (Guernsey) LLP		PO Box 98, Carey House, Les Banques			St Peter Port	Guernsey	GY1 4BZ	Channel Islands
CARL MOORE		Address on File						
Carl Steigerwald III		Address on File						
CARL WELLMAN		Address on File						
Carla Martin		Address on File						
Carla Siegal Interiors		31 Sturges Hwy			Westport	CT	06880	
CARLSON, STEPHEN		Address on File						
Carmona, Benjamin		Address on File						
CARNEGIE CONSULTING		44 CARNABY ST						
Carol Bavousett Mattick PC		919 Congress Ave Suite 919			London	TX	WTF 9PP	United Kingdom
CAROLYN SANCHEZ		Address on File			Austin		78701	
CARON, JOHN H		Address on File						
Carpenter Lipps & Leland LLP		280 Plaza, Suite 1300	280 North High Street		Columbus	OH	43215	
Carrington Coleman		Address on File						

APP-8907

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CARROLL, JUSTIN		Address on File						
Carter Ledyard & Milburn LLP		Counsellors at Law 2 Wall St			New York	NY	10005	
CARTER, JEROME		Address on File						
CARTUS CORPORATION PTE LTD			#09-01/04 SGX CENTRE 2		Singapore		068807	SINGAPORE
Carwin Advisors		4 SHENTON WAY						
Case Anywhere LLC		2100 McKinney Ave, Suite 1510			Dallas	TX	75201	
Casepoint, LLC		21860 Burbank Blvd.	Suite 125		Woodland Hills	CA	91367	
Cashier - Texas Workforce Commission		7900 Tysons One Place, 680			McLean	VA	22102	
CASPER COMPANY LLC		PO Box 149037			Austin	TX	78714-9037	
CASTELLA, ANDRES		830 POST RD E			Westport	CT	06880	
CASTELLA, ANDRES		Address on File						
Catalyst Financial Partners LLC		Address on File						
Catapult Systems Inc.		118 E 28th Street	Suite 314		New York	NY	10016	
		1221 South MoPac Expressway	Ste 350		Austin	TX	78746	
	Cooper Lee Luvisa Educational Trust	Address on File						
Catherine M. Luvisa, trustee		Address on File						
Catherine M. Luvisa, trustee		Address on File						
Catherine McCoy		Address on File						
Catherine P. Matthews		Address on File						
Cattle Barons Ball		3838 Oak Lawn Avenue, Suite 700			Dallas	TX	75219	
Cattle Barons Ball		30 Highland Park Village Ste 216			Dallas	TX	75205	
CATTLE BUYERS WEEKLY		PO BOX 2533			Petaluma	CA	94953-2533	
Cawley, Gillespie & Associates, Inc.		306 West 7th Street, Ste 302			Fort Worth	TX	76102	
Cawley, Keith		Address on File						
CB RICHARD ELLIS		2700 POST OAK BLVD	STE 250		Houston	TX	77056	
CB Richard Ellis, Inc		2700 Post Oak Blvd, Suite 250			Houston	TX	77056	
CB Richard Ellis, Inc		Valuation & Advisory Services	2415 East Camelback Rd		Phoenix	AZ	85016-4290	
Cbeyond		210 Interstate North Pkwy SE Ste 300			Atlanta	GA	30339-2233	
Cbeyond		PO Box 848432			Dallas	TX	75284-8432	
CBIZ Valuation Group, Inc.	ATTN ACCOUNTS RECEIVABLE	PO BOX 849846			Dallas	TX	75284-9846	
CBIZ Valuation Group, Inc.		3030 LBJ Freeway, Ste 1650			Dallas	TX	75234	
CBIZ Valuation Group, Inc.		4851 LBJ Freeway	Suite 800		Dallas	TX	75244	
CBIZ Valuation Group, LLC	Attn Accounts Receivable	4851 LBJ Freeway #800			Dallas	TX	75284	
Cboe LiveVol, Inc.		400 South LaSalle Street			Chicago	IL	60605	
CBRE, Inc.		Location Code 2981	P.O. Box 406588		Atlanta	GA	30384-6588	
CCH		21250 HAWTHORNE BLVD			Torrance	CA	90503-5502	
CCH Incorporated		PO Box 4307			Carol Stream	IL	60197-4307	
CCH Prosystem FX		PO Box 5729			Carol Stream	IL	60197-5729	

001-692

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
GCH Prosystem FX		P.O. Box 2701			Torrance	CA	90509-2701	
CCS Medical		1505 LBJ Freeway	Suite 600		Farmers Branch	TX	75234	
CCW Recovery Solutions		4 Mount Ephraim Road	Tunbridge Wells		Kent		TN1 1EE	United Kingdom
CDW	Attn Ronelle Erickson	200 N. Milwaukee Ave			Vernon Hills	IL	60061	
CDW Direct		PO Box 75723			Chicago	IL	60675-5723	
Cecilio Gomez		Address on File						
Cedar Glade LP	Attn Robert K. Minkoff, President	600 Madison Ave, 17th Floor			New York	NY	10022	
Centaurus Financial, Inc.		2300 E. Katella Ave	Suite 200		Anaheim	CA	92806	
Center for Financial Professionals Ltd		The Maitings, Roydon Road			Stanstead Abbots	Herts	SG12 8HG	United Kingdom
Center Street Securities, Inc.	c/o CFP Events, Suite 68	2 International Plz Ste 301			Nashville	TN	37217-2088	
Centerpoint Advisors		301 Commerce St Ste 1750			Fort Worth	TX	76102	
Centerpoint Builders		5339 Alpha Rd Ste 250			Dallas	TX	75240	
CENTRAL REPRODUCTION COMPANY		PO BOX 131971			Dallas	TX	75313	
Centroid		1050 Wilshire Dr.	Ste #170		Troy	MI	48084	
Centroid		900 Wilshire Dr.	Ste. #273		Troy	MI	48084	
CenturyLink		100 CenturyLink Drive			Monroe	LA	71203-0000	
CenturyLink Communications, LLC		1801 California Street			Denver	CO	80202	
CERA	Accounts Receivable	Department 55 Cambridge Pkwy			Cambridge	MA	02142	
Certified Moving & Storage Company		286 Madison Avenue			New York	NY	10017	
Certified Process Servers, Inc.		PO Box 496508			Garland	TX	75049-6508	
Certified Staffing Solutions		66 Orange Street, 3rd FL			Providence	RI	02903	
Cetera Advisor Networks LLC	Attn STS	200 N. Sepulveda Blvd, Ste 1300			El Segundo	CA	90245	
Cetera Advisor Networks LLC	c/o Legacy Advisor, C. Tabaka	2450 Rimrock Rd, Ste 203			Madison	WI	53713	
Cetera Financial Group	c/o Due Diligence Dept	200 N. Sepulveda Blvd, Ste 1200			El Segundo	CA	90245	
Cezar AV, Inc.		393 Upland Avenue			Yonkers	NY	10703	
CFA Society Los Angeles		520 S. Grand Ave	Ste 370		Los Angeles	CA	90071	
CFALA		520 S. Grand Ave.	Ste 655		Los Angeles	CA	90071	
CFA-SW	ATTN Scott Woodward	UHY, LLP	1717 Main Street		Dallas	TX	75201	
CFO & CONTROLLER ALERT		370 TECHNOLOGY DR	PO BOX 3019		Malvern	PA	19355	
Chad Clark	Address on File	Address on File						
CHAD SCHRAMEK	Address on File	Address on File						
Chakheeva, Svetlana	Address on File	Address on File						
CHAMBERS, TRACIE	Address on File	Address on File						
CHAN, WING FUNG WILLY	Address on File	Address on File						
CHANCERY ST JAMES PLC	5 ST JAMESs SQUARE	Address on File			London		SW1Y 4SJ	United Kingdom
Chang, Frederic	Address on File	Address on File						
Chang, Lewis	Address on File	Address on File						

APP-6999

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Chapline, Thomas		Address on File						
Charitable DAF Fund GP, LLC	Grant Scott	4140 Park Lake Avenue	Suite 600		Raleigh	NC	27612	
Charitable DAF Fund, L.P.	Grant Scott	4140 Park Lake Avenue	Suite 600		Raleigh	NC	27612	
Charles Byrne		Address on File						
Charles Geraci		Address on File						
CHARLES GREGOR		Address on File						
Charles Hoedebeck	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Charles River Associates		PO Box 845960			Boston	MA	02284-5960	
Charles Schwab & Co., Inc.		211 Main Street	MS SF-211MN-08-434		San Francisco	CA	94105	
Charley Krause		Address on File						
Charlie Maynard		Address on File						
Charlotte Investor IV LP	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
Charlotte Investor IV, L.P.	Altn Erica Weisgerber Debevoise and Plimpton LLP	919 Third Avenue			New York	NY	10022	
Charlotte Investor IV LP	Charlotte Investor IV LP	c/o HarbourVest Partners, LLC	One Financial Center		Boston	MA	02111	
Charter Finan. Publishing Network, Inc.		PO Box 7550			Shrewsbury	NJ	07702-7550	
Chase Bank of Texas, N.A.		600 Travis Street	8th Floor	Global Trust Services	Houston	TX	77002	
CHASE COURIERS, INC		1220 Champion Circle	#114		Carrollton	TX	75006	
CHASE COURIERS, INC		1002 N. Central Expressway			Richardson	TX	75080	
CHASE COURIERS, INC		1002 N CENTRAL EXPWY, #229			Richardson	TX	75080	
Chase Miller		Address on File						
Chatham Worth		Address on File						
CHAVARRIAGA, MAURICIO		Address on File						
CHEMICAL DATA		2900 N LOOP WEST	STE 830		Houston	TX	77092	
CHEMICAL MARKET ASSOCIATES, INC		PO BOX 974416			Dallas	TX	75397-4416	
Chen, Bryan		Address on File						
Chen, Jonathan C.		Address on File						
Cherith Harrison		Address on File						
Chetan Aras		Address on File						
Chi Un Chun		Address on File						
Chick-fil-A		12120 Inwood Road			Dallas	TX	75244	
Chick-fil-A		1201 Elm Street	LL06		Dallas	TX	75270	
CHILDRENS SEEK CAMP		Cory Cheat	3624 Long Prairie Rd.		Flower Mound	TX	75022	
CHIRAG PANCHOLI		Address on File	Ste #101					
CHISM, CARTER		Address on File						
Chisum, Naomi		Address on File						
Choi, Jae Young		Address on File						
CHOI, YUN S.		Address on File						
CHOICE INVESTMENTS, INC		4800 BEE CAVE ROAD			Austin	TX	78746	
Chris Carrillo		Address on File						

001-8914

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CHRIS COLVIN		Address on File						
CHRIS CRAWSHAW		Address on File						
Chris Hakemack		Address on File						
Chris Hylan		Address on File						
Chris Jackson		Address on File						
Chris Lombardi		Address on File						
Chris Malone		Address on File						
Chris Miller		Address on File						
Chris Saehler		Address on File						
Chris Sullivan		Address on File						
Christian & Small LLP		505 N 20th Street, Suite 1800			Birmingham	AL	35203-2696	
Christian Carrillo		Address on File						
Christian MacCaron		Address on File						
Christina Dandar		Address on File						
Christina Seaman		Address on File						
Christine Hedrick		Address on File						
Christine Ragnauth		Address on File						
Christopher Courbier		Address on File						
CHRISTOPHER EGER		Address on File						
CHRISTOPHER NILSEN		Address on File						
CHRISTOPHER PITTMAN		Address on File						
Christopher Rice	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Christopher Rossi		Address on File						
Chronicle of Higher Education		PO Box 1955			Marion	OH	43306-8055	
Chronicle of Philanthropy	Attn Subscription Department	PO Box 1989			Marion	OH	43306-8089	
Chubb		2001 Bryan St.	Ste. 3600		Dallas	TX	75201-0000	
Chubb National Insurance Company	c/o Chubb	202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
Chuck Hoar		Address on File						
Chuck McQueary		Address on File						
Church, Daniel		Address on File						
CIGNA HEALTHCARE		CGLIC-Chicago	5476 Collections Center Dr		Chicago	IL	60693-0547	
CIRCLE B		3536 MILLER PARK			Garland	TX	75042-7519	
Cisco		170 West Tasman Dr			San Jose	CA	95134-0000	
CISCO Capital		File No. 73226	PO Box 60000		San Francisco	CA	94160-3230	
Cisco Webex Events		170 West Tasman Dr			San Jose	CA	95134-0000	
Cisco WebEx, LLC		16720 Collections Center Dr			Chicago	IL	60693	
Cision US Inc.		PO Box 842869			Boston	MA	02284-2869	
Cision US Inc.		1 Prudential Plaza, 7th floor	130 E Randolph Street		Chicago	IL	60601-0000	
CIT TECHNOLOGY	ATTN CUSTOMER SERVICE	PO BOX 550599			Jacksonville	FL	32255-0599	
Citibank, N.A.	Doug Warren	390 Greenwich Street	4th Floor		New York	NY	10013	
CITICORP VENDOR FINANCE		PO BOX 7247-0118			Philadelphia	PA	19170-0118	

001-8915



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Citigroup Financial Products Inc. Citigroup Global Markets Inc.	Citigroup Global Markets Inc.	390 Greenwich Street, 4th Floor	Managing Director	Global Structured Credit Products	New York	NY	10013	
Citizens of Georgia Power Citrix Online, LLC	Attn Stephen Kin, Bin #63031	7825 River Road 7414 Hollister Avenue			Waynesboro Goleta	GA CA	30830 93117	
City of Allen	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	76015	
City of Dallas		1500 Marilla Street	2D South		Dallas	TX	75201	
City of Dallas		City Hall 1AN			Dallas	TX	75277	
City of Dallas		City Hall, 2D South			Dallas	TX	75277	
City of Dallas		Security Alarms	P.O. Box 139076		Dallas	TX	75313-9076	
City of Dallas	Linda D. Reece	c/o Perdue Brandon Fielder et al	1919 S. Shiloh Road, Suite 310, LB 40		Garland	TX	75042	
City of Richardson	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair and Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	75207	
City of Surprise		16000 N. Civic Center Plaza	Stormwater Division		Surprise	AZ	85374-7470	
Civic Research Institute		4478 US Route 27 PO Box 585			Kingston	NJ	08528	
CJ Peng		Address on File						
CL McDade & Company		PO Box 702565			Dallas	TX	75370	
Claraphi Advisory Network		25301 Cabot Rd	Suite 203		Laguna Hills	CA	92653	
CLARITY IN NUMBERS, LLC		10 UPENA LN APT 304			KIHEI	HI	96753-5112	
Clark Hill Strasburger		Address on File						
Clark, James		Address on File						
Clark, Stetson		Address on File						
Classic Legal Document Services, Inc.		Address on File						
Claudia C Pleitez		1717 Main Street, Suite 2280			Dallas	TX	75201	
Clay Callan		Address on File						
Clayton Coleman		Address on File						
Cleanwater Analytics LLC		Address on File						
Cleanwell Systems, INC.		777 W Main St	Ste 900		Boise	ID	83702-0000	
Cleary Gottlieb Steen & Hamilton LLP		441 Louge Ave			Mountain View	CA	94043	
Clerk of the Municipal Courts		One Liberty Plaza			New York	NY	10006-1470	
CLERK, SUPREME COURT		2014 Main Street			Dallas	TX	75201	
		PO BOX 149335			Austin	TX	78714-9335	
ClickDimensions, LLC		5901 Peachtree Dunwoody Rd., Ste B500			Atlanta	GA	30328	
Client One Securities, LLC		11460 Tomahawk Creek Parkway	Suite 100		Leawood	KS	66211	
Clientwise LLC		487 East Main Street	Suite 303		Mount Kisco	NY	10549	
Clifford Chance		Address on File						
Clifford Chance		PO Box 7247-6805			Philadelphia	PA	19170-6805	
Clint Swisher		Address on File						
CLO Holdco, Ltd.	c/o Grant Scott, Esq	Myers Bigel Sibley & Sajovec, P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	Grant Scott, Director	Myers Bigel P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	

APP-8918

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CLO Holdco, Ltd.	Grant Scott, Director	Myers Bigel P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	Grant Scott, Esq.	Myers Bigel Sibley & Sajovec, P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	John J Kane	Kane Russell Coleman Logan PC	901 Main Street, Suite 5200		Dallas	TX	75202	Cayman Islands
CLO Holdco, Ltd.		190 Elgin Avenue	George Town	Grand Cayman	George Town	KY	19005	United Kingdom
CM Murray LLP		37th Floor	One Canada Square, Canary Wharf		London	TX	E14 5AA	
CMGRP, Inc.		1717 Main St, Ste 1600			Dallas	TX	75201	
CMGRP, Inc.		PO Box 74008263			Chicago	IL	60674-8263	
CMS BondEdge		PO Box 98616			Chicago	IL	60693	
CNBC LLC	c/o Legal Dept, Attn Janet Williams	900 Sylvan Avenue			Englewood Cliffs	NJ	07632	
Coastal Equities Inc.		1201 N. Orange Street	9th Floor		Wilmington	DE	19801	
Coates Analytics		PO Box 371685			Pittsburgh	PA	15251-7685	
COBURN, JASON		Address on File						
COBURN, JASON M		Address on File						
Coch, Trevor		Address on File						
Cockle Printing Co		2311 Douglas St			Omaha	NE	68102	
COCVAC		BOX 399			Clark Mills	NY	13321	
Cohen, Jeffrey		PO BOX 94787			Cleveland	OH	44101-4787	
Coheso, Inc.		Address on File						
Colbert, Kenneth T.		7083 Commerce Cir Ste 1			Pleasanton	CA	94588-8017	
ColdFusion Ice		Address on File						
Cole Scholtz	Court Plaza North	4901 Saint Lawrence Road			Fort Worth	TX	76103	
Cole Scholtz	Michael D. Warner, Esq.	25 Main Street	P.O. Box 800		Hackensack	NJ	07602-0800	
Coleman Research Group, Inc.	Attn Legal	Cole Scholtz Meisel Forman & Leonard	301 Commerce Street, Suite 1700		Fort Worth	TX	76102	
Coleman Research Group, Inc.		1 Glenwood Ave			Raleigh	NC	27603	
Coleman Research Group, Inc.		100 Park Avenue Suite 1600			New York	NY	10017	
Coleman, Clayton		120 West 45th St	25th Floor		New York	NY	10036	
Collas Crill	attn Stephen Leontsinis	Address on File	Cricket Square PO Box 709		Grand Cayman		KY1-1107	Cayman Islands
COLLAS CRILL LLP, ADVOCATES CLIENT ACCOUNT		Floor 2, Willow House	Floor 2, Willow House, Cricket Square, PO Box 709		Grand Cayman		KY1-1107	Cayman Islands
Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Glategny Court, PO Box 140, Glategny Esplanade			St Peter Port	Guernsey	GY1 4EW	Channel Islands
Collin County Tax Assessor/Collector		1700 Redbud Blvd., Suite 300			McKinney	TX	75069	
Collin County Tax Assessor/Collector		P.O. Box 8046			McKinney	TX	75070	
Collin County Tax Assessor/Collector		P.O. Box 8046			McKinney	TX	75070	

001-8917

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Collins Building Services, Inc		Court Square Place, 24-01			Long Island City	NY	11101	
Collins Legal Video Service		44th Rd	15th Fl		Dallas	TX	75201	
Collins Realtime Reporting		1700 Pacific Ave	Suite 2410		Dallas	TX	75201	
COLLINS, BRIAN		1700 Pacific Ave	Suite 2410		Dallas	TX	75201	
Colin McDermott		Address on File						
		Address on File						
Colonial Surety Company		123 Tice Boulevard, Suite 250			Woodcliff Lake	NJ	07677	
Colorado Department of Revenue		Colorado Department of Revenue			Denver	CO	80261	
Colorado State Treasurer		Colorado DEPT of Regulatory Agencies	1560 Broadway, Suite 900		Denver	CO	80202-5150	
ColorMark, L.C.		1840 Hutton Dr	Bldg 208		Carrollton	TX	75006	
COLVIN, CHRISTOPHER		Address on File						
COLVIN, MICHAEL		Address on File						
Commissioner of Revenue Services		DEPARTMENT OF REVENUE SERVICES	PO BOX 2936		Hartford	CT	06104-2936	
Commissioner of Securities, State of LA		Office of Financial Institutions	8660 United Plaza Boulevard, 2nd Floor		Baton Rouge	LA	70809	
COMMISSIONER OF TAXATION AND FINANCE		NYS ASSESSMENT RECEIVABLES	PO BOX 4127		Binghamton	NY	13902-4127	
Commodity Futures Trading Commission		Three Lafayette Centre	1155 21st Street, NW		Washington	DC	20581	
COMMONWEALTH OF MASSACHUSETTS		Securities Division	1 Ashburton Place, Room 1701		Boston	MA	02108	
COMMONWEALTH OF MASSACHUSETTS		MASSACHUSETTS DEPT OF REVENUE	PO BOX 7065		Boston	MA	02204-7065	
Communities Foundation of Texas, Inc.	Attn Marcia Godwin 5500	Caruth Haven Lane			Dallas	TX	75225-8146	
Communities in Schools of North Texas		PO Box 295543			Lewisville	TX	75029-5543	
Community Beer Company		1530 Inspiration Drive	Suite 200		Dallas	TX	75207	
Community Partners of Dallas		1215 Skiles Street			Dallas	TX	75204	
Commvault Backup		1 Commvault Way			Tinton Falls	NJ	07724-0000	
COMPASS BANK OPERATING		PO BOX 630020			Dallas	TX	75263-9720	
Compass Lexecon		PO Box 630391			Baltimore	MD	21263-0391	
Compass Lexecon		1244 Dryden Pl			Evanston	IL	60201-3399	
Compass Lexecon LLC		PO Box 418005			Boston	MA	02241-8005	
COMPETITIVE LOGISTICS LLC		53 PERIMETER CENTER E	STE 201		Atlanta	GA	30346	
Complete Coherence Ltd		Newton House, Suite B	Newton Lane		Romsey, Hants		SO51 8LE	United Kingdom
Complete Fitness Outfitters		PO Box 1237			Atoka	OK	74252	
Complete Legal, Ltd		1201 Elm St.	Suite 2560		Dallas	TX	75270	
Compliance Science, Inc.		875 Avenue of the Americas	12th Floor		New York	NY	10001	
Compliance Search Group		1001 Avenue of the Americas	Suite 2401		New York	NY	10018	
Compliance Search Group		450 Seventh Ave	Suite 1409		New York	NY	10123	

APP-6938

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Comptroller of Maryland		Revenue Administration Division	110 Carroll Street		Annapolis	MD	21411-0001	
Comptroller of Public Accounts		PO Box 149348			Austin	TX	78714	
Compuforms Data Products, Inc.		PO Box 101536			Fort Worth	TX	76185-1536	
CompuLink Technologies, Inc.		214 West 29 Street	Suite 201		New York	NY	10001	
Computershare		250 Royall St #1011			Canton	MA	02021	
Computershare		14257 Collection Ctr Dr			Chicago	IL	60693	
Computershare		16750 Collection Ctr Dr			Chicago	IL	60693	
Computershare Trust Company, N.A.		PO BOX 43078			Providence	RI	02940-3078	
Comsys Services, LLC		PO Box 60260			Charlotte	NC	28260	
Concord Marketing Solutions		2000 Bloomingdale Road			Glendale Heights	IL	60139	
Concorde Holdings, Inc.		1120 East Long Lake Rd	Suite 207		Troy	MI	48085	
Concorde Investment Services		1120 East Long Lake Road	Ste 207		Troy	MI	48085	
Concur Technologies, Inc.		62157 Collections Center Drive			Chicago	IL	60693	
Concur Technologies, Inc.		18400 NE Union Hill Road			Redmond	WA	98052	
Conference Plus, Inc		8153 Solutions Center			Chicago	IL	60677-8001	
Conference Room AV		13601 W McMillan Rd	Suite 102-277		Boise	ID	83713	
Conga		P.O. Box 7839			Broomfield	CO	80021	
ConnectAndSell, Inc		856 Rand St.			San Mateo	CA	94401	
Connected Software		PO Box 29			West Newbury	MA	01985	
Connecticut Department of Banking		Securities & Business Invest Division	260 Constitution Plaza		Hartford	CT	06103	
CONNER, PATRICK		Address on File						
Connex Systems, Inc.		2033 Chenault Drive, Suite 150			Carrollton	TX	75006	
CONNIE MILTENBERGER		127 KENDALL BLUFF COURT			Chesterfield	MO	63017	
Connolly Bove Lodge & Hutz LLP		1007 North Orange St			Wilmington	DE	19899	
Connolly Gallagher LLP		1201 North Market Street	20th Floor		Wilmington	DE	19801	
Connolly, James		Address on File						
Connor White		Address on File						
Conseco Life Insurance Company		PO Box 71214			Charlotte	NC	28272-1214	
CONSOLIDATED GENERAL LIFE INSURANCE CO		4245 N CENTRAL EXPWY	STE 500		Dallas	TX	75205	
Context Summits LLC		401 City Avenue	Suite 815		Bala Cynwyd	PA	19004	
Continental Court Reporters, Inc.		2777 Allen Parkway, Suite 600			Houston	TX	77019-2166	
Continental Office Group, LLC		PO Box 132			Wylie	TX	75098	
Contrarian Funds, LLC		500 Ross St 154-0455			Pittsburgh	PA	15262	
Contrarian Funds, LLC		500 Ross St 154-0455			Pittsburgh	PA	15262	

001-895

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Contrarian Funds, LLC	Attn Alpa Jimenez	411 West Putnam Ave., Suite 425			Greenwich	CT	06830	
ConvergeOne, Inc.	Selina Held	10900 Nesbitt Avenue South			Bloomington	MN	55437	
Conway, Jacob		NW 5806	PO Box 1450		Minneapolis	MN	55485-5806	
		Address on File						
CONYERS DILL & PEARMAN		CLARENDON HOUSE 2	CHURCH STREET		Hamilton		0HM11	BERMUDA United Kingdom
Cooke Young Keidan	Phillip Young	21 Lombard St			London		EC3V 9AH	United Kingdom
Cooke, Brad		Address on File						
COOLTECH AIR								
CONDITIONING LTD								
COOPER LEVENSON APRIL NIEDELMAN		530 LONDON ROAD	Stanwell		Ashford		TW15 3AE	United Kingdom
Copy Sense		1125 ATLANTIC AVE			Atlantic City	NJ	08401	
Copy Solutions		121 E. 8th	Ste 100B		Austin	TX	78701	
		2001 Bryan St	Suite 1935		Dallas	TX	75201	
		400 Tri-State Bldg 432 Walnut St						
CopyPLEX		222 Rosewood Dr			Cincinnati	OH	45202	
Copyright Clearance Center		PO Box 843006			Danvers	MA	01923	
Copyright Clearance Center		28 Innisbrook Ave			Boston	MA	02284-3006	
CORAL EQUITY PARTNERS		Address on File			Las Vegas	NV	89113	
CORCORAN, KIMBERLY								
CORE Staffing Services, Inc.		463 Fashion Ave Rm 1800			New York	NY	10018-7760	
Corinne Durand		Address on File						
CORNELIUS, WILLIAM		Address on File						
Comer Bakery		CB Catering 91 PO Box 844288			Dallas	TX	75284-4288	
Comerstone Healthcare Group Holding Inc								
Comerstone Healthcare Group Holding, In	David Smith	3030 Ross Avenue	Suite 5400		Dallas	TX	75201	
Comerstone Healthcare Group Holding, Inc.		2200 Ross Ave	Ste. 5400		Dallas	TX	75201-0000	
Comerstone Macro LLC		13455 Noel Road, Suite 1320			Dallas	TX	75240	
		1330 Avenue of the Americas Fl 5			New York	NY	10019-5493	
Comerstone Restructuring LLC		1125 Maxwell Ln	Suite 1010		Hoboken	NJ	07030	
ComerStone Staffing		PO Box 909			Grapevine	TX	76099	
CORPORATE COFFEE SYSTEMS		745 SUMMA AVE			Westbury	NY	11590	
CORPORATE EXPRESS INC		PO BOX 71217			Chicago	IL	71217	
Corporate Expressions		11 Blackberry Ln.			Norwalk	CT	06850	
Corporate Golf		604 West Morgan St Ste 202			Durham	NC	27701	
Corporate Green		PO Box 820725			Dallas	TX	75382	
Corporate Interiors Inc.		PO Box 709			Frisco	TX	75034-0709	
Corporate Montage		9950 Westpark Dr Ste 602			Houston	TX	77063-5196	
Corporate Search Partners		6116 N Central Expwy Ste 406			Dallas	TX	75206	
Corporate Source Ltd		2651 N Harwood Ste 260			Dallas	TX	75201	

APP-9016

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Corporate Source Ltd		1505 Oak Lawn Ave	Suite 300		Dallas	TX	75207	
Corporate Source Ltd		Lockbox 671236			Dallas	TX	75267-1236	
Corporate Strategies by SkillPath		6900 Squibb Rd			Mission	KS	66202	
Corporate Strategies by SkillPath		PO Box 803839			Kansas City	MO	64180-3839	
Corporate Transportation Group		335 Bond St			Brooklyn	NY	11231	
Corporation Service Company		PO BOX 13397			Philadelphia	PA	19101-3397	
Cory McCallum		Address on File			Edgewater	NJ	07020	
COSMOPOLITAN GLASS		307 DAIBES CT						
CoStar Realty Information, Inc.		PO Box 791123			Baltimore	MD	21279-1123	
Cotton, Austin		Address on File						
Coughlin, William		Address on File						
Coughlin, William A.		Address on File						
Counsel Press LLC		PO Box 1053			New York	NY	10018-9998	
CounselWorks LLC		477 Madison Avenue	Suite 740		New York	NY	10022	
COURIERS INC		225 MILLWELL DR			Maryland Heights	MO	63043	
Cournoyer, Timothy		Address on File						
Courthouse Digital Video		8848 Twin Pines Ln			Frisco	TX	75036-1427	
Courtlandt Securities Corporation		PO Box 11929			Newport Beach	CA	92658	
Courtroom Intelligence, Inc.		620 N Grant	Suite 512		Odessa	TX	79761	
Courtroom Intelligence, Inc.		1219 West University Blvd			Odessa	TX	79764	
Covenant Review LLC		708 Third Ave	6th Floor		New York	NY	10017	
Covenant Review LLC		230 Park Ave, Suite 812			New York	NY	10169	
COVERT INVESTIGATIVE SERVICES		PO BOX 67			Lewisville	TX	75057	
COVITZ, HUNTER		Address on File						
Cowen and Company, LLC		Finance Group - 21st Floor	599 Lexington Avenue		New York	NY	10022	
Cowie, Jason		Address on File						
COX, BRIAN		Address on File						
COZEN O CONNER ATTORNEYS		W1385	PO BOX 7777		Philadelphia	PA	19175-0775	
CP EATON PARTNERS, LLC		131 ROWAYTON AVE			Rowayton	CT	06853	
CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandaneau	452 Fifth Avenue		New York	NY	10018	
CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl Suite 1500		Dallas	TX	75201	
CPCM, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610		Dallas	TX	75201	
CPCM, LLC		6505 W. Park Blvd. Ste. 306	PMB# 352		Plano	TX	75093	
Craig and Macauley Professional Corp.		600 Atlantic Ave			Boston	MA	02210	
Crain Communications Inc.		16309 Collection Center Dr.			Chicago	IL	60693	
Crain Communications Inc.		1155 Gratiot Ave			Detroit	MI	48207-2732	
Cranellis		10047 Park Meadows Dr			Lone Tree	CO	80124	
Crawford Wishnew & Lang	Michael J Lang	1700 Pacific Avenue Suite 2390			Dallas	TX	75201	

APP-9034

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
GRE ADVISORS, LLC		PO BOX 2302			Addison	TX	75001	
Creative Meetings & Incentives CREATIVE PRINTING		2405 Mill Plain Rd 311 N STEMMONS	STE 400		Fairfield Dallas	CT TX	06824 75207	
CREDIT SUISSE	ATTN JUDY HARNETT	11 MADISON AVE, 11TH FLR 700 College Road East			New York Princeton	NY NJ	10010 08540	
CREDIT SUISSE		11 MADISON AVE, 26TH FLR	AARON OVEDIA		New York	NY	10010	United Kingdom
Crediflux		63 Clerkenwell Rd			London		EC 1M-5NP	
Crescent Asset Management		1440 Broadway	17th flr		New York	NY	10018	
Crescent Partners, LLC		1440 Broadway	17th floor		New York	NY	10018	
Crescent Research		PO Box 64-3622			Vero Beach	FL	32964	
Crescent TC Investors LP		200 Crescent Ct	Suite 250		Dallas	TX	75201	
Crescent TC Investors, L.P.	c/o Michael S. Held	2323 Ross Avenue, Suite 600			Dallas	TX	75201	
Crescent TC Investors, L.P.	Dale Todd, President	277 Park Ave., 36th Floor			New York	NY	10017	
Crescent TC Investors, L.P.	Hien Le	5847 San Felipe St., Suite 150			Houston	TX	77057	
Crescent TC Investors, L.P.	Hien Le	5847 San Felipe St., Suite 150			Houston	TX	77057	
Crescent TC Investors, L.P.	Jackson Walker LLP	Michael S. Held	2323 Ross Ave., Suite 600		Dallas	TX	75201	
Crescent TC Investors, L.P.	Michael S. Held	2323 Ross Ave., Suite 300			Dallas	TX	75201	
Crescent TC Investors, L.P.		Post Office Box 841772			Dallas	TX	75284	
Crescent TC Investors, L.P.		Post Office Box 841772			Dallas	TX	75284	
CREST, DAVID		Address on File						
Cris Rodriguez		Address on File						
Crisostomo, Norm		Address on File						
Critical Electric Systems Group, LLC		704 Central Pkwy East	#1200A		Plano	TX	75074	
CROSS 3 LLC		7324 ELDRED AVE, NE			Rockford	MI	49341	
Crosson Dannis, Inc.		8150 N. Central Expressway, Suite 950			Dallas	TX	75206	
Crossroads Audio, Inc.		2623 Myrtle Springs Avenue			Dallas	TX	75220	
Crowe & Dunlevy, P.C.	Vickie L. Driver	2525 McKinnon Street, Suite 425			Dallas	TX	75201	
Crowe Dunlevy		Address on File						
Crowell & Moring		1001 Pennsylvania Ave NW			Washington	DC	20004-2595	
CROWELL, LEONARD		Address on File						
Crown Capital Securities, L.P.		725 Town & Country Rd	Suite 530		Orange	CA	92868	
CRT CAPITAL GROUP, LLC		262 HARBOR DR			Stamford	CT	06902	
CSC		PO Box 13397			Philadelphia	PA	19101-3397	
CSI e-Discovery Services, LLC		4950 N. OConnor Rd.	Suite 152		Irving	TX	75062	
CSI Global Deposition Services	Accounting Dept-972-719-5000	4950 N. OConnor Rd., 1 st Fl			Irving	TX	75062-2778	

APP-90318



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CSI Litigation Psychology, LLC		4950 North OConnor Rd.	Corporate Plaza 1, First Floor		Irving	TX	75062	
CSS Medical Inc.	Steve Saft	14255 49th Street North	Suite 301		Clearwater	FL	33762	
CT Corp		PO Box 4349			Carol Stream	IL	60197-4349	
CT Corporation		1999 Bryan Street	Ste 900		Dallas	TX	75201-0000	
CT Corporation System	ATTN Michael E. Jones	350 N. St. Paul Street, Ste. 2900			Dallas	TX	75201	
CT Corporation System	C/O STEPHANIE WATTS-DARTY	DALLAS CORPORATE TEAM 2	350 North St. Paul St.		Dallas	TX	75201	
CT Corporation System		PO Box 4349			Carol Stream	IL	60197-4349	
CT Lien Solutions		PO Box 301133			Dallas	TX	75303	
CT Lien Solutions		Lockbox 200824			Houston	TX	77216	
CTRL+V Inc.		251 Union St.			Lawrence	NY	11559	
Culhane Meadows PLLC		PO Box 49716			Atlanta	GA	30359	
Culinaire International	Attn Catering Dept	2943 SMU Blvd			Dallas	TX	75205	
CULLEN ESTATE TRUST		601 JEFFERSON ST STE 4000			Houston	TX	77002-7913	
CUNNINGHAM, BRITNEY		Address on File	Suite B102		Princeton	NJ	08540	
CurAlea Associates LLC		12 Roszel Road			Phoenix	AZ	85016	
Cushman & Wakefield of Arizona, Inc.		2555 East Camelback Road, Ste 400			New York	NY	10041	
CUSIP		55 Water Street	43rd Floor		Chicago	IL	60693-0333	
CUSIP Global Services		33356 Collection Center Dr			Chicago	IL	60693	
CUSIP Service Bureau		2542 Collection Center Drive	2542 Collection Center Drive					
CUSIP Service Bureau		Standard and Poors	Drive		Chicago	IL	60693	
CUSIP Service Bureau		PO Box 19140A			Newark	NJ	07195-0140	
CUSTOM BOOK BINDERY, INC.		9 SHERIDAN AVE			Clifton	NJ	07011	
Custom Headsets of Dallas		5949 W Hwy/ 175			Kaufman	TX	75142	
CVE Technologies Group Inc.		1414 S. Gustin Rd.			Salt Lake City	UT	84104	
CVE technology		3000 E Plano Pkwy			Plano	TX	75074-0000	
CW PARTNERS LLC		2811 MCKINNEY AVE	STE 214		Dallas	TX	75204	
Cylance		400 Spectrum Center Dr.	Suite 900		Irvine	CA	92618-0000	
CYNTHIA VALLES		Address on File						
CYRUS SPURLINO		7214 N MOBLEY RD			Odessa	FL	33556-2303	
REVOCABLE TRUST		1600 Airport Fwy Ste 501			Bedford	TX	76022-6882	
Cystic Fibrosis Foundation	NE Texas/Fort Worth Chapter	7506 E Independence Blvd #120			Charlotte	NC	28227	
Cystic Fibrosis Foundation		3102 Maple Ave, Ste 120			Dallas	TX	75201	
Cystic Fibrosis Foundation		Northeast Texas Chapter			New York	NY	10122	
CZG Dynamics Associates		14 Penn Plaza, Suite 1712			Dallas	TX	75201	
D Magazine		750 North St. Paul Street	Suite 2100		Dallas	TX	75219-9701	
D Magazine		4311 Oak Lawn Ave Ste 100			Dallas	TX	75201	
D&S Enterprises		10703 Sweetwater Drive			Frisco	TX	75035	
D. Alan Bowliby		PO Box 1067			Addison	TX	75001	

APP-90319

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
D. Allan Bowlby & Associates, Inc		PO BOX 1067			Addison	TX	75001	
D.F. King & Co. Inc.		48 Wall Street			New York	NY	10005	
D.H. Hill Securities, LLLP		1543 Green Oak Place	Ste 100		Kingwood	TX	77339	
DAETSCH, MOLLY		Address on File						
DALE BEHM		Address on File						
Dale Frey		Address on File						
Dallas A&M Club	Attn Mike Henderson	4303 Glenwick			Dallas	TX	75205	
Dallas AfterSchool Network		3900 Willow St Ste 110			Dallas	TX	75226-1247	
Dallas Area Habitat for Humanity		House Party	PO Box 700924		Dallas	TX	75370	
Dallas Art & Design		3617 Fairmount St Ste 101			Dallas	TX	75219	
Dallas Bar Association		2101 Ross Ave			Dallas	TX	75201	
Dallas Basketball Ltd.		1333 N Stemmons Fwy	Ste 105		Dallas	TX	75207-3722	
Dallas Business Journal		PO Box 840190			Dallas	TX	75284-0190	
Dallas CASA		2757 Swiss Avenue			Dallas	TX	75204	
Dallas Challenge		7777 Forest Lane	Suite C-410		Dallas	TX	75203	
DALLAS CHAPTER TEI	ATTN Sharon Langlotz	Cash America International, Inc	1600 West 7th St		Ft. Worth	TX	76102-6803	
DALLAS CHAPTER TEI		901 MAIN ST	69TH FLR, BANK AMERICA PLAZA		Dallas	TX	75202	
DALLAS CHAPTER TEI		PO BOX 961101	BNSF RAILWAY COMPANY, SCOTT RYNEARSON		Fort Worth	TX	76161-1101	
Dallas Childrens Advocacy Center	Attn Stepheni Jordan	5351 Samuell Blvd			Dallas	TX	75228	
Dallas Childrens Theater	Attn Michael Gonzales	5938 Skillman			Dallas	TX	75231	
Dallas Committee on Foreign Relations		4925 Greenville Avenue	Suite 1025		Dallas	TX	75206-4092	
Dallas Contemporary, MTV	Attn Hannah Fagadau	161 Glass Street			Dallas	TX	75207	
Dallas County	Attn Elizabeth Weller	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Dallas County	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	75207	
Dallas County Republican Party		10100 N Central Exprwy	Ste 175		Dallas	TX	75231	
Dallas County Tax Assessor	John R. Ames, CTA	1201 Elm Street	Suite 2600		Dallas	TX	75270	
Dallas County Tax Assessor	John R. Ames, CTA	PO Box 139066			Dallas	TX	75313-9066	
Dallas County Tax Office		PO Box 139033			Dallas	TX	75313-9033	
Dallas Courier Service, Inc.		PO Box 833583			Richardson	TX	75083	
DALLAS DUCKS UNLIMITED		400 TURTLE CREEK CENTER BLVD	3811 TURTLE CREEK	SCOTT WEBER	Dallas	TX	75219	
Dallas Employment Services		6125 Luther Ln # 299			Dallas	TX	75225-6202	
Dallas Gigs LLC		PO Box 225423			Dallas	TX	75222	
Dallas Glass & Door Company, Ltd	Attn Eddie Parker	PO Box 440			Fate	TX	75132	
Dallas Hispanic Firefighters Association		703 McKinney Ave	Suite 201		Dallas	TX	75202	
DALLAS HR		4100 SPRING VALLEY RD	STE 300		Dallas	TX	75244	
Dallas Jewish Community Foundation		One Hillcrest Green	12700 Hillcrest Rd, Suite 201		Dallas	TX	75230	

APP-9034

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Dallas Junior Chamber of Commerce Found.		PO Box 130721			Dallas	TX	75313	
Dallas Kid to Do	Attn Megan Harrison	650 South R.L. Thornton Freeway			Dallas	TX	75203-3013	
Dallas Landscape Lighting		2026 Midlake Rd			Dallas	TX	75205	
Dallas Museum of Art		1717 North Harwood			Dallas	TX	75201	
DALLAS PETROLEUM CLUB		2200 ROSS AVE	LB 171		Dallas	TX	75201-2799	
DALLAS POLICE AND FIRE		THE VICTOR LAZADA MEMORIAL FUND	7474 FERGUSON RD		Dallas	TX	75228	
Dallas Police Department	Alarm Permit Compliance Unit	PO Box 840186			Dallas	TX	75284-0186	
Dallas Producers Club	c/o J. Patrick Collins	PMB 414	3824 Cedar Springs Rd		Dallas	TX	75219-4136	
Dallas Regional Chamber	Attn Finance	500 North Akard St, Suite 2600			Dallas	TX	75201	
Dallas Security Systems, Inc.		PO Box 550939			Dallas	TX	75355-0939	
Dallas Stars		2601 Avenue of the Stars			Frisco	TX	75034-9089	
Dallas Summer Musicals, Inc.		909 1st Ave			Dallas	TX	75210-1042	
Dallas T-Shirt Company		2626 Manana Dr	Suite A		Dallas	TX	75220	
Dallas Urban Debate Alliance		PO Box 670564			Dallas	TX	75367	
Dallas Wildcat Committee	Attn Barbara Johnston	2200 Ross Ave, Suite 4150E			Dallas	TX	75201	
Dallas Womens Foundation		8150 North Central Expwy Suite #110			Dallas	TX	75206	
Dallas Youth Council		PO Box 793604			Dallas	TX	75379	
Dallas Zoological Society		650 South RL Thornton Fwy			Dallas	TX	75203-3013	
Damage Recovery		PO Box 801770			Kansas City	MO	64180	
DAMC	ATTN CARL BAGGETT	NORCOM CAPITAL	15770 N DALLAS PKWY		Dallas	TX	75248	
DAMERIS, THEODORE		Address on File						
DAMEWARE DEVELOPMENT		241 MORNINGSIDE DR			Mandeville	LA	70448	
Dan Drabinski		Address on File						
Dan Subach		Address on File						
Dan Winikka	c/o Loewinsohn Flegle Deary Simon	12377 Merit Drive			Dallas	TX	75251	
Dana Driensky		Address on File						
DANAHY, BRIAN J.		Address on File						
DANDAR, CHRISTINA		Address on File						
Daniel J Edelman, Inc		JPMorgan Chase Bank, NA	21992 Network Place		Chicago	IL	60673	
Daniel Kaplan Associates LLC		55 Madison Ave, 4th Fir			Morristown	NJ	07960	
Daniel Moisio		Address on File						
Daniel N. Shaviro		Address on File						
Daniel P Winikka	Loewinsohn Flegle Deary Simon LLP	12377 Merit Drive, Suite 900			Dallas	TX	75251	
Daniel Ranson		Address on File						
Daniel Riedler		Address on File						
Daniel Sexton		Address on File						

APPX-70321

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Daniel Sharvit		Address on File						
Daniel Sheehan & Associates, PLLC	Daniel J Sheehan, Jr	8150 N. Central Expressway Suite 100			Dallas	TX	75206	
Daniels & Erickson, PC		Address on File	Suite 760		Dallas	TX	75251	
Dansby White		12221 Merit Dr.						
Darby Dunn Communications		Address on File						
Darla M Chavez		461 Manor Lane			Peiham	NY	10803	
Daryl's By Design		Address on File						
DATAACARE SOFTWARE GROUP INC		1801 N Griffin Street			Dallas	TX	75202	
Datamax		445 PARK AVE	10TH FLR		New York	NY	10022	
DataPlus Consulting Incorporated		PO Box 20527			Saint Louis	MO	63139	
DataPlus Consulting Incorporated		750 North St Paul St. Suite 1225			Dallas	TX	75201	
DataPlus Consulting Incorporated		PO Box 190634			Dallas	TX	75219	
DataPoint Management		750 North St Paul	Suite 1225		Dallas	TX	75201	
DAUGHERTY, PATRICK		210 Empire House	1 Empire Way		Wembley		HA9 OEW	United Kingdom
DAUM, KURT		Address on File						
Dave Barnett		Address on File						
DAVE WALLS		Address on File						
DAVID BLANKS		Address on File						
DAVID BLANKS		Address on File						
David Boguslawski		Address on File						
David C. Smith		Address on File						
DAVID CALLAHAN		Address on File						
David Childs Tax Assessor-Collector		PO Box 620088			Dallas	TX	75262-0088	
David Childs Tax Assessor-Collector			DALLAS COUNTY TAX ASSESSOR-COLLECTOR					
David Culley		PO BOX 139066			Dallas	TX	75313-9066	
David Feldman Worldwide, Inc		Address on File						
David Fraiberg		PO Box 2392			New York	NY	10116-2392	
DAVID FULLERTON		Address on File						
David Geneson		Address on File						
David Hill		Address on File						
David Hu		Address on File						
David Huff Photography LLC		22022 N 119th Drive			Sun City	AZ	85373	
DAVID LANCELOT		Address on File						
DAVID LEE		Address on File						
DAVID LEHUQUET		Address on File						
David M. Cooper		Address on File						
DAVID MARTIN		Address on File						
David Ourlicht		Address on File						
DAVID POWERS		Address on File						

APP-9032

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
DAVID R HOLBROOKE ROTH IRA		120 BULKLEY AVE APT 405			Sausalito	CA	94965-2149	
DAVID SALYER		Address on File						
DAVID SMITH		Address on File						
David Smith		Address on File						
David Spiegel		Address on File						
David Tomek PLLC		325 N St Paul Street	Suite 3300		Dallas	TX	75201	
David W. Langford, CSR, CRR, RDR	Official Court Reporter	101st Judicial District Court	George L. Allen Courts Building		Dallas	TX	75202-4631	
David Walls		Address on File						
DAVID WEISBACH		Address on File						
DAVID WARD PHILLIPS & VINEBERG LLP		44TH FLR	1 FIRST CANADIAN PLACE		TORONTO	ON	M5X 1B1	CANADA
Davis Deadman	Jason P. Kathman	2701 Dallas Parkway, Suite 590			Plano	TX	75093	
Davis Deadman		Address on File						
DAVIS FORESTRY		PO BOX 24633			Little Rock	AR	72221	
Davis Polk & Wardwell	Attn Andrew Dean	450 Lexington Ave			New York	NY	10017	
Davis R. Deadman		Address on File						
Davis Wright Tremaine LLP		2600 Century Square 1501 Fourth Ave			Seattle	WA	98101-1688	
DAVIS, MARY M.		Address on File						
DAVIS, MARY MARTHA		Address on File						
Dawn ORourke		Address on File						
Day Pitney LLP		PO Box 416234			Boston	MA	02241-6234	CZECH REPUBLIC
DDC Financial Group s.r.o.		Bohusovicka 230-12	190 00 Prague		Praha 9			
DEADMAN, DAVIS		Address on File						
DealFlow Media, Inc		PO Box 122			Syosset	NY	11791	
Deana K. Adams	Official Court Reporter	600 Commerce, 630 C	6th Floor, East Tower		Dallas	TX	75202	
Deanne Engle		Address on File						
Debevoise & Plimpton		919 Third Ave			New York	NY	10022	
Debevoise & Plimpton LLC	M. Natasha Labovitz, Erica S. Weisgerber, Daniel E. Stroik c/o Accounting Dept. 28th Floor	919 Third Avenue			New York	NY	10022	
Debevoise & Plimpton LLP	Attn Christopher K. Tahbaz, Esq.	909 Third Ave			New York	NY	10022	
Debevoise and Plimpton LLP	Baker & McKenzie LLP	919 Third Avenue			New York	NY	10022	
Debra A. Dandeneau		452 Fifth Avenue			New York	NY	10018	
Debt Domain		295 Madison Ave	Ste 24		New York	NY	10017-0000	
Debtomain (USA) Inc.		295 Madison Ave	Suite 924		New York	NY	10017	
DECHERT LLP		PO BOX 7247-6643			Philadelphia	PA	19170-6643	United Kingdom
Dechert UK		160 Queen Victoria Street			London	England	EC4V 4QQ	
DEDYO, STEPHEN J.		Address on File						
DeGolyer & MacNaughton		5001 Spring Valley Rd	Suite 800 east		Dallas	TX	75244	
Del Vecchio Reporting Services, LLC		117 Randi Drive			Madison	CT	06443	
DELAROSA, STEVEN		Address on File						

APPX-90329

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
DELAWARE DIVISION OF CORPORATIONS	Division of Corporations	401 FEDERAL ST	STE 4		Dover	DE	19901	
Delaware Secretary of State	DIVISION OF CORPORATIONS	401 Federal St. Suite 4			Dover	DE	19901	
Delaware Secretary of State	Division of Corporations	PO BOX 11728			Newark	NJ	07101-4728	
Delaware Secretary of State	Division of Corporations	PO Box 5509			Binghamton	NY	13902-5509	
DELAWARE SECRETARY OF STATE # 51-6000279	Division of Corporations	PO Box 74072			Baltimore	MD	22174-4072	
DELAWARE SECRETARY OF STATE # 51-6000279		1209 Orange St			Wilmington	DE	19801	
DELAWARE SECRETARY OF STATE # 51-6000279	DELAWARE SECRETARY OF STATE # 51-6000279	State of Delaware Division of Corp	PO Box 5509		Binghamton	NY	13902-5509	
DELGADO, MAURICIO		Address on File						
Dell Business Credit		Payment Processing Center	PO Box 5275		Carol Stream	IL	60197-5275	
Dell Commercial Credit		Dept. 50-0049055190 PO BOX 689020			Des Moines	IA	50368-9020	
Dell Financial Services		Payment Processing Center	4307 Collection Center Dr.		Chicago	IL	60693	
Dell Financial Services L.L.C.	DFS-Bankruptcy	PO Box 81577			Austin	TX	78708	
Dell Marketing LP	c/o Dell USA LP	PO Box 676021			Dallas	TX	75267-6021	
DELOITTE & TOUCHE	ATTN KILEY RODEN	10 WESTPORT RD			Wilton	CT	06897	
Deloitte Financial Advisory Services LLP		4022 Sells Drive			Hermitage	TN	37076	
Deloitte Financial Advisory Services LLP		2200 Ross Ave			Dallas	TX	75201	
Deloitte Financial Advisory Services LLP		PO Box 2062			Carol Stream	IL	60132-2062	
Deloitte Tax LLP		4022 Sells Drive			Hermitage	TN	37076	
Deloitte Tax LLP		PO BOX 2079			Carol Stream	IL	60132-2079	
Deloitte Tax LLP		PO Box 844736			Dallas	TX	75284-4736	
Delphi Legal Technologies		350 N. Saint Paul Suite 275			Dallas	TX	75201	
Delphi Legal Technologies		PO Box 133026			Dallas	TX	75313-3026	
Delta Dallas Staffing, LP		15950 N. Dallas Pkwy, Ste 500			Dallas	TX	75248	
Deluxe Business Forms		Tollway Plaza II			Dallas	TX	75248	
Denison Glass & Mirror		PO Box 742572			Cincinnati	OH	45274-2572	
Dennis Sugino		4231 S State Highway 91			Denison	TX	75020-8115	
DENNIS WINTER IRA		Address on File						
Denton County		Address on File						
Denton County Tax Assessor		PO Box 90223			Denton	TX	76202	
Denton US LLP		Dept. 894579			Denton	TX	76202	
Dentons US LLP	Attn Lauren Macksoud, Esq. and Patrick Maxcy, Esq.	1221 Avenue of the Americas			Los Angeles	CA	90189-4579	
Dentons US LLP	Casey Doherty	1221 McKinney Street, Suite 1900			New York	NY	10020	
Denver Daughtry		Address on File			Houston	TX	77010-2006	
Department of Business Oversight		1515 K St #200			Sacramento	CA	95814	

APP-90324

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Department of Corporations (CA)		Securities Regulations Div.	320 W 4th St, Ste 750		Los Angeles	CA	90013-1105	
Department of Finance, State of Idaho		Securities Bureau	800 Park Boulevard, Suite 200		Boise	ID	83712	
Department of State	Division of Corporations	99 Washington Ave.			Albany	NY	12231-0001	
DEPARTMENT OF TAX AND REVENUE	WV STATE TAX DEPT	PO BOX 2745	INTERNAL AUDITING DIVISION		Charleston	WV	25330-2745	
Department of Taxation and finance		Dept of Labor-Unemp Insurance Div	PO Box 15012		Albany	NY	12212	
DEPARTMENT OF THE TREASURY	INTERNAL REVENUE SERVICE	ACS SUPPORT	PO BOX 57		Bensalem	PA	19020-8514	
DEPARTMENT OF THE TREASURY	IRS	STOP 5107 NWSAT	4050 ALPHA RD		Farmers Branch	TX	75244-4201	
DEPARTMENT OF THE TREASURY		Internal Revenue Service			Cincinnati	OH	45999-0009	
Department of the Treasury		4050 Alpha Road	Suite 517, MC 8000NDAL		Dallas	TX	75201-7849	
Department of the Treasury - Internal Revenue Service	Internal Revenue Service	1100 Commerce St	M/S MC5027DAL		Dallas	TX	75242	
Department of the Treasury - Internal Revenue Service	Internal Revenue Service	P.O. Box 7346			Philadelphia	PA	19101-7346	
Dept. of Licensing & Regulatory Affairs	Corp. Securities & Comm Licensing Bureau	525 W. Allegan Street - Audit & Exam Div			Lansing	MI	48909	
DERRICK PITTS		Address on File						
Desai, Neil		Address on File						
Dessaint, Louis C.		Address on File						
DEWITT, AUDREY		Address on File						
DFPG Investments, Inc.		9017 S. Riverside Dr.	Ste 210		Sandy	UT	84070	
DFW Ice Cream		10198 Western Hills Dr.			Frisco	TX	75034	
DFW MULTIMEDIA INC		1330 RIVER BEND DR	SUITE 850		Dallas	TX	75247	
DFW Private Equity Forum	Attn Amy Thompson	2323 Victory Avenue	Suite 2000		Dallas	TX	75219	
DFW VIDEO		DFW Multimedia, Inc.	13300 River Bend Drive, Ste. 850		Dallas	TX	75247	
DGHS Holdings, LLC		5949 Sherry Lane	Suite 750		Dallas	TX	75225	
Dhamodharan Srinivasan		583 Jeremy Drive			Bourbonnais	IL	60606	
Dhamidharka, Kerry		Address on File						
DHL EXPRESS		PO BOX 4723			Houston	TX	77210-4723	
DHR INTERNATIONAL, INC		10 South Riverside Plaza	Suite 2220		Chicago	IL	60606	
Dice Holdings, Inc.		4939 COLLECTIONS CENTER DR.			Chicago	IL	60693	
DICE INC					Chicago	IL	60693	
Dickman Davenport, Inc.		3131 Turtle Creek Blvd	Suite 320		Dallas	TX	75219	
DIECKHAUS, SCOTT		Address on File						
DIECKHAUS, SCOTT		Address on File						
DIFC Global		11-12 St. James Square			London			United Kingdom
DIFFA/Dallas		2050 Stemmons Fwy	Mail Unit 262		Dallas	TX	SW1Y 4LB	
Diffenderfer, Claude A.		Address on File					75207	
Digital Copy LLC		500 N Akard St, Suite 250			Dallas	TX	75201	
Digital Legal LLC		1001 Jefferson Plaza	Suite 100		Wilmington	DE	19801	

APP-9035



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Digital Marketing and Print Solutions		3305 Wiley Post			Carrollton	TX	75006	
Digital Mountain		5050 El Camino Real	Suite 205		Los Altos	CA	94022	
Digital Telefonos		PO Box 852184			Richardson	TX	75085-2184	
Digital Verdict, Inc.		750 N. St. Paul Street	Suite 1225		Dallas	TX	75201	
Digital Works		6606 LBJ Fwy	Suite 240		Dallas	TX	75240	
DingIn LLC		50 Milk St Ste 110			Boston	MA	02109-5004	
DiningIn Out in Dallas		3030 Olive Street	Ste 400		Dallas	TX	75219	
Dinoto Inc.		535 Dean Street	PH 102		Brooklyn	NY	11217	
DiOrto, Matthew		Address on File						
Direct Corporate Resources, Inc.		Freedom Center 10203 Koitzebue Ste 114			San Antonio	TX	78217	
Director of Compliance	Re Prime Brokerage Services	Jefferies LLC	520 Madison Avenue, 16th Floor		New York	NY	10022	
Directors Desk LLC		Lockbox 50200	PO Box 8500		Philadelphia	PA	19178-0200	
DirectTV		208 South Akard Street			Dallas	TX	75202-0000	
Directv, LLC		PO Box 60036			Los Angeles	CA	90060-0036	
DISCOVERY BENEFITS		3216 13TH AVE S			Fargo	ND	58103	
DISCOVERY BENEFITS		PO BOX 869	COBRA DEPT		Fargo	ND	58107	
DISCOVERY BENEFITS		PO BOX 9528			Fargo	ND	58107-0869	
DISCOVERY BENEFITS		PO BOX 2079			Omaha	NE	68108-2079	
Discovery Benefits Inc		4321 20th Ave. S.			Fargo	ND	58103-0000	
Discovery Data		12 Christopher Way, Ste 202			Eatontown	NJ	07724	
Displays Unlimited, Inc.		626 106th Street			Arlington	TX	76011	
District Director	Attn Insolvency	Internal Revenue Service	31 Hopkins Plaza, Room 1150		Baltimore	MD	21201	
Diversus Investment Advisers (Asia) Ltd		410 Oxford Street			Bondi Junction	NSW	02022	AUSTRALIA
DIVYASH PATEL		Address on File						
Dixon Hughes Goodman LLP		4350 Congress Street	Suite 900		Charlotte	NC	28209	
Dixon Hughes Goodman LLP		PO Box 602828			Charlotte	NC	28260-2828	
DKW Law Group LLC		600 Grant St, 58th Flr			Pittsburgh	PA	15219	
DLA Piper LLP (US)	Marc D. Katz, Esq.	DLA Piper LLP (US)	1900 N Pearl St, Suite 2200		Dallas	TX	75201	
DLA Piper LLP (US)		1900 N Pearl St, Suite 2200			Dallas	TX	75201	
DLA Piper LLP US		6225 Smith Avenue			Baltimore	MD	21209	
DOAR Communications, Inc.		170 Earle Ave			Lynbrook	NY	11563	
Document Technologies, Inc.		PO Box 933435			Atlanta	GA	31193-3435	
Don Bryant		Address on File						
Don Drive Interiors		8408 Chancellor Row			Dallas	TX	75247	
Don Netzer Photography		2510 Southwell Rd.	#107		Dallas	TX	75229	
Don Netzer Photography		2510 Southwell Rd. # 107			Dallas	TX	75229	
DONALD OSBORNE		Address on File						
Donald Salvino		Address on File						
DONALDSON, MICHEAL		Address on File						
Donaldson, Steven		Address on File						
DONDERO, JAMES		Address on File						
Donggeng Gong		Address on File						
Donnelley Financial Solutions		PO Box 842282			Boston	MA	02284-2282	

APPX-90326

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Donnelley Financial, LLC		35 W Wacker Drive			Chicago	IL	60601	
Donnelley Financial, LLC		20 Commerce Way, Ste 800	Lockbox #842282		Woburn	MA	01801-1057	
Donnelley Financial, LLC		PO Box 842282			Boston	MA	02284-2282	
Donnelley Financial, LLC		PO Box 531832			Atlanta	GA	30353-1832	
DOREBAUM, ANDREI		Address on File						
DOUG MEYER		Address on File						
DOUGHERTY, RAYMOND		Address on File						
DOUGHERTY, RAYMOND		Address on File						
Douglas Wade Carvell		Address on File						
Dow Jones & Company, Inc.	ATTN PAUL CHAMPIGNY	8251 PRESIDENTS DR	BARRON/CUSTOMER SERVICE		Orlando	FL	32809	
Dow Jones & Company, Inc.		84 Second Ave.			Chicopee	MA	01020	
Dow Jones & Company, Inc.		Subscriptions Dept.	200 Burnett Rd		Chicopee	MA	01020	
Dow Jones & Company, Inc.		1211 Avenue of the Americas			New York	NY	10036	
Dow Jones & Company, Inc.		BOX 4137			New York	NY	10261-4137	
Dow Jones & Company, Inc.		WALL ST JRNL OR BARRONS	PO Box 4137		New York	NY	10261-4137	
Dow Jones Reuters Business Interactive		PO Box 7247-0237			Philadelphia	PA	19170-0237	
Dozai, Ana		Address on File						
DRABINSKI, DANIEL J.		Address on File						
Dravis, Samantha		Address on File						
Drew Dedelow		Address on File						
Drew Thomas		Address on File						
DREW, RICHARD		Address on File						
Drilling Info, Inc.		PO Box 679093			Dallas	TX	75267-9093	
DrillingInfo		PO Box 5545			Austin	TX	78763	
Drinker Biddle & Reath LLP		One Logan Square, Ste 2000			Philadelphia	PA	19103-6996	
DRINNON, KASEY		Address on File						
DRONOV, ALEXEY		Address on File						
Dropoff, Inc.		Dept 3696	PO Box 123696		Dallas	TX	75312-3696	
DSFOP		PO Box 36023			Dallas	TX	75235-1023	
DSHS		Mail Code 2003	PO Box 149347		Austin	TX	78714-9347	
DST Asset Manager Solutions		330 W. 9th	Ste 219230		Kansas City	MO	64105	
DST RESEARCH ANALYTICS & CONSULTING, LLC		DST TECHNOLOGIES, INC	5523 Collections Center Drive		Chicago	IL	60693	
DST Systems, Inc.		2454 Collections Center Dr			Chicago	IL	60693-0024	
DST Technologies, Inc.		2454 Collections Center Drive			Chicago	IL	60693-0024	
DTCC ITP LLC		PO Box 27590			New York	NY	10087-7590	
Duane Morris LLP		30 South 17th St			Philadelphia	PA	19103-4196	
DUBOSE FUNERAL HOME		703 SOUTH ROCKWALL ST			Terrill	TX	75160	
Ducera Partners LLC		499 Park Ave, 16th Floor			New York	NY	10022	
Duff & Phelps, LLC		Benesch, Friedlander, Coplan & Aronoff	200 Public Square, Suite 2300		Cleveland	OH	44114-2378	
Duff & Phelps, LLC		2397 Paysphere Circle			Chicago	IL	60674	

APPX 90327

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Duff & Phelps, LLC		DUFF & PHELPS, LLC	12595 Collection Center Drive		Chicago	IL	60693	
Duff & Phelps, LLP	Benesch	LouAnne Molinaro	222 Delaware Avenue, Suite 801		Wilmington	DE	19801-1611	
Duff & Phelps, LLP	David A. Landman	200 Public Square, Ste. 2300			Cleveland	OH	44114	
Duff & Phelps, LLP	Richard G. Hardy, Esq.	1660 West 2nd Street, Suite 1100			Cleveland	OH	44113	
Duffy, James B.		Address on File						
Duffy, William		Address on File						
Dun & Bradstreet	Dun & Bradstreet Inc.	PO Box 75434			Chicago	IL	60675-5434	
Dun & Bradstreet	The Rowland Law Firm	PO Box 3108			Crofton	MD	21114	
Dun & Bradstreet	The Rowland Law Firm	Ronald L. Rowland, Authorized Agent	2453 Vineyard Lane		Crofton	MD	21114	
DUNN, CHRISTOPHER		Address on File						
Dunn, John		Address on File						
DUO Security		170 West Tasman Dr			San Jose	CA	95134	
Dustin Schneider		Address on File						
DUSTIN WORLEY		Address on File						
DuWest Realty		3319 Darmouth Ave.			Dallas	TX	75205	
DuWest Realty		4403 N Central Expy			Dallas	TX	75205	
DuWest Realty		4514 Cole Avenue	Suite 1100		Dallas	TX	75205	
Dykema Gossett, PLLC		400 Renaissance Center			Detroit	MI	48243-1668	
Dynamex		Greeley Square Station	PO Box 20284		New York	NY	10001	
Dynamex		PO BOX 20284 GREELEY SQ STATION			New York	NY	10001	
Dynamex		PO Box 842304			Dallas	TX	75284-2304	
E Gallery Studios		1330 Motor Circle			Dallas	TX	75207	
eA Data Automation Services, LLC								
EA Electric		5000 Olde Towne Parkway	Suite 100		Marietta	GA	30068	
EAB HealthWorks LLC		2941 Trade Center Drive	#200		Carrollton	TX	75007-4647	
Eagle Software		400 West End Ave	Suite 8A		New York	NY	10024	
Earl F. Hale, Jr.		124 Indiana Ave			Salina	KS	67401	
EarthColor Houston Inc.		Address on File						
Earthstream Global Inc.		PO Box 840578			Dallas	TX	75284-0578	
EASLEY & MARQUIS, PLLC		800 Town & Country Blvd	Suite 300		Houston	TX	77024	
Eastern Point Trust Company		5000 LEGACY DR	STE 400		Plano	TX	75024	
Eastern Point Trust Company, Inc.	Attn Accounts Receivable	PO Box 3322			Warrenton	VA	20188-3322	
Eastland CLO Ltd.	George S. Robinson, IV	4685 Millennium Drive			Belcamp	MD	21017	
Eastland CLO, Ltd.	c/o Ogier Fiduciary Services (Cayman) Limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Eastland CLO, Ltd.	Eastland CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Eastland CLO, Ltd.		P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town, Grand Cayman		KY1-1108	Cayman Islands

APPX 70328

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Eastland CLO, Ltd. and Investors Bank and Trust Company	Eastland CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1234	Queensgate House	The Directors-Eastland CLO, Ltd.	George Town, Grand Cayman		KY1-1108	Cayman Islands
Eastland CLO, Ltd. and Investors Bank and Trust Company	Investors Bank and Trust Company Attn CDO Services Group Ref Eastland CLO	200 Clarendon St 3637 Temecula Creek Trail	Mail Code EUC 108		Boston McKinney	MA TX	02116 75070	
Eckelkamp Retirement Planning		5550 S. Ft. Apache Rd 6850 Manhattan Blvd.	Suite 101 Suite 300		Las Vegas Fort Worth	NV TX	89148-7667 76120	
Eclipse Entertainment, LLC		PO Box 110849 Address on File			Carrollton	TX	75011-0849	
EcoSystems Environmental, Inc.		701 Central Plaza	18 Harbour Road	Wan Chai	HONG KONG			HONG KONG
Ed Trampolski		18th Flr Ferrum Tower 66 Address on File	Suite 900		Seoul		100210	South Korea
Edelman Pub Relations Worldwide (HK) Ltd		3900 Essex 50 Washington St 9th Flr			Houston Norwalk	TX CT	77027 06854	
Edelman Pub Relations Worldwide Korea Ltd		11200 Rockville Pike, Ste. 310 88747 Expedite Way			Rockville Chicago	MD IL	20852 60695-1700	
Eden, Hugh B.		5950 Berkshire Ln 807 West Lynn Ste 218	Suite 200		Dallas Austin	TX TX	75225 78703	
EDGAR filings, Ltd	c/o Michael D Breen	Address on File			Edina	MN	55424	
Edgar Online		5100 Wooddale Ave 2711 N. Haskell Ave.	Suite 2070, LB 18		Dallas	TX	75201	
Edgar Online		Address on File						
Edge Realty Partners		Address on File						
Edgewater Financial LLC		1 Thronal Circle			Darien	CT	06820	
Edjie Fox		1040 Avenue of the Americas 4939 Collections Center Dr	8th Floor		New York Chicago	NY IL	10018 60693	
Edina Country Club		Address on File						
Education is Freedom		Address on File			New York	NY	10022	
Edward A Barber		Address on File			Dallas	TX	75230	
Edward Lin		Address on File						
Edward McRedmond		Address on File						
Effort Group, LLC		Address on File						
efinancialcareers		Address on File						
efinancialcareers		Address on File						
Eftekhari, Cyrus		Address on File						
EGON ZEHNDER INTERNATIONAL		350 PARK AVE			New York	NY	10022	
Egret Management, Inc.		10515 Egret Lane			Dallas	TX	75230	
EIDSON, ALLISON		Address on File						
EIMEN, CATHERINE		Address on File						
EIMER STAHL KLEVORN & SOLBERG LLP		224 SOUTH MICHIGAN AVE	STE 1100		Chicago	IL	60604	
EIMN, LLC		225 Park Avenue South, 7th Floor			New York	NY	10003	
EL CONQUISTADOR GOLF RESORT CASINO	Attn Accounting Department	1000 EL CONQUISTADOR AVE			Fajardo	PR	00738	
Eliatia Abate		Address on File						
Eleanor Munson, PhD		Address on File						
Electra Cruises, Inc.		3439 Via Oporto			Newport Beach	CA	92663	
Elektronik Devices Company		1712 Poinciana Ln			Plano	TX	75075	

APP-90329

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ELGIN CAPITAL		130 JERMYN ST			London		SW1Y 4UR	United Kingdom
Eliason, Hayley		Address on File						
Eliot Weissberg	The Investors Center, Inc.	70 East Main St, POB 1447			Avon	CT	06001	
Elisa Dreier Reporting		950 Third Avenue 5th Floor			New York	NY	10022	
ELISABETH LEIDERMAN		780 Third Ave, 7th Flr			New York	NY	10017	
Elite Casino Events		Address on File						
		P.O. Box 6755			Fort Worth	TX	76115	
Elite Copy Solutions, Inc.		403 N Stemmons Freeway Ste 100			Dallas	TX	75207	
Elite Deposition Technologies		400 N. St Paul St, 13th Floor, Ste 1340			Dallas	TX	75201	
Elite Document Technology-Dallas		400 N. Saint Paul St.	Suite 1300		Dallas	TX	75201	
Elite Document Technology-Dallas		403 North Stemmons Freeway Suite 100			Dallas	TX	75207	
Elite Scheduling Services, LLC		8442 S. Union Lake Dr. SE			Alexandria	MN	56308	
Elkins McSherry		225 Liberty St	24th floor		New York	NY	10281-0000	
ELKINS/MCSHERRY, LLC	ATTN FINANCE	2 WFC	225 LIBERTY ST, 24TH FLR		New York	NY	10281	
ELKINS/MCSHERRY, LLC		1290 Avenue of the Americas	22nd Floor		New York	NY	10104	
Ellen W. Slight, Esq.	United States Attorney s Office	District of Delaware	1007 N. Orange Street, Suite 700		Wilmington	DE	19801	
Ellington, Scott	c/o Frances A Smith	Ross & Smith PC	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
Ellington, Scott		Address on File						
EMC Integrated Systems Group		121 Central Ave	Suite 200		Grapevine	TX	76051	
Emerald City Management		4688 Reunion Dr.			Plano	TX	75024	
Emerging Portfolio Fund Research, Inc.		PO Box 417184			Boston	MA	02241-7184	
Emerson Network Power		PO BOX 70474			Chicago	IL	60673-0001	
Emert, Craig		Address on File						
EMI Environmental Group		14850 Montfort Dr Ste 205			Dallas	TX	75254	
Emma Crutenden		Address on File						
EMMANUEL, ARTHUR		Address on File						
Emmet, Marvin & Martin, LLP		120 Broadway	32nd Floor		New York	NY	10271	
Employer Compliance Service		611 Pennsylvania Ave SE #4000			Washington	DC	20003-4303	
Employment Security Division		500 East Third Street			Carson City	NV	89713-0030	
EMSI-Examination Mgmt Services, Inc		Health Service Division			Dallas	TX	75391-0465	
ENA Capital, LLC	Attn Steve Elliman and Bob Kauffman	Eliman Management Group, Inc.	PO Box 910465		Dallas	TX	75391-0465	
Encore Discovery Solutions		4040 E. Camelback Road, Suite 250			Phoenix	AZ	85018	
Encore Live, LLC		Dept 2651	PO Box 122651		Dallas	TX	75312-2651	
Encore Productions		600 E Exchange Ave			Fort Worth	TX	76164-8246	
		2012 Greenbriar Lane			Plano	TX	75074	

APPX 90830

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
EnerCom, Inc.		800 18th Street	Suite 200		Denver	CO	80202	
Energy Search Associates, LLC		7709 San Jacinto Place	Ste 206		Plano	TX	75024	
EnergyNet Services, Inc.		7201 W. Interstate 40	Suite 319		Amarillo	TX	79106	
ENGSTROM, DONNA		Address on File						
EnMark Services, Inc.		1700 Pacific Avenue	Suite 2660		Dallas	TX	75201	
ENOCH, KEVIN		Address on File						
Entwistle & Cappucci LLP		280 Park Ave	26th Floor West		New York	NY	10017	
Envestnet Tamarac		701 5th Ave, Ste 1400			Seattle	WA	98104	
Envoy Data Corporation		1310 W. Boxwood Ave			Gilbert	AZ	85233	
EPFR Global		PO Box 417184			Boston	MA	02241-7184	
Epiq eDiscovery Solutions		Dept 2651	PO Box 122651		Dallas	TX	75312-2651	
Episcopal School of Dallas	Karla Wigley	ESD Development Office	4100 Merrell Rd.		Dallas	TX	75229	
Episcopal School of Dallas		4100 Merrell Rd			Dallas	TX	75229	
Epocal		2060 Walkley Rd.			Ottawa	ON	K1G 3P5	CANADA
Equest		PO Box 2109			Wylie	TX	75098	
Equest		PO Box 171779			Dallas	TX	75217	
Equity Search Partners		200 Crescent Court, Ste 1300			Dallas	TX	75201	
Equivalent Data		4809 Westway Park Blvd.	Payment Center		Houston	TX	77041	
eRevival LLC		141 Lanza Ave	Bldg 5		Garfield	NJ	07026	
Eric Girard		Address on File						
ERIC KEPHART		Address on File						
ERIC MARK		Address on File						
Eric Pearson		Address on File						
Eric Reynolds		Address on File						
Eric Thayer		Address on File						
Erick Rawlings		Address on File						
Erin Sheehan		Address on File						
Ernst & Young		200 Plaza Drive			Secaucus	NJ	07094	
ERS		101 S Coit Rd Bldg 36, Ste 297			Richardson	TX	75080	
Erskine Chambers - Andrew Blake		33 Chancery Lane			London		WC2A 1EN	United Kingdom
Erskine Chambers - Michael Todd		33 Chancery Lane			London		WC2A 1EN	United Kingdom
Escudero, Gaston		Address on File						
ESD	ATTN SARA CAMPBELL	EPISCOPAL SCHOOL OF DALLAS	4100 MERRELL RD		Dallas	TX	75229	
Esquire Deposition Services, LLC		PO Box 827829			Philadelphia	PA	19182-7829	
Esquire Deposition Solutions, LLC		PO Box 846099			Dallas	TX	75284	
Esquire Litigation Solutions, LLC		PO Box 785751			Philadelphia	PA	19178-5756	
Estevez, Jaime		Address on File						
Estudio ROVIRA		1850 North Greenville Ave #158			Richardson	TX	75081	
ETCI		PO Box 3512			Arlington	VA	22203	
ETrade Financial	Altn AR/Mutual Funds							

001-7033

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
EUROMONEY								
INSTITUTIONAL INVESTOR		PO Box 4009			Chesterfield	MO	63006-4009	
EuroUSA Shipping Inc.		1826 Hollars Place			Middleburg	FL	32068	
Evans & McFarland, LLC		4643 S. Ulster, Suite 800			Denver	CO	80237	
Evans, Christian		Address on File						
EventWork Photography, LLC		1712 Midcrest Dr			Plano	TX	75075	
Evercore Restructuring LLC		55 East 52 St			New York	NY	10055	
eVestment		5000 Ole Towne Parkway	Suite 100		Marietta	GA	30068	
Evoque Data Center		250 Vesey Street 15th Floor			New York	NY	10281-0000	
EWIRE Inc		One Lincoln Centre	Suite 1060		Dallas	TX	75240	
EWING, LEAH		Address on File						
Exagere LLC		227 Dauphine			New Orleans	LA	70112	
Exclaimer Ltd.		445 Park Avenue	9th Floor		New York	NY	10022	
EXECUTIVE BEVERAGE SERVICE		PO BOX 850783			Richardson	TX	75081	
EXECUTIVE BEVERAGE SERVICE		5032 DICKENS LN			CARROLLTON	TX	75010-4915	
Executive Charge, Inc.		1440 39th St			Brooklyn	NY	11218	
Executive Liquidation		100 Redneck Avenue			Moonachie	NJ	07074	United Kingdom
Executive Office Group Limited		23 Berkeley Square			London		W1J 6HE	
Executive Scheduling Associates, Inc.		215 Lake Blvd. Ste 367			Redding	CA	96003	
Experience, Inc.		2 Faneuil Hall Marketplace	3 rd Floor		Boston	MA	02109	
Experis Finance US, LLC		PO Box 905378			Charlotte	NC	28290-5378	
EXPERT PAY		PO BOX 659791			San Antonio	TX	78265-9791	
Exterior Consulting Innovations, Inc.		1406 S Clark Rd			Duncanville	TX	75137-2811	
F5		801 5th Ave			Seattle	WA	98104-0000	
Fabriclean, Inc.		11-39 50th Ave			Long Island City	NY	11101	
Factiva		PO BOX 30994			New York	NY	10261	
Factiva Factory Builder Stores		DJRBI, LLC	PO Box 7247-0237		Philadelphia	PA	19170-0237	
FACTSET RESEARCH SYSTEMS, INC.		512 E Dallas Rd	Ste 500		Grapevine	TX	76051	
FACTSET RESEARCH SYSTEMS, INC.		301 Merritt 7, 3rd Floor			Norwalk	CT	06851	
Fafinski Mark & Johnson, P.A.		PO BOX 414756			Boston	MA	02241-4756	
Fair Harbor Capital, LLC		775 Prairie Center Drive, Suite 400			Eden Prairie	MN	55344	
Fair Harbor Capital, LLC	As Assignee of Action Shred of Texas	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	As Assignee of CVE Technologies Group Inc.	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	As Assignee of Daniel Sheehan & Associates, PLLC	Ansonia Finance Station	PO Box 237037		New York	NY	10023	

APP-90832



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Fair Harbor Capital, LLC	As Assignee of Vengroff Williams Inc as Authorized Agent of American Arbitration Association	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	Frederick Glass	130 West 57th Street, 5th Floor			New York	NY	10019	
Fair Market Life Settlements Corporation		435 Ford Rd	Suite 120		St. Louis Park	MN	55426	
FAIRMONT DALLAS		1717 N AKARD ST	COLIZ BAKER, GROUP BILLING COORDINATOR		Dallas	TX	75201	
Faith Petersen		Address on File						
Falcon E&P Opportunities GP, LLC	c/o PetroCap LLC	Marc Manzo	2602 McKinney Avenue	Suite 400	Dallas	TX	75204	
Family Compass		4210 Junius Street			Dallas	TX	75246	
Family Office Association		500 West Putnam Ave.	Suite 400		Greenwich	CT	06830	
Fanning & Associates		PO Box 37			Denton	TX	76202	
Fanning & Associates		226 Sanders Rd			Denton	TX	76210	
FARIA, RICHARD		Address on File						
Farouk Z Lajji		Address on File						
FASKEN MARTINEAU DUMOULIN		STE 4200 TORONTO DOMINION BANK TOWER	BOX 20 TORONTO-DOMINION CENTRE		TORONTO	ON	M5K 1N6	CANADA
FASTFRAME		3001 Knox Street	#105		Dallas	TX	75205	
FASTFRAME		11107 Sesame Street			Dallas	TX	75238	
Fat Ox		7715 E Montebello Avenue			Scottsdale	AZ	85250	
Fauxcades, Inc.		8888 Governors Row			Dallas	TX	75247	
Feast of Sain Arnold		8 Fourth Street			Colorado Springs	CO	80906	
Federal Insurance Company	Federal Insurance Company	202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
Federal Insurance Company	c/o Chubb	202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
FedEx		4103 COLLECTION CENTER						
FedEx		DR			Chicago	IL	60693	
FedEx		Dept CH PO Box 10306			Palatine	IL	60055-0306	
FedEx		PO Box 94515			Palatine1	IL	60094-4515	
FedEx		PO Box 660481			Dallas	TX	75266-0481	
FEDORYSHYN, ERIC		Address on File						
FEHLIG, STACEY		Address on File						
Felhaber Larson Fenlon & Vogt		220 Southy 6th Street	Ste 2200		Minneapolis	MN	55402-4504	
Felicity Toube QC		3-4 South Square	Grays Inn		London		WC1R 5HP	United Kingdom
Ferguson, Misty		Address on File						
FERRELL, JOHN		Address on File						
Fetzer Architectural Woodwork		6223 West Double Eagle Circle			West Valley City	UT	84118	
Fidelity Information Services		PO Box 911653			Dallas	TX	75391-1653	
Fidelity Information Services Inc		PO Box 18012			Ashburn	VA	20146	

APPX 90339

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Fidelity Information Services Inc		Payment Processing Center	PO Box 4535		Carol Stream	IL	60197-4535	
Fidelity Investments Institutional		Operations Company, Inc.	PO Box 73307		Chicago	IL	60673-7307	
Fidelity National Information Services		Payment Processing Center	PO Box 18012		Ashburn	VA	20146	
FIGARI & DAVENPORT LLP		901 MAIN ST	3400 BANK OF AMERICA PLAZA		Dallas	TX	75202-3796	
FINANCIAL ACCOUNTING STANDARDS BOARD		PO BOX 630420			Baltimore	MD	21263-0420	
FINANCIAL AGENT		FEDERAL TAX DEPOSIT PROCESSING	PO BOX 970030		Saint Louis	MO	63197	
Financial Data Services, Inc.	Cash Management	4800 Deer Lake East Dr, 2nd Flr			Jackson	FL	32246-6484	
Financial Fineprint, Inc		1619 3rd Ave Apt 7K			New York	NY	10128-3036	
FINANCIAL GRAPHIC SERVICE, INC.		2910 S 18th AVE			Broadview	IL	60155-4727	
Financial Graphic Services		PO Box 85090			Chicago	IL	60680-0851	
Financial Industry Regulatory Authority		15200 Omega Drive, Suite 210			Rockville	MD	20850	
Financial Investment News		41 Union Square West	Suite 1021		New York	NY	10003	
Financial Investment News		267 Fifth Avenue	Suite 1010		New York	NY	10016	
Financial Media Group, LLC		9635 Maroon Circle	Ste 150		Englewood	CO	80112	
Financial Planning Association		1290 N Broadway # 1625			Denver	CO	80203-2122	
Financial Planning Association of Iowa	Attn Erin Ramsey	914 NE 53rd Court			Ankeny	IA	50021	
Financial Research Associates	ATTN Teri Lewis	18705 NE Cedar Drive			Battle Ground	WA	98604	
Financial Research Associates, LLC	Attn Teri Lewis	18705 NE Cedar Drive			Battle Ground	WA	98604	
Financial Research Associates, LLC		200 Washington Street	Suite 201		Santa Cruz	CA	95060	
Financial Risk Management		888 Seventh Ave			New York	NY	10019	
Financial Services Institute		607 14th St, NW	Suite 750		Washington	DC	20005	
Financial Services Institute		PO Box 116730			Atlanta	GA	30368-6730	
Financial Times		PO Box 1627			Newburgh	NY	12551-9976	
Financial Tracking		1111 East Putnam Ave	Ste 304		Riverside	CT	06878-0000	
Financial Tracking Technologies LLC		2 Soundview Dr, Ste 100			Greenwich	CT	06830	
Financial Tracking Technologies LLC		1111 E Putnam Ave.	Suite 304		Riverside	CT	06878	
Financial West Group	Attn Nicole White	4510 E. Thousand Oaks Blvd.			Westlake Village	CA	91362	
Fink, Jason		Address on File						
FINRA		1735 K Street, NW			Washington	DC	20006	
Fire Works Media Productions		2440 Pebblebrook Ct.			Grand Prairie	TX	75050	
First Allied Securities	Attn Commission Accounting	655 W. Broadway, 11th Flr			San Diego	CA	92101	

APP-90334

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
First American Title Insurance Company		8311 W. Sunset Road	Suite 100		Las Vegas	NV	89113	
First Financial Network, Inc.		14000 Quail Springs Pkwy, Ste 200			Oklahoma City	OK	73134	
First Foundation Advisers		18101 Von Karman Avenue	Suite 750		Irvine	CA	92612	
First Foundation Inc.		18101 Van Karman Avenue	Ste 700		Irvine	CA	92612	
First Page Management LLC dba StatusLabs		151 South 1st	Ste 100		Austin	TX	78704-0000	
First Presbyterian Church		One West Putnam Ave			Greenwich	CT	06830	
First Southwest		325 North St. Paul St	Suite 800		Dallas	TX	75201	
First Trust Highland Floating Rate Fund		330 Bay St Ste 1300			Toronto	ON	M5H2S8	CANADA
FIS Brokerage & Securities Services LLC		62446 Collections Center Drive			Chicago	IL	60693-0624	
FIS Investment Systems LLC		601 Riverside Ave			Jacksonville	FL	32204	
Fischer Porter & Thomas, PC		440 Sylvan Avenue, Suite 130			Englewood Cliffs	NJ	07632-2700	
FISH & RICHARDSON P.C.		PO BOX 3295			Boston	MA	02110	
FITEH, STEPHANIE		Address on File						
FITEH ZEGEYE		Address on File						
FITZSIMMONS, BRIAN		Address on File						
Five Blocks, Inc.		5967 West 3rd Street	Suite 307		Los Angeles	CA	90036	
FJJ INTERNATIONAL		858 TOWER VIEW CIRCLE			New Hope	PA	18938	
Flagship Cruises & Events		PO Box 120751			San Diego	CA	92112	
Flaherty, Sensabaught, & Bonasso, PLLC		200 Capital St	PO Box 3843		Charleston	WV	25338-3843	
Fleming Zulack Williamson Zauderer LLP		One Liberty Plaza	35th Floor		New York	NY	10006-1404	
Flexential		11900 East Cornell Avenue	Building B, 3rd Floor		Aurora	CO	80014-0000	
Flexential Colorado Corp.		8809 Lenox Point Drive	Suite G		Charlotte	NC	28273	
Flexential Colorado Corp.		PO Box 732368			Dallas	TX	75373-2368	
Flink, Robert		Address on File						
Fiorance & Associates Consulting		1475 Richardson Dr.	Suite 270		Richardson	TX	75080	
Florida Department of Banking & Finance		200 East Gaines Street			Tallahassee	FL	32399-6502	
FLORIDA DEPARTMENT OF REVENUE		5050 W TENNESSEE ST			Tallahassee	FL	32399-0135	
Florissant Geological, LLC		5214 Vanderbilt Ave.			Dallas	TX	75206	
Flossie ORiley Photography		701 Woodcrest Dr			Hurst	TX	76053-4921	
Foley Gardere		Foley & Lardner LLP	2021 McKinney Avenue Suite 1600		Dallas	TX	75201	
FOLLEY GARDERE		2021 MCKINNEY AVENUE	SUITE 1600		Dallas	TX	75201	
Foley Gardere, Foley Lardner LLP		2021 McKinney Avenue, Ste. 1600			Dallas	TX	75201	
Folks & Associates		PO Box 851168			Mesquite	TX	75185-1168	
Forbes		PO BOX 5468			Harlan	IA	51593-0968	
Forbes		PO Box 5474			Harlan	IA	51593-0974	
Fordham, Michael		Address on File						

APP-90335

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Forensic Risk Alliance		Third Floor, Audrey House	Ely Place		London		EC IN- 6SN	United Kingdom
Forside Consulting Services, LLC		3 Canal Plaza	Suite 100		Portland	ME	04101	
Forside Consulting Services, LLC		PO Box 7556			Portland	ME	04112-7556	
Forside Financial Services, LLC		3 Canal Plaza	Suite 100		Portland	ME	04101	
Forest Resource Consultants, Inc		964 Georgia Ave Ste 100			Macon	GA	31201-6766	
Forest2Market, Inc.	ATTN Accounts Receivable	10030 Park Cedar Drive	Suite 201		Charlotte	NC	28210-8902	
Forney & Terrell Alarm Systems, LLC		P.O. Box 341			Terrell	TX	75160	
Forns, Alison		Address on File						
Forrest A. Garb & Associates, Inc.		5310 Harvest Hill, Ste 130			Dallas	TX	75230	
Forshey & Prostok, L.L.P. - IOLTA		777 Main St, Ste 1290			Fort Worth	TX	76102	
FORSIGHT Resources, LLC		8761 Dorchester Rd	Suite 102		North Charleston	SC	29420	
Fort Worth Stock Show Syndicate		PO Box 17005			Fort Worth	TX	76102	
Fort Worth Wildcatters		777 Main Street #800			Fort Worth	TX	76102	
Fortune		PO Box 60400			Tampa	FL	33660-0400	
Fortune		PO BOX 61460			Tampa	FL	33661-1460	
FORTUNE Personnel Consultants of Troy		560 Kirts Blvd	Suite 102		Troy	MI	48084	
Foundation for BrainHealth Advances	Center for BrainHealth	2200 West Mockingbird Lane			Dallas	TX	75235	
Four Seasons Plantscaping, LLC		139 Turtle Creek Blvd.			Dallas	TX	75207-6807	
Four Seasons Plantscaping, LLC		PO Box 793429			Dallas	TX	75379-0000	
FOWLER HATLEY		Address on File			Philadelphia	PA	19103-3222	
Fox Rothschild LLP	Attn Accounts Receivable-60	2000 Market St, 20th Floor						
FOX, SEAN		Address on File						
FPA Connecticut State Conference		95 West St			Rocky Hill	CT	06067	
FPA of Middle Tennessee	Patricia Fisher, Chapter Exec	PO Box 150608			Nashville	TN	37215	
FPA South Florida		8930 State Rd, Ste 316			Davie	FL	33324	
FPA NJ		551 Valley Rd #365			Upper Montclair	NJ	07043	
FPC	FORTUNE Personnel Consultants of Troy	560 Kirts Blvd.	Suite 102		Troy	MI	48084	
FPC OF SAVANNAH, INC.		PO BOX 8846			Savannah	GA	31412	
FPG CT Owner LP		PO Box 5297	Lockbox 305297		New York	NY	10008-5297	
FPG Galleria Two Owner, LP		PO Box 3085			Hicksville	NY	11802-3085	
FRAGOMEN, DEL REY, BERNSEN & LOEWY LLP		99 WOOD AVE SOUTH	10TH FLR		ISELIN	NJ	08830	
Frances Wildhaber		Address on File						

APP-90336

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Franchise Tax Board	Bankruptcy Section MS A340	PO Box 2952			Sacramento	CA	95812-2952	
FRANCHISE TAX BOARD		PO BOX 942857			Sacramento	CA	94257-0511	
FRANCIS X GRAY & CO		122 W 26TH ST	STE 1101		New York	NY	10001	
Frank Cunningham		Address on File						
Frank Russell Company		NW 6327	PO Box 1450		Minneapolis	MN	55485-6327	
Frank Waterhouse	c/o David Neier	Winston Strawn LLP	200 Park Avenue		New York	NY	10166	
Frank Waterhouse	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue		New York	NY	10018	
Frank Waterhouse	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Frank Waterhouse	Ross & Smith, PC	Plaza of the Americas	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
Frank Waterhouse		Address on File						
Franke Foodservice Solutions		3149 Paysphere Circle			Chicago	IL	60674-0031	
Frederick C. Moss		Address on File						
FreedomPark LP		7501 Esters Blvd	Ste. 130		Irving	TX	75063	
FreeMotion Fitness		PO Box 99661			Chicago	IL	60690	
FRICK, TINA		Address on File						
FridsonVision		54 W 21st ST	STE 1007		New York	NY	10010	
Fried Frank Harris Shriver & Jacobson		1 Penn Plaza Ste 3600			New York	NY	10119	
Fried, Frank, Harris, Shriver & Jacobson		One New York Plaza			New York	NY	10004-1980	
Friedman Kaplan Seiler & Adelman LLP		One New York Plaza			New York	NY	10004-1980	
Friedreichs Ataxia Research Alliance		1633 BROADWAY			New York	NY	10019-6708	
Friends of the Dallas Fire Dept.		533 W. Uwachlan Avenue			Downington	PA	19335	
Friends of the Dallas Police	c/o Ray Cheery	Dallas Security Systems PO Box 550939			Dallas	TX	75355-0939	
Friends of the IDF		3232 McKinney Ave	#855		Dallas	TX	75204	
FRITZ, ERIC		29 E MADISON ST			Chicago	IL	60602	
Frizell, Madeline		Address on File						
Frizell, Madeline		Address on File						
Front Sight Focus	Attn Tamera Watt	PO Box 12292			Raleigh	NC	27605	
Frontier State Bank	Attn Mr Steve Elliott	5100 South I-35 Service Road			Oklahoma City	OK	73129	
Frontline Source Group, Inc.		901 Main Street	Suite 4010		Dallas	TX	75202	
FSC Securities Corporation	Attn Reimbursement Processing	Lockbox 101092	3585 Atlanta Ave		Hapeville	GA	30354	
FSC Securities Corporation	Attn Shelly Kooiker	3737 Woodland Ave, Ste 500			West Des Moines	IA	50266	
FT Interactive Data		32 CROSBY DR			Bedford	MA	01730	
FT Interactive Data Corporation		PO Box 98616			Chicago	IL	60693	
FTI CONSULTING		22 Crosby Drive			Bedford	MA	01730-0000	
FTI CONSULTING		2001 Ross Ave	Suite 400		Dallas	TX	75201	
FTI CONSULTING		PO BOX 630391			Baltimore	MD	21263-0391	

APP-90337

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
FTI Consulting, Inc.		Three Times Square	10th floor		New York	NY	10036-0000	
Fuentes, Brian		Address on File						
Fulbright & Jaworski		2200 Ross Ave Ste 2800			Dallas	TX	75201-2784	
Fulbright & Jaworski		FULBRIGHT TOWER	1301 MCKINNEY	SUITE 5100	Houston	TX	77010-3095	
Fullmer, Kevin		Address on File						
Fullmer, Kevin		Address on File						
Fun Time Faces TX		417 Parkhurst Drive			Dallas	TX	75218	
FUNDFIRE	Money-Media, Inc.	1430 Broadway, 12th Flr	Suite 1208		New York	NY	10018	
FURNITURE FOR BUSINESS		14 CARLSON COURT			London			United Kingdom
Furniture Solutions Now Ltd.		1505 Oak Lawn Ave	Suite 300		Dallas	TX	SW15 2NQ 75207	
FUSE Research Network, LLC		200 Highland Avenue	Suite 403		Needham	MA	02494	
Fusion GPS		2122 P Street NW	Suite 202		Washington	DC	20037	
G.L. Seaman & Company		4201 International Parkway			Carrollton	TX	75007	
G.Neil Corporation		PO Box 451179			Sunrise	FL	33345-1179	
Gabriel Moss QC					London			United Kingdom
GAGE, CASEY S		3-4 South Square, Grays Inn						
Gail Davis & Associates, Inc.		Address on File	Suite 740		Dallas	TX	75219	
Gail Spurgeon		Address on File						
Gallop, Johnson & Neuman, L.C.		101 S Hanley Ste 1600			Saint Louis	MO	63105	
Game On!		502 South 2nd Avenue			Dallas	TX	75226	
Gaming Today		PO Box 93116			Las Vegas	NV	89193	
Garcia & Associates Security		Two Penn Plaza Ste 1500			New York	NY	10121	
GARCIA, ERICKA		Address on File						
GARDERE WYNNE SEWELL LLP		1000 LOUISIANA	STE 3400		Houston	TX	77002-5011	
Gardner Haas PLLC		2501 N. Harwood Street	Suite 1250		Dallas	TX	75201	
Gardner, William		Address on File						
Garland Independent School District		c/o Perdue Brandon Fielder et al	1919 S. Shiloh Road, Suite 310, LB 40		Garland	TX	75042	
Garman Turner Gordon	Linda D. Reece	Address on File						
Garman Turner Gordon	William M. Noall	7251 Amigo St Ste 210			Las Vegas	NV	89119-4302	
Gartner Inc		PO BOX 911319			Dallas	TX	75391-1319	
Gary Cao		Address on File						
Gary Durham Consulting, LLC		200 Crescent Court	Suite 1414		Dallas	TX	75201	
Gary Fitzsimmons, District Clerk		600 COMMERCE ST	STE 716		Dallas	TX	75202-4606	
Gary L. Gardner		Address on File						
Gary Sinsie Foundation		PO Box 368			Woodland Hls	CA	91365-0368	
Gary V McGowan		Address on File						
GARZA, LAUREN		Address on File						
Gateway Financial Advisors, Inc.		4101 Dublin Blvd.	Suite F, PMB 57		Dublin	CA	94568	
GATHINGS, SALLY		Address on File						
GATZKI, KENT		Address on File						

APPX 722

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
GAUNTT, AMANDA		Address on File						
Gaurav Singhal		Address on File						
Gautier, Chris		Address on File						
Gazelle Court Reporting Services, LLC		2807 Allen Street, No 727			Dallas	TX	75204	
GDHCC		4622 MAPLE AVE	STE 207		Dallas	TX	75219	
Geeks Who Drink LLC		9450 SW Gemini Dr # 84921			Beaverton	OR	97008-7105	
General American Life Insurance		PO Box 790201			Saint Louis	MO	63179-0196	
General Information Services	ATTN Sara Leslie	12770 Coit Rd, Ste 300			Dallas	TX	75251	
General Information Services		PO Box 538450			Atlanta	GA	30353-8450	
Geomap Company		PO Box 671077			Dallas	TX	75267-1077	
George Bates		Address on File						
George Catering		PO Box 140537			Dallas	TX	75214	
GEORGE FEIGER IRA		Address on File						
George Mathew		Address on File						
George W. Bush Foundation		2943 SMU Blvd	Leslie Cravens, Catering		Dallas	TX	75205	
George W. Bush Foundation		PO Box 600610			Dallas	TX	75360	
George W. Bush Presidential Center		Library and Museum	2943 SMU Boulevard		Dallas	TX	75205	
GEORGIA DEPARTMENT OF REVENUE		2943 SMU Boulevard			Dallas	TX	75205	
GEORGIA DEPARTMENT OF REVENUE		TAXPAYER SERVICES DIVISION	PO BOX 105499		Atlanta	GA	30348-5499	
GEORGIA DEPARTMENT OF REVENUE		Processing Center	PO Box 740239		Atlanta	GA	30374-0239	
GEORGIA DEPARTMENT OF REVENUE		PROCESSING CENTER	PO BOX 740320		Atlanta	GA	30374-0320	
Georgia Secretary of State		2 Martin Luther King Jr. Drive	Suite 820 West Tower		Atlanta	GA	30334	
Geraghty, Dougherty and Edwards		1531 Hendry St, PO Box 1605			Ft. Myers	FL	33902	
Gerry Gartenberg Productions, Inc.		3 New York Avenue			White Plains	NY	10606	
Gerson Lehman Group		850 Third Ave	9th Floor		New York	NY	10022	
Gerson Lehman Group		BOX 200589			Pittsburgh	PA	15251-0589	
Getty Images US Inc.		PO Box 84434			Seattle	WA	98124-5734	
GHV Settlement Fund	C/O Richard Haskell	920 N Stone Ave			Lagrange Park	IL	60526	
Gianna Cerullo		Address on File						
GIBB, ALLISON		Address on File						
Gibbs & Bruns LLP		1100 Louisiana Street	Suite 5300		Houston	TX	77002	
GIBBSPRODUCTIONS		2429 Connecticut Lane			Dallas	TX	75214	
Gibson, Dunn & Crutcher LLP		333 South Grand Ave			Los Angeles	CA	90071	
Gifford Fong Associates		3658 Mt. Diablo Boulevard	Suite 200		Lafayette	CA	94549-4751	
Gigantic Color		PO Box 740209, Dept# 7052			Atlanta	GA	30374	
Gilbert Bromley		Address on File						
Gilbert Martinez Jr.		Address on File						
GILCHRIST, CLINT		Address on File						
GILL, NICOLE		Address on File						
GILLES, ERIN		Address on File						

APP-90339



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Gillian C. Sartini		Address on File						
GILLIAN, KATIE		Address on File						
Gils Elegant Catering		Address on File						
GIMBEL, JESSICA D.		1001 MacArthur Blvd			Grand Prairie	TX	75050	
Girard Securities, Inc.		Address on File						
GIRARD, ERIC	Attn Connie Goodell	5405 Morehouse Dr Ste 135			San Diego	CA	92121-4767	
		Address on File						
Girard, Kovarik & Associates	Attn Robert Danion	101 N. Clematis St, Ste 200			West Palm Beach	FL	33401	
GLASGOW, SAMUEL		Address on File						
Glassdoor		1 Harbor Drive	Suite 300		Sausalito	CA	94965	
Glassdoor		Dept 3436	PO Box 123436		Dallas	TX	75312-3436	
Glast, Phillips, & Murray		2200 One Galleria Tower	13355 Noel Rd, LB 48		Dallas	TX	75240-1518	
GLC Advisors & Co., LLC		451 Jackson Street	2nd Floor		San Francisco	CA	94111	
Gleneagles CLO, Ltd	The Directors	PO Box 1093 GT	Queensgate House, South Church Street		Grand Cayman		KY1-11-8	Cayman Islands
Gleneagles CLO, Ltd.		PO Box 1093 GT, Queensgate House	South Church Street		Grand Cayman			Cayman Islands
Gleneagles CLO, Ltd.								
JPMorgan Chase Bank, National Association	JPMorgan Chase Bank, National Association	600 Travis 50th Floor	Worldwide Securities Service	Gleneagles CLO, Ltd. Telecopy	Houston	TX	77002	
GLENN KIM		Address on File						
Glenn Morrison		Address on File						
Global Alpha Forum, LLC		30 Old Kings Hwy South			Darien	CT	06820	
Global Experience Specialists, Inc.		Bank of America, PO Box 96174			Chicago	IL	60693	
GLOBAL FINANCIAL SERVICES		PO BOX 856460			Louisville	KY	40285-6460	
Global Recruiters of Mid-Cities		PO Box 2165			Bedford Park	IL	60499-2165	
Global Shares Inc.		111 Town Square Place	Suite 1401		Jersey City	NJ	07310	
Global Shares Ireland Ltd		Unit 2, Building D,	West Cork Technology Park Clonkality Co. Ste 100		Cork		P85 EY90	IRELAND
GlobalMacro Partners, LLC		1755 S. Naperville Rd			Wheaton	IL	60189	
GLOBE STORAGE & MOVING CO. INC		36 BLEECKER ST						
Glocap Search LLC		156 W 56th St.	4th Floor		New York	NY	10012	
Gloss Luxury Event Rentals		6525 Briarhaven Drive			New York	NY	10019	
GM SNYDER AND ASSOCIATES					Dallas	TX	75240	
GoDaddy		300 Ozark Trail Drive	Suite 104		Saint Louis	MO	63011	
Godfrey		14455 N. Hayden Rd.	Ste. 219		Scottsdale	AZ	85260	
Godier, Lindsey		1000 Louisiana	Suite 5100		Houston	TX	77002-5096	
Goetz, Matthew X.		Address on File						
Goetz, Matthew X.		Address on File						
Goglia PLLC		Address on File						
		4519 Melissa Lane			Dallas	TX	75229	
Gold Crown Valet Parking, Inc.		901 Waterfall Way	Suite 107		Richardson	TX	75080	
GOLD LION		8043 Abramshire Ave			Dallas	TX	75231	

APPX 70340

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Gold Medal Strategies, Inc.		319 1st Street West			Tierra Verde	FL	33715	
Gold Star Distributors, Inc.		PO Box 831150			Richardson	TX	75083-1150	
Golds Gym International	Altn Corporate Billing	125 E John Carpenter Frwy	Suite 1300		Irving	TX	75062	
Golds Texas Holdings Group, Inc		4001 Maple Avenue	Suite 200		Dallas	TX	75219	
Goldsmith Associates, PLLC		4001 Maples Avenue Ste 200			Dallas	TX	75219-0000	
GOLDSMITH, JASON		6540 Highgate Lane			Dallas	TX	75214	
GOLDSMITH, SARAH B.		Address on File						
Golf Balls Galore, Inc.		Address on File						
GONZAGA, GABRIELLA		2181 J and C Blvd			Naples	FL	34109	
GONZALEZ, EVAN		Address on File						
GOOD FULTON & FARRELL		Address on File						
Goodwin and Marshall, Inc.		2808 FAIRMOUNT ST	STE 300		Dallas	TX	75201	
GOODWIN PROCTER LLP		2405 Mustang Drive			Grapevine	TX	76051	
Gordon, Fournaris & Mammarella, P.A.		EXCHANGE PLACE	53 STATE STREET		Boston	MA	02109	
Gosserand, Boyd		1925 Lovering Avenue			Wilmington	DE	19806	
Gotham Promotions		Address on File						
GourmeATS - Kevin Ashade		67 Sullivan St			New York	NY	10012	
Governance Re Ltd.		1407 Main St.	Apt 1703		Dallas	TX	75202	
Governance Re Ltd.		Wellesley House North	2nd Floor, 90 Pitts Bay Road		Pembroke		HM 08	Bermuda
Governance RE Ltd.		Wellesley House North, 2nd Floor	90 Pitts Bay Road		Pembroke		HM 08	Bermuda
GP Industries, Inc.		Clarendon House	2 Church St		Hamilton		HM 11	Bermuda
GPI Lee Parkway, LP		3230 Riverside Ave #110-A			Paso Robles	CA	93446	
Grace Chang		3333 Lee Parkway			Dallas	TX	75219	
Grafton Hospitality		Address on File						
Graham, Jacquelyn		340 South US Highway 1 Ste 306			Jupiter	FL	33477	
Grand Street Settlement		Address on File						
Grant Thornton LLP		80 Pitt Street			New York	NY	10002	
Grant, Jennifer		33570 Treasury Center			Chicago	IL	60694-3500	
Grants Interest Rate Observer		Address on File						
Grapevine Consultants		233 Broadway Fl 24			New York	NY	10279-2502	
Grasshopper Lawn & Patio, LLC		3003 Double Creek Drive			Grapevine	TX	76051	
GRATEKE, RYAN		1002 Ashby Dr			Allen	TX	75002	
Graubard Miller		Address on File						
Graves, Vanessa		Address on File						
Gray Reed & McGraw LLP	Jason S. Brookner	Address on File						
GRAY, MATTHEW	Mark Gargiulo - CFO	1601 Elm Street, Suite 4600			Dallas	TX	75201	
Grayson CLO Corp., et al		1300 Post Oak Blvd., Suite 2000			Houston	TX	77056	
Grayson CLO Ltd.		Address on File						
		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands

APPX 70341

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Grayson CLO Ltd.	Grayson CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Grayson CLO, Ltd.	Investors Bank and Trust Company c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town, Grand Cayman			Cayman Islands
Grayson CLO, Ltd. Investors Bank & Trust Company	Elizabeth Weller	P.O. Box 1234	Queensgate House South Church Street	The Directors - Grayson CLO, Ltd.	George Town, Grand Cayman	KY	1-1108	Cayman Islands
Grayson County		Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
Great American Photo Booths		3525 Melanie Ln			Plano	TX	75023	
Great Investors Best Ideas Foundation		3879 Maple Avenue	Ste 350		Dallas	TX	75219	
Great Northern Insurance Company, Chubb National Insurance Company and Federal Insurance Company		202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
Great Performances	c/o Chubb	2417 3rd Ave Fl 3			Bronx	NY	10451-6339	
Great Point Capital LLC		200 W Jackson #1000			Chicago	IL	60606	
Great Southern Bank		8201 Preston Road	Suite 305		Dallas	TX	75225	
Great Value Storage		9530 Skillman Street			Dallas	TX	75243	
Great Value Storage		401 Congress Ave, 33rd Flr			Austin	TX	78701	
Greater Talent Network, Inc.		437 Fifth Avenue			New York	NY	10016	
Green, Allison		Address on File						
GREEN, JASON		Address on File						
Greenberg Traurig		2200 Ross Avenue	Suite 5200		Dallas	TX	75201	
Greenberg Traurig		1000 LOUISIANA ST	STE 1800		Houston	TX	77002	
Greenbriar CLO, Ltd.	c/o Maples Finance Limited	PO Box 1093GT	Boundary Hall, Cricket Square	George Town	Grand Cayman		KY1-11-8	Cayman Islands
Greenbriar CLO, Ltd.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Greenbriar CLO, Ltd. and State Street Bank and Trust Company	Greenbriar CLO, Ltd. c/o Maples Finance Limited	P.O.Box 1093GT	Boundary Hall Cricket Square		George Town, Grand Cayman	KY	1-9902	Cayman Islands
Greenbriar CLO, Ltd. and State Street Bank and Trust Company	Company Attn CDO Services Group	200 Clarendon St	Mail Code EUC 108		Boston	MA	02116	
Greenway - 4641 Production, L.P.	c/o Robert Lynn Management	4851 LBJ Freeway	Suite 1000		Dallas	TX	75244	
Greenway - 4641 Production, L.P.	c/o Trinity Interests, Inc.	12750 Merit Dr Ste 1300			Dallas	TX	75251	
Greenway - 4641 Production, L.P.		2808 Fairmount Street	Ste 100		Dallas	TX	75201	
Greenway - 4641 Production, L.P.		5924 ROYAL LANE	STE 250		Dallas	TX	75230	
GREENWICH STRATEGIC ADVISORS LLC		42 CARY ROAD			Riverside	CT	06878	
Greenwood Office Outfitters		2951 Suffolk Drive	Suite 640		Fort Worth	TX	76133-1149	
Greg Campbell		Address on File						

APPX-90342

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Greg Jackson		Address on File						
Greg Lussen		Address on File						
GREGG IMAMOTO		Address on File						
Gregory C. Bussey		Address on File						
Gregory Chang		Address on File						
Gregory FCA Communications		27 West Athens Avenue			Ardmore	PA	19003	
Gregory Polsen		Address on File						
Gregory Webster		Address on File						
GREGORY, MICHAEL		Address on File						
GREGORY, MICHAEL		Address on File						
Greig Sagers		Address on File						
Greylane Partners, LLC		P.O. Box 733976			Dallas	TX	75373-3976	
Greylane Solutions		PO Box 733976			Dallas	TX	75373-3976	
Greylane Solutions LLC		1 Sansome Street, Ste 1895			San Francisco	CA	94104-4432	
GRIFFITH, CANDICE		Address on File						
GRIFFITH, CANDICE C.		Address on File						
GRIFFITH, MATTHEW		Address on File						
GRO Designs, LLC		3500 Commerce St. #100			Dallas	TX	75226	
GROFF, SCOTT		Address on File						
Groom Law Group		1701 Pennsylvania Ave NW	Ste 1200		Washington	DC	20006	
GROS EXECUTIVE RECRUITERS, INC		1616 WESTGATE CIRCLE			Brentwood	TN	37027-8019	
Group Services Inc		Condominium San Alberto,						
GROVES, SHAWN		Suite 721	605 Conado Ave		San Juan	PR	00907	
Gruber Hurst Johansen Hail		Address on File						
Shank LLP		PO Box 600041			Dallas	TX	75360-0041	
GRUBHUB for Work		PO Box 748570			Los Angeles	CA	90074-8570	
GrubHub Holdings Inc.		111 W. Washington Street	Ste 2100		Chicago	IL	60602-0000	
Grubhub Holdings Inc.		5050 Capitol Ave Apt 252			Dallas	TX	75206-7724	
GSB Digital		30-30 47th Avenue	Suite 5500		Long Island City	NY	11101	
GT Dallas Properties LLC		PO Box 3085			Hicksville	NY	11802-3085	
G-TEXAS MANAGEMENT, INC.		1135 SOUTH LAMAR ST			Dallas	TX	75215	
Guardian Performance Solutions LLC		836 57th Street	Suite 408		Sacramento	CA	95819	
Guggenheim Strategic Opportunities Fund		330 Madison Ave, 11th Floor			New York	NY	10017	
Guidepoint Global		675 Avenue of The Americas			New York	NY	10010-5117	
Guidepost Solutions, LLC		Fl 2			New York	NY	10017	
Guild Associates		415 Madison Ave	11th Floor		New York	NY	10017	
Gulati, Sanjay		153 Mitchell Hill Rd			Lyme	CT	06371-3021	
GUNNERSON, ERIK		Address on File						
GUSTAVO PRILICK		Address on File						
Guy J. Renzi & Associates		2277 State Hwy 33,			Trenton	NJ	08690	
H.I.S. BridgeBuilders		Golden Crest Corporate Center	Suite 410		Dallas	TX	75208	
		2705 West Commerce St						

APPX-90349

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Haas Petroleum Engineering Svcs, Inc.		750 N Saint Paul St Ste 1750			Dallas	TX	75201-3288	
Hagar Restaurant Service LLC		1229 West Main St.			Oklahoma City	OK	73106	
Hain Capital Investors Master Fund, Ltd		301 Route 17, 7th Floor			Rutherford	NJ	07070	
Hakemack, Christopher		Address on File						
Hal Whalen		Address on File						
Hale, Sarah		Address on File						
HALL, PHIL		Address on File						
Halloran & Sage LLP		225 Asylum Street	One Goodwin Square		Hartford	CT	06103	
HALPIN, CHRISTOPHER		Address on File						
Haltorn, Steven		Address on File						
Hamilton	PRICKETT, JONES & ELLIOTT, P.A.	Marcus E. Montejo	Kevin H. Davenport	1310 King Street	Wilmington	DE	19801	
Hamilton Communications		PO Box 555			Westbrook	CT	06498	
HAMILTON, TODD		Address on File						
Hand Securities Inc.		820 Gessner Rd	Suite 1250		Houston	TX	77024	
Hansen, Jessica		Address on File						
Hanson, Adam		Address on File						
HARBOR GROUP LTD		70 E SUNRISE HWY	#411		Valley Streram	NY	11581	
Harbor Yacht Clubs, LLC		1880 Harbor Island Drive			San Diego	CA	92101	
HarbourVest 2017 Global AIF L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest 2017 Global AIF L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HARBURVEST 2017 GLOBAL AIF L.P.		One Financial Centre, 44th Floor			Boston	MA	02111	
HarbourVest 2017 Global Fund L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest 2017 Global Fund L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HARBURVEST 2017 GLOBAL FUND L.P.		One Financial Centre, 44th Floor			Boston	MA	02111	
HarbourVest Dover Street IX Investment L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Dover Street IX Investment L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
Harbourvest Dover Street IX Investment, LP		One Financial Centre, 44th Floor			Boston	MA	02111	
HarbourVest Partners L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HarbourVest Partners L.P. on behalf of funds and accounts under management	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Skew Base AIF L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Skew Base AIF L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	

APPX 90341

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
HARBOURVEST SKEW BASE AIF L.P.		One Financial Centre, 44th Floor			Boston	MA	02111	
Harder LLP		132 S. RODEO DRIVE	FOURTH FLOOR		BEVERLY HILLS	CA	90212	
HARIKRISHAN NAIR		8734 SHADY SHORE DR			FRISCO	TX	75034	
Harlem Lacrosse		PO Box 708			New York	NY	10030	
Harper & Peterson, P.L.L.C		3040 Woodbury Drive			Woodbury	MN	55129	
Harris Hilburn & Sherer		1111 Rosalie			Houston	TX	77004	
HARRIS, WILTSHIRE & GRANNIS LLP		1200 EIGHTEENTH ST, NW			Washington	DC	20036	
HARRISON, MATTHEW		Address on File						
Harsha Patwardhan		Address on File						
Hart Energy Publishing, L.P.		4545 Post Oak Pl Ste 210			Houston	TX	77027	
Hart Energy Publishing, L.P.		1616 S. Voss Rd	Suite 1000		Houston	TX	77057	
Hart Energy, LP		1616 S. Voss Street	Suite 1000		Houston	TX	77057	
Hartford CFA Society		PO Box 266			Granby	CT	06035	
Hartford Life Insurance Company		777 Main Street			Hartford	CT	06115	
Hartline Dacus Barger Dreyer LLP		6688 N. Central Expwy, #1000			Dallas	TX	75206	
Hartman Wanzor LLP	Kenneth Cantrell	6050 Southwest Blvd Suite 150			Fort Worth	TX	76109	
Hartman Wanzor LLP		6050 Southwest Blvd	Suite 200		Fort Worth	TX	76109	
Harvard Club of Dallas		5706 E Mockingbird Ln Ste 115			Dallas	TX	75206-5461	
Harvard Club of New York City		35 West 44th Street			New York	NY	10036	
Harvest Exchange Corp		PMB 245	516 N Ogden Ave		Chicago	IL	60642-6421	
Haselroth, Matthew		Address on File						
HASENAUER, MICHAEL		Address on File						
HASENAUER, MICHAEL		Address on File						
Haven Search Group, LLC		3303 Lee Parkway	Suite 400		Dallas	TX	75219	
Hawaii State Tax Collector		PO Box 1530			Honolulu	HI	96806-1530	
HAWK Network Defense, Inc.		5057 Keller Springs Road	Suite 300		Addison	TX	75001	
Hayes, Christopher		Address on File						
Hayley Eliason	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
HAYMARKET MEDIA LIMITED		2371, The Centrium, 60 Wyndham St	Central		HONG KONG			HONG KONG
Haynes and Boone, LLP	ATTN Cari Peretzman	901 Main St # 3100			Dallas	TX	75202	
Haynes and Boone, LLP		2323 Victory Ave	Suite 700		Dallas	TX	75219	
Haynes and Boone, LLP		PO Box 841399			Dallas	TX	75284-1399	
Hazen, Anthony		Address on File						
HCM Market Letter, LLC		Harch Capital Management, LLC	621 NW 53rd Street, Suite 400		Boca Raton	FL	33487	
HCRE Partner, LLC	Wick Phillips Gould & Martin, LLP	Jason M. Rudd, Lauren K. Drawhorn	3131 McKinney Avenue, Suite 500		Dallas	TX	75204	
HEAD, ALAN		Address on File						
Health Strategy Consulting		46 Kilvert St			Warwick	RI	02886	

APPX 725

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Health Texas Provider Network		PO Box 844128			Dallas	TX	75284	
Heat Software USA Inc		PO Box #204375			Dallas	TX	75320-4375	
HEATHER BROWN		Address on File						
HEATHERINGTON, MELINDA		Address on File						
HEBERT, ERIC		Address on File						
Hedge Connection, Inc.		141 Parkway Rd	Suite 15		Bronxville	NY	10708	
Hedge Fund Alert		5 Marine View Plaza #400			Hoboken	NJ	07030-5795	
Hedge Fund Research, Inc.		10 South Riverside Plaza	Suite 700		Chicago	IL	60606	
Hedgebay Securities, LLC		62 Post Road West			Westport	CT	06880	
HEDGEFUND INTELLIGENCE LTD		NESTOR HOUSE, PLAYHOUSE YARD	ACCOUNT DEPT		London		EC4V 5EX	United Kingdom
Hedgeye Risk Management, LLC	Legal Department	1 High Ridge Park 3rd Floor			Stamford	CT	06905-0000	
HEIN ONKENHOUT		Address on File						
HEISS, BRADFORD		Address on File						
Heider Melendez		Address on File						
Helen Kim	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Helicopters for Heroes	c/o Jeff Davis	9219 Viscount Row			Dallas	TX	75247	
HELLER EHRMAN LLP		FILE NO 73536	PO BOX 60000		San Francisco	CA	94160-3536	
Helping Our Heroes Foundation		6505 W. Park Blvd	Ste 306-165		Plano	TX	75093	
Helwig, Kevin		Address on File						
HENDERSHOT, PAUL		Address on File						
HENDRIX, KRISTIN		Address on File						
Henjum Goucher		Address on File						
Henjum Goucher		Address on File						
HENNINGAN, BENNETT & DORMAN LLP		865 S FIGUEROA ST			Los Angeles	CA	90017	
Henry Chang		Address on File						
Herbert A. Rosenthal, Chartered		1020-19th St, NW, #400			Washington	DC	20036-6101	
HEROES FOR CHILDREN	ATTN LARISSA LINTON & JENNY SCOTT	3411 PRESTON RD, STE C-13						
HERREN, CASEY		227			Frisco	TX	75034	
HERRICK, KATHRYN D.		Address on File						
Hersey, William		Address on File						
Hess, Zachary		Address on File						
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800	Wilmington	DE	19801	
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Harwood Street, Suite 500	Dallas	TX	75201	
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
HFF SECURITIES LP		10100 SANTA MONICA BLVD	STE 1400		Los Angeles	CA	90067	

APP-9346



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HFP GP, LLC	Attn Highland Capital Management, L.P. as sole member	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
HG Deposition and Litigation Services		2777 N. Stemmons Freeway, Ste 1025			Dallas	TX	75207	
Higdon Barrett		Address on File			New York	NY	10169	
HIGDON PARTNERS		230 PARK AVE			Dallas	TX	75243	
High Bandwidth		10107 Candlebrook Drive						
High Profile, Inc.		4851 LBJ Freeway, Suite 500			Dallas	TX	75244	
High Road Touring		Jackson Haring	751 Bridgeway, 3rd Flr		Sausalito	CA	94965	
High Tower	Attn GIS	505 5th Ave, 14th Flr			New York	NY	10017	
High Tower	Attn Klaris Tamazian	200 W. Madison, Ste 2500			Chicago	IL	60606	
Highland Builders, Inc.		2342 Fabens Road	Ste 100		Dallas	TX	75229	
Highland Capital Insurance Solutions GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Capital Loan Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Capital Loan GP, LLC	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	Attn Davor Rukavina, Esq. and Julian P. Vasek, Esq.	Munsch Hardt Kopf & Harr, P.C.	3800 Ross Tower	500 N. Akard Street	Dallas	TX	75202-2790	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	A. Lee Hogewood, III	4350 Lassiter at North Hills Ave., Suite 300		Raleigh	NC	27609	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	Attn Artoush Varshosaz	1717 Main Street, Suite 2800		Dallas	TX	75201	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	Attn Stephen G. Topetzes	1601 K Street, NW		Washington	DC	20006-1600	
Highland Capital Management Services, Inc.	c/o The Corporation Trust Company	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Capital Multi-Strategy Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland CDO and Structured Products Fund, Ltd. Citigroup Financial Products Inc.	Citigroup Financial Products Inc.	390 Greenwich Street	Doug Warren		New York	NY	10013	
Highland CDO and Structured Products Fund, Ltd. Citigroup Financial Products Inc.	JPMorgan Chase Bank	600 Travis Street	50th Floor	ITS-Greg Sheehan	Houston	TX	77002	
JPMorgan Chase Bank	JPMorgan Chase Bank	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland CDO Opportunity Fund GP, LLC								

APPX-90347

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Highland CDO Opportunity Fund, Ltd. IXIS Financial Products Inc. JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	600 Travis Street	50th Floor 500 West 2nd St., Suite 1800	WSS-Greg Sheehan	Houston	TX	77002	
Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette First Floor, Dorey Court, Admiral Park	St Peter Port		Austin	TX	78701-4684	Channel Islands
Highland CLO Funding, Ltd Highland CLO Management Ltd.		PO Box 309	Ugland House		Guernsey		GY1 6HJ	Cayman Islands
Highland Credit Opportunities	Japanese Feeder Sub-Trust	c/o Intertrust (Cayman) Limited	190 Elgin Avenue	George Town	Grand Cayman		KY1-9005	Cayman Islands
Highland Credit Opportunities	Japanese Unit Trust	c/o Intertrust (Cayman) Limited	190 Elgin Avenue	George Town	Grand Cayman		KY1-9005	Cayman Islands
Highland Credit Opportunities CDO GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Credit Opportunities CDO, Ltd.	c/o Walkers SPV Limited	Walker House 87 Mary Street	George Town		Grand Cayman		KY1-9002	Cayman Islands
Highland Crusader Offshore Partners, L.P., et al.	Michael A. Rosenthal, Gibson, Dunn and Crutcher LLP	200 Park Avenue			New York	NY	10166	
Highland Dallas Foundation Inc.	c/o CT Corporation, Registered Agent	1209 Orange St			Wilmington	DE	19801	
Highland Dynamic Income Fund GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Employee Retention Assets, LLC	Attn James Dondero	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Fund Holdings, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland GP Holdings LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Legacy Limited	c/o Maples & Calder/ Graham Lockington	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Legacy Limited	c/o Queensgate SPV Services Limited	PO Box 1093GT / Suzanne St. Thomas	Compass Center, 2nd Flr, Crewe Road	George Town	Grand Cayman			Cayman Islands
Highland Loan Fund, Ltd. et al		PO Box 309	Ugland House South Church Street	Grand Cayman	Cayman Island		KY1-1104	Cayman Islands
Highland Loan Funding V, Ltd.	c/o Maples & Calder/ F.O.E.	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Loan Funding V, Ltd. Highland Loan Master Fund, L.P.	c/o QSPV Limited c/o Maples Corporate Services Limited	PO Box 1093 GT, Queensgate House PO Box 309	South Church Street Ugland House 13455 Noel Road, Suite 1300	George Town	Grand Cayman			Cayman Islands
Highland Multi Strategy Credit Fund GP, L.P.	c/o The Corporation Trust Company	Two Galleria Tower			Dallas	TX	75240	
Highland Multi-Strategy Credit Fund GP, L.P.	c/o The Corporation Trust	1209 Orange St			Wilmington	DE	19801	
Highland Multi-Strategy Credit Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	

APP-90348

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Highland Multi-Strategy Fund GP, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Multi-Strategy Master Fund, L.P.	c/o MQ Services Ltd.	Victoria House	31 Victoria Street		Hamilton		0HM10	Bermuda
Highland Multi-Strategy Master Fund, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Park CDO I, Ltd.	Moody's Investors Service, Inc. Standard & Poors Ratings Services	99 Church Street	Commercial Mortgage Surveillance Group	CDO Surveillance	New York	NY	10041	
Highland Park CDO I, Ltd.		55 Water Street, 41 st Floor			New York	NY	10041	
Highland Park CDO I, Ltd. The Bank of New York Trust Company, National Association	Highland Park CDO I, Ltd. c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House, South Church Street	George Town, The Directors	George Town			Cayman Islands
Highland Park CDO I, Ltd. The Bank of New York Trust Company, National Association	The Bank of New York Trust Company, National Association	601 Travis	16th Fl		Houston	TX	77002	Cayman Islands
Highland Park CDO I, Ltd. Highland Principal Opportunities GP, LLC	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Prometheus Feeder Fund I, L.P.	c/o Maples Corporate Services Limited	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	Cayman Islands
Highland Prometheus Feeder Fund II, L.P.	c/o Maples Corporate Services Limited	PO Box 309	Ugland House		Grand Cayman		KY1-1104	Cayman Islands
Highland Prometheus Mast Fund, L.P.	c/o Maples Corporate Services Limited	PO Box 309	Ugland House		Grand Cayman		KY1-1104	Cayman Islands
Highland Restoration Capital Partners GP, LLC	c/o The Corporation Trust Company	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Restoration Capital Partners Master, L.P.		1209 Orange St			Wilmington	DE	19801	Cayman Islands
Highland Restoration Capital Partners Offshore, L.P.	c/o Interttrust Cayman	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Highland Restoration Capital Partners, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Select Equity Fund GP	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Select Equity Fund GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Select Equity Master Fund, GP	c/o MQ Services Ltd.	Victoria House	31 Victoria Street		Hamilton		0HM10	Bermuda
Highland SunBridge GP, LLC	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
HighTower Advisors	Attn GIS	505 5th Ave, 14th Floor			New York	NY	10017	
HighTower Advisors		200 West Madison	Suite 2500		Chicago	IL	60606	
Sarian Group		656 East Swedesford Road	Suite 360		Wayne	PA	19087	
HighTower Holding LLC		200 W. Madison	Ste 2500		Chicago	IL	60606	
Hilary Adams		Address on File						

APP-90349

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HILGENBRINK, ANDREW		Address on File						
Hilgenbrink, Andrew		Address on File						
HILL, OWEN		Address on File						
Hill, Robert		Address on File						
Hilcrest Athletic Association	HHS Athletics c/o Andy Todd	9924 Hillcrest Rd			Dallas	TX	75230-5309	
Hillis, Blair		Address on File						
Hines REIT 2200 Ross Avenue LP		PO Box 841147			Dallas	TX	75284-1147	
Hines REIT 2200 Ross Avenue LP		PO Box 841197			Dallas	TX	75284-1197	
Hitchcock, Daniel		Address on File						
HM Life Insurance Company		PO Box 382229			Pittsburgh	PA	15250-8229	
Hoedebeck, Charlie		Address on File						
Hoermann, Richard		Address on File						
Hoge & Gameros, LLP		4311 Oak Lawn Ave Ste 600			Dallas	TX	75219	
Holland & Knight, LLP		PO Box 864084			Orlando	FL	32886-4084	
Hollister, Michael J.		Address on File						
Holloway, Travis		Address on File						
Holly Church Communications		3730 Pinebrook Cir Apt 606			Bradenton	FL	34209-8073	
Holmes Detective Bureau, Inc.		1270 Avenue of the Americas	Suite 1906		New York	NY	10020	
Holt, Eric		Address on File						
Home Health Service		2400 Dallas Parkway	STE 440		Plano	TX	75093	
Home Health Services		3333 Earheart Drive	Suite 210		Carrollton	TX	75006	
HOME, BRIAN		Address on File						
HONEYCUTT, JOHN BROOKS		Address on File						
HONEYCUTT, JOHN BROOKS		Address on File						
HONIS, JOHN		Address on File						
HONIS, JOHN		Address on File						
Honyaku Center Inc.		3-13-12 Mita			Minato-ku	Tokyo	109-0073	JAPAN
HOOVER HULL LLP		PO BOX 44989			Indianapolis	IN	46244-0989	
Hopes Door Inc.		860 F Ave	Suite 100		Plano	TX	75074	
HOPSON, STUART		Address on File						
Hotel Crescent Court		400 Crescent Court			Dallas	TX	75201	
Hotel Zaza		2332 Leonard Street			Dallas	TX	75201	
Houlihan Lokey	Attn Accounts Receivable	10250 Constellation Blvd, 5th Floor			Los Angeles	CA	90067-6802	
HOUSE OF BLUES	ATTN BARBARA BOUMAN	2200 N LAMAR ST			Dallas	TX	75202	
Housing Crisis Center		Megan Singleton, Development Manager	4210 Junius Street		Dallas	TX	75246	
How Handy Is That		21650 Oxnard Street	Suite 1530		Woodland Hills	CA	91367	
Howard B. Wiener		Address on File						
HOWARD DRANSFIELD IRA		Address on File						
Howle, Ian		Address on File						
hr-Q-Dallas, LLC		2859 Umatilla St			Denver	CO	80211	
HSIEH, ADA		Address on File						

APP-90350

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HTH Worldwide Insurance Services	c/o Travel Accounting	One Radnor Corporate Center Address on File	933 1st Ave		King of Prussia	PA	19406-1342	
HUBBLE, JONATHAN		75 Remittance Drive, Suite 6465			Chicago	IL	60675-6465	
HUDSON GLOBAL RESOURCES		2124 Oak Tree Rd One Battery Park Plaza			New Jersey	NJ	08820	
Hudson Reporting & Video, Inc	A DEPOSITION CENTER	1717 Main St Ste 2800			New York	NY	10006	
HUGHES & HUBBARD		Address on File			Dallas	TX	75201	
Hughes & Luce LLP		Address on File						
Hughes, Alex		Address on File						
HUKILL, NATHAN		PO Box 8500-3885			Philadelphia	PA	19178-3885	
HULL, CYNTHIA		703 McKinney Ave, Ste 405			Dallas	TX	75202	
Hummingbird		Address on File						
Hundt Reporting, L.L.C.		Address on File						
Hunt, Brandon		Address on File						
HUNT, HEATHER		6612 Sondra Dr.			Dallas	TX	75214	
Hunter Covitz	c/o David Neier, Winston Strawn LLP	Address on File						
Hunter Covitz		Address on File						
HUNTER COVITZ		Address on File						
Hunter Donaldson		Address on File						
Hunter Mountain Investment Trust		87 Railroad Place Site 403			Saratoga Springs	NY	12866	
Hunter Mountain Trust	c/o Rand Advisors LLC	John Honis						
Hunter Mountain Trust	c/o E. P. Keiffer	Rochelle McCullough LLP 325 N Saint Paul St Site 4500			Dallas	TX	75201-3827	
Hunter Mountain Trust	Hunter Mountain Trust	John Honis, Trustee for Hunter Mountain Trust			Saratoga Springs	NE	12866	
Hunting & Fishing for ALS Research		2525 Fairmont St			Dallas	TX	75201	
HUNTINGTON, JOHN		Address on File						
Hunton & Williams LLP		RIVERFRONT PLAZA, EAST TOWER			Richmond	VA	23219	
Hunton & Williams LLP		PO BOX 840686			Dallas	TX	75284-0686	
Hunton Andrews Kurth LLP	Alexander G. McGeoch	1445 Ross Avenue Suite 3700			Dallas	TX	75202	
Hunton Andrews Kurth, LLP		1445 Ross Avenue			Dallas	TX	75202-2799	
Hurley, Leslie		Address on File						
HURLEY, MICHIEL		Address on File						
Huron Consulting Group		4795 Paysphere Circle			Chicago	IL	60674	
Hutcherson Law		10000 N. Central Expressway			Dallas	TX	75231	
Hutchison & Steffen, PLLC		10080 W Alta Drive			Las Vegas	NV	89145	
HV International VIII								
Secondary L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP			New York	NY	10022	
HV International VIII								
Secondary L.P.	c/o HarbourVest	One Financial Center			Boston	MA	02111	
HV INTERNATIONAL VIII		One Financial Centre, 44th Floor			Boston	MA	02111	
SECONDARY L.P.								
Hyatt Regency Lost Pines Resort and Spa		575 Hyatt Lost Pines Road			Lost Pines	TX	78612	

APP-9351

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Hyatt Regency Scottsdale Resort & Spa		7500 E Doubletree Ranch Road			Scottsdale	AZ	85258	
I & A INTERNATIONAL		1717 MAIN ST	SUITE 4800		Dallas	TX	75201	
i Entertainment		2409 Avenue J	Suite D		Arlington	TX	76006	
I.M.S. Relocation		2005 McDaniel Drive	Ste 150		Carrollton	TX	75006	
IA Watch		PO Box 9407			Gaithersburg	MD	20897-9824	
IAN FARRAND		100 Winners Circle, Ste 300	PO Box 5094		Brentwood	TN	37024-5094	
IBM Websphere		Address on File						
ICAA		1 New Orchard Road			Armonk	NY	10504-0000	
Ice Bro Promos		1050 17th St, NW Ste 725			Washington	DC	20036-5503	
ICE Data Indices, LLC		1007 East Levee			Dallas	TX	75207	
ICE Data Pricing & Reference Data, LLC		PO Box 74008873			Chicago	IL	60693-8873	
ICE Systems, Inc.		PO Box 98616			Chicago	IL	60693	
ICI Mutual Insurance Brokers, Inc.		PO Box 11126			Hauptpaugue	NY	11788-0934	
IDAHO STATE TAX COMMISSION	REVENUE OPERATIONS DIVISION	1401 H Street NW	Suite 1000		Washington	DC	20005	
IDAHO STATE TAX COMMISSION		IDAHO STATE TAX COMMISSION	PO BOX 36		Boise	ID	83722-0410	
IDC.SERVCO Business Services		PO Box 83784			Boise	ID	83707-3784	
iDiscover, LLC		PO Box 1925			Culver City	CA	90232-1925	
IFG Project Resourcing		2049 Century Park East, Ste 4370			Los Angeles	CA	90067	
IFP Securities, LLC		1560 Sawgrass Corporate Pkwy 4th Flr			Sunrise	FL	33323	
IHS Global Inc.		3030 N Rocky Point Dr W	Suite 700		Tampa	FL	33607	
IHS Markit		PO Box 847193			Dallas	TX	75284-7193	
II Magazines	Michelle Searles	15 Inverness Way East			Englewood	CO	80112	
II Magazines	Absolute Return & Alpha	225 Park Ave - South			New York	NY	10003	
IInews		PO Box 4009	Subscriptions		Chesterfield	MO	63006-4009	
IJC Partners LLC		PO Box 5018			Brentwood	TN	37024-9552	
Ikon Office Solutions		20 East 46th St	Suite 901		New York	NY	10017	
Ikon Office Solutions		DALLAS DISTRICT-DAT	PO BOX 676466		Dallas	TX	75267	
Ikon Office Solutions		Northeast District-NYG	PO BOX 827164		Philadelphia	PA	19182-7164	
Ikon Office Solutions		LDS Southeast District -FTL	PO Box 532545		Atlanta	GA	30353-2545	
Ikon Office Solutions		LDS DALLAS DISTRICT -DAL	PO BOX 676466		Dallas	TX	75267-6466	
ILLINOIS DEPARTMENT OF REVENUE		National Accounts	PO Box 676466		Dallas	TX	75267-6466	
ILLINOIS DEPARTMENT OF REVENUE		PO BOX 19009			SPRINGFIELD	IL	62794-9009	
Illinois Secretary of State		PO Box 19045			Springfield	IL	62794-9045	
Illinois Securities Department		Department of Business Services			Springfield	IL	62756	
Illumant LLC		Securities Division	421 E. Capital Ave., 2nd Fl.		Springfield	IL	62701	
		431 Florence Street	Suite 210		Palo Alto	CA	94301	

APP-90352

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ImageMAKER Development, Inc		Suite 102-416, 6th St			New Westminster	BC	V3L 3B2	CANADA
ImageMAKER Development Inc		Ste 102,416 - 6th Street PO Box 613310			New Westminster	BC	V3L 3B2	Canada
ImageNet		2633 McKinney Ave			Dallas	TX	75261-3310	
Imaginity Interactive, Inc.		Address on File		Ste 130-377	Dallas	TX	75204	
IMAMOTO, GREGG								
IMCA	Altn Lara Davies	5619 DTC Pkwy, Suite 500			Greenwood Village	CO	80111	
Imran Hussain		Address on File						
IMRE		210 W PENNSYLVANIA AVE STE 700			TOWSON	MD	21204-4532	
In Time Communications		9137 Loma Vista Dr			Dallas	TX	75243	
INCORPORATING SERVICES, LTD		3500 S DUPONT HWY			Dover	DE	19901	
Independence Capital Co., Inc.		5579 Pearl Road		Suite 100	Parma	OH	44129	
Independent Financial Group LLC		12671 High Bluff Drive		Suite 200	San Diego	CA	92130	
Independent Petroleum Assoc. of America		1201 15th St, NW		Ste 300	Washington	DC	20005	
Independent Petroleum Assoc. of America		PO Box 79584		Suite 720	Baltimore	MD	21279-0584	
IndexUniverse LLC		201 Mission Street		Suite 1520	San Francisco	CA	94105	
IndexUniverse LLC		353 Sacramento Street			San Francisco	CA	94111	
INDIANA DEPARTMENT OF REVENUE		PO BOX 1028			Indianapolis	IN	46206-1028	
Indiana Securities Division		Securities Division		302 West Washington Street, Room E-111	Indianapolis	IN	46204	
Infinity Litigation		3141 Hood St, #103			Dallas	TX	75219	
Informa Investment Solutions		PO Box 416014			Boston	MA	02241-6014	
Informa Investment Solutions		4 Westchester Park Drive			White Plain	NY	10604-0000	
Informa UK Ltd.		PO Box 32794			Hartford	CT	06150-2794	
Information Management Network		225 Park Avenue South, 7th Fl			New York	NY	10003	
INFOTECH		92 CORPORATE PARK		STE C703	Irvine	CA	92606	
INNES, JOHN		Address on File						
Innovative Legal Solutions, Inc.		440 Louisiana, Suite 1100			Houston	TX	77002	
INSIDE CMS		PO BOX 7167		BEN FRANKLIN STATION	Washington	DC	20044-7167	
INSIDE HEALTH POLICY.COM		PO BOX 7167		BEN FRANKLIN STATION	Washington	DC	20044-7167	
Insider Score		254 Witherspoon St			Princeton	NJ	08542	
InsiderScore, LLC		254 Witherspoon Street			Princeton	NJ	08542	
InsiderScore, LLC		100 Thanet Circle		Suite 300	Princeton	NJ	08540-0000	
Insight		PO Box 78825			Phoenix	AZ	78825	
Insight Direct USA, Inc.		PO Box 731069			Dallas	TX	75373	
Insight Investments		611 Anton Blvd		Suite 700	Costa Mesa	CA	92626	
Instant Technologies		54 Ross Road			Durham	NH	03824	

APP-90359



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Institute for International Research		PO BOX 3685			Boston	MA	02241-3685	
Institute for Portfolio Alternatives		PO Box 480			Ellicott City	MD	21041-0480	
Institute for Private Investors		17 State Street	5th Floor		New York	NY	10004	
Institutional Investor News	Attn Andrew Levin	225 Park Ave South, 8th Flr			New York	NY	10003	
Institutional Investor News	ATTN Jeff Schilling	225 Park Ave. South	7th Floor		New York	NY	10003	
Institutional Investor News	Attn Mutual Fund Industry Awards	PO Box 1575			New York	NY	10008	
Institutional Investor News		PO BOX 5034			Brentwood	TN	37024	
Institutional Investor News		PO Box 417611			Boston	MA	02241-7611	
Institutional Investor News		PO BOX 1575			New York	NY	10008-1575	
Institutional Investor News		PO Box 4009			Chesterfield	MO	63003-4009	
Institutional Investor Newsletters		PO BOX 5016			Brentwood	TN	37024-9549	
Institutional Investor Newsletters		PO Box 5018			Brentwood	TN	37024-9552	
Institutional Investor Newsletters		PO BOX 5030			Brentwood	TN	37024-9555	
Institutional Investor, LLC		PO Box 417611			Boston	MA	02241-7611	
Institutional Recovery Solutions, Inc.		626 RXR Plaza	601 Locust Street, 4th Floor		Uniondale	NY	11556	
Insurance Commissioner of Iowa		Securities Bureau			Des Moines	IA	50309-3738	
INSYNC ELECTRONIC MEDIA DESIGN, LLC		33 FELWAY DR			Coram	NY	11727	
Integra FEC LLC		1801 Lavaca Street, Suite 101			Austin	TX	78701	
Integrated Financial Associates, Inc.		265 E. Warm Springs Road, Suite 1-7			Las Vegas	NV	89119	
Integrated Financial Associates, Inc.	Carlyon Cica Chtd	3111 S. Rainbow Blvd., Suite 209			Las Vegas	NV	89146	
Integrated Solutions		425 Gotham Pkwy			Carlstadt	NJ	07072	
Interactive Data Pricing & Reference		PO BOX 98616			Chicago	IL	60693	
Interactive Data Pricing and Reference D		32 Crosby Drive			Bedford	MA	01730-0000	
InterDyn BMI		3001 Broadway St NE, #320			Minneapolis	MN	55413	
Interfor		575 Madison Avenue, Suite 1006			New York	NY	10022	
Internal Revenue Service	Attn Insolvency	1352 Marrows Road, 2nd Floor			Newark	DE	19711-5445	
Internal Revenue Service	Attn Linda Yao	4050 Alpha Road	MC 4505 NDAL		Farmers Branch	TX	75244	
Internal Revenue Service	Faye Coppel, Bankruptcy Specialist	1100 Commerce St	M/S MC5027DAL		Dallas	TX	75242	
Internal Revenue Service		P.O. BOX 21126			Philadelphia	PA	19114	
Internal Revenue Service		STOP 5107 NWSAT	4050 ALPHA RD		Farmers Branch	TX	75244-4201	
Internal Revenue Service		Ogden			Ogden	UT	84201-0039	
International Assets Advisory, LLC		390 North Orange Ave	Ste 750		Orlando	FL	32801	

001-7354

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
International Bar Association International Foundation		10th Flr 1 Stephen St 18700 W. Bluemount Rd	PO Box 69		London Brookfield	WI	WI T 1AT 53008-0069	United Kingdom
Intertrust	Accounts Receivable	190 Elgin Ave 110 A St	George Town		Grand Cayman Needham	MA	KY1-9000 02494-2807	Cayman Islands
Intex Solutions, Inc.		P.O. Box 10259			New York	NY	10259	
Intralinks Inc.		150 East 42nd St	8th floor		New York	NY	10017-0000	
Intuit		PO Box 30860			Los Angeles	CA	90030-0860	
INVeSHARE, Inc.		P.O. Box 130114			Dallas	TX	75313	
Investigative Management Group		PO Box 568			Alpharetta	GA	30009-0568	
Investment Company Institute		825 Third Avenue	18th Floor		New York	NY	10022	
Investment Company Institute		PO Box 759456			Baltimore	MD	21275	
Investment Management Advisors, LLC		Dept. 3077			Washington	DC	20061-3077	
Investment Management Institute		3131 Maple Ave., Suite 7E			Dallas	TX	75201	
Investment Management Institute		123 Mason St			Greenwich	CT	06830	
Investment Planners, Inc.		165 W. Putnam Avenue PO Box 170	2nd Floor		Greenwich	CT	06830	
Investment Professionals Conference Investment Program Association	Altn Rachel Christensen	470 Tanner Building			Provo	UT	84602	
InvestorWires, Inc.		PO Box 480			Ellicott City	MD	21042-0480	
Investors Bank & Trust Company		14 Wall Street Lockbox # 415926	20th Floor		New York	NY	10005	
Investors Business Daily		200 Clarendon Street 12655 Beatrice St.	Mail Code EUC 108		Boston	MA	02241-5926	
IPC Information Systems, Inc.		PO Box 26644			Los Angeles	CA	02116	
IPC Network Services, Inc.		1500 Plaza 10	15th Floor		New York	NY	10087	
Ipitomi Limited		3rd Floor	125 Wood Street		London			United Kingdom
Ipreo Data Inc.		421 Fayetteville Street 840 NEWPORT CENTER DR	Suite 900 STE 450		Raleigh	NC	27601	
IRELL & MANELLA LLP		600 SOUTH COMMONWEALTH AVE, DEPT 316			Newport Beach	CA	92660-6324	
IRENE KUBERT	LASC				Los Angeles	CA	90005	
Iron Mountain - Off-Site Data Protection		PO Box 915026			Dallas	TX	75391-5026	
Iron Mountain Records Management	Whitelaw House	Alderstone House Business Park	MacMillan Rd		Livington	TX	EH54 7DF	United Kingdom
Iron Mountain Records Management		PO Box 915004			Dallas	TX	75391-5004	

APP-9035

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Ironwood Legal Solutions		Level 8, South Wing			Colombo	NV	2	Sri Lanka
IRR - Las Vegas		Millennium House, 46/58, Nawam Mawatha	Suite 100		Las Vegas	NV	89147	
IRS		8367 West Flamingo Road	1100 Commerce St #121		Dallas	TX	75242	
Irving ISD	Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
Irving, Katie		Address on File						
Isaac D. Leventon	c/o David Neier	Winston Strawn LLP	200 Park Avenue		New York	NY	10166	
Isaac Leventon	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue		New York	NY	10018	
Isaac Leventon	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Island Love Rebuilding Fund		PO Box 53412			Lafayette	LA	70505-3412	
Itech Inc.		6230 Wilshire Blvd, # 145			Los Angeles	CA	90048	
ITG Investment Research, Inc.	Attn Chris Stilo	380 Madison Ave			New York	NY	10017	
ITG Investment Research, Inc.		1270 Avenue of the Americas			New York	NY	10020	
ITG Investment Research, Inc.		PO Box 30270			New York	NY	10087-0270	
Ivanti Security		698 West 10000 South			Jordan	UT	84095-0000	
Ivins, Phillips & Barker Chartered		1700 Pennsylvania Avenue, NW			Washington	DC	20006	
J Gregory Stone		Address on File						
J. Sagar Associates		Vakils House	18 Sprout Road	Ballard Estate	Mumbai		400 001	India
J.C. Trident, Inc.		9035 Orlando Ave			Navarre	FL	32566	
Jack Boles Parking		PO Box 190326			Dallas	TX	75219-0326	
Jack Takacs		Address on File						
JACK YANG		Address on File						
Jackson Walker		PO Box 130989			Dallas	TX	75313-0989	
Jackson Walker LLP	Michael S. Held	2323 Ross Ave., Suite 600			Dallas	TX	75201	
Jackson Walker LLP		PO BOX 130989			Dallas	TX	75313-0989	
Jackson, Jesse		Address on File						
JACOBS ENGINEERING GROUP		PO BOX 651063			Charlotte	NC	28265	
JAGADEESH REDDY		Address on File						
Jain, Ajit		Address on File						
Jain, Ajit		Address on File						
Jain, Bhawika		Address on File						
Jain, Bhawika		Address on File						
JAKE AMBROSE		Address on File						
Jake Istnick		Address on File						
JAMAL CARTY		Address on File						
James A Shilkett		Address on File						
James C. Merrill & Associates, Inc.		14677 Midway Rd, Ste 203			Addison	TX	75001	
James D. Calver		Address on File						
James D. Dondero	D. Michael Lynn	Address on File						
James D. Dondero		Address on File						
James D. Dondero		Address on File						

APP-90356

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
James Dondero, as the successor-in-interest to the Canis Major Trust	James D. Dondero	D. Michael Lynn Address on File	420 Throckmorton Street, Suite 1000		Fort Worth	TX	76102	
James Edward		Address on File						
James Klein		Address on File						
James Lamar		Address on File						
James Love		Address on File						
James Mathis Consulting LLC		3701 Braewood Circle			Plano	TX	75093	
James McCaffrey		Bank of Marshall Islands Building, 2nd Floor, PO Box 509			Majuro		96960	Marshall Islands
JAMES PAGLIAROLI		Address on File						
James Palmer		Address on File						
James Peterson		Address on File						
James R. Thompson		Address on File						
James T. Bentley		Address on File			New York	NY	10022	
James, Carter & Coulter, P.L.C.	Schulte Roth & Zabel LLP	919 Third Avenue						
JAMESON, MATTHEW		500 Broadway	Suite 400		Little Rock	AR	72203	
JAMS, Inc.		Address on File						
Jane Rose Reporting Inc.		PO Box 512850			Los Angeles	CA	90051-0850	
Janet McGreal		2547 State Hwy. 35	Suites 1&2		Luck	WI	54853	
JANIS ROGERS & ASSOCIATES		Address on File						
Jansen & Palmer, LLC		1545 W MOCKINGBIRD LN	STE 1032		Dallas	TX	75235	
JANULESKI, GEOFFREY J		4746 Elliot Avenue South			Minneapolis	MN	55407	
Japan Alternative Investment Co Ltd		Address on File						
Japanese Evangelical Missionary Society		19th Floor, KDDI Otemachi Bldg	1-8-1 Otemachi, Chiyoda-ku		Tokyo		100-0004	JAPAN
Jardine, Jeffrey		948 East Second St			Los Angeles	CA	90012-4382	
Jardine, Jordan		Address on File						
Jaron Stern		Address on File						
Jason Chang		Address on File						
Jason Goldsmith		Address on File						
Jason Hoarell		Address on File						
Jason Kathman		Address on File						
JASON KIRSCHNER		Address on File						
Jason L. Janik		Address on File						
Jason Post		Address on File						
Jason Rothstein		Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
JASON SANTAMARIA	Michael P. Hutchens, Esq.	Address on File						
Jason Vanacour		Address on File						
Jason Vanacour		Address on File						
Jasper CLO Ltd MMP-5 Funding, LLC and IXIS Financial Products Inc.	Jasper CLO Ltd.	PO Box 1234 Queengate House	South Church Street	The Directors	Grand Cayman			Cayman Islands

APP-90357

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
Jasper CLO Ltd.	JPMorgan Chase Bank	600 Travis Street	50th Floor	Worldwide Securities Services - Jasper CLO Ltd.	Houston	TX	77002	Cayman Islands
Jasper CLO Ltd.	JPMorgan Chase Bank, National Association	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Jasper CLO Ltd.	JPMorgan Chase Bank, National Association	Queensgate House, South Church Street, George Town		P.O. Box 1093GT	Grand Cayman			Cayman Islands
Jasper CLO, Ltd.	c/o Ogier Fiduciary Services (Cayman) Limited	PO Box 1234	Queensgate House, South Church Street		Grand Cayman			Cayman Islands
Jay Angotti		Address on File						
Jay Borikar		Address on File						
Jay Gierak		Address on File						
Jay M Cohen, PA		PO Box 2210			Winter Park	FL	32790	
Jay Slulis		Address on File						
Jay Steigenwald		Address on File						
JB Sigmom		Address on File						
JDRF Greater Dallas Chapter		9400 N Central Expressway	Suite 1201		Dallas	TX	75231	
Jean Paul Sevilla	Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Avenue		New York	NY	10018	
Jean Paul Sevilla	c/o David Neier, Winston Strawn LLP	200 Park Avenue			New York	NY	10166	
Jean Paul Sevilla	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Jean Paul Sevilla		Address on File						
Jean-Francois Lemay		Address on File						
Jeff Cohen		Address on File						
Jeff Damec		Address on File						
Jeff Gilbert		Address on File						
Jeff Graham		Address on File						
Jeff Habicht		Address on File						
Jeff Seaver		Address on File						
Jeff Turner		Address on File						
Jefferies	Ronald Wong	101 California Street	Suite 3100		San Francisco	CA	94111	
Jefferies LLC	Attn Casey Doherty	c/o Dentons US LLP	1221 McKinney Street, Suite 1900		Houston	TX	77010-2006	
Jefferies LLC	Attn Christopher Bianchi	Prime Brokerage Services	520 Madison Avenue		New York	NY	10022	
Jefferies LLC	Christopher Bianchi	520 Madison Avenue, 2nd Floor			New York	NY	10022	
Jefferies LLC	Dentons US LLP	Attn Lauren Macksoud, Esq. and Patrick Maxcy, Esq.	1221 Avenue of the Americas		New York	NY	10020	
Jefferies LLC		520 Madison Avenue, 12th Floor			New York	NY	10022	
Jeffrey Dutton		Address on File						
Jeffrey Rose		Address on File						
Jehyun Law		11st Floor, Samsung Life East Yeouido Bldg, 25	Yeouido-Dong	2Gili 17, International Financial-Ro	Yeongdeungpo-Gu	Seoul	150-878	South Korea
JEMS		948 EAST 2ND ST			Los Angeles	CA	90012-4317	
Jenifer Jurius		Address on File						
JENKINS, AMY		Address on File						
JENNA BRIDGES		Address on File						

APP-7458

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
JENNER & BLOCK LLP		353 N CLARK ST			Chicago	IL	60654-3456	
Jenni Logan		Address on File						
Jennifer Buntz		Address on File						
JENNIFER LYNN HUNTSMAN TRUST	ATTN BRIAN SHRUM	1 S MAIN ST 12TH FLR			Salt Lake City	UT	84111-1904	
Jennifer Ricci		Address on File						
Jennifer Wootton		Address on File						
JENSEN, ASTRID		Address on File						
JENSEN, MARTY		Address on File						
Jeong, Sang K.		Address on File						
Jeremy Kross		Address on File						
Jeremy Simpson		Address on File						
JERICO SERVICES		2571 MERRELL RD			Dallas	TX	75229	
Jerome Carter	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76012-4135	
Jessica Gimbel		Address on File						
Jessica Hoskings		Address on File						
Jessica Nalder		Address on File						
Jessica Ogle		Address on File						
Jessup Holdings LLC	Attn John Mandler	c/o Mandel, Katz and Brosnan LLP	100 Dutch Hill Road, Suite 390		Orangeburg	NY	10962	
Jesuit Alumni Homecoming		12345 Inwood Rd			Dallas	TX	75244	
Jeti, Vikram		Address on File						
JEWISH FEDERATION OF GREATER DALLAS	ATTN KAREN HANEY	JACOB FELDMAN BUILDING	7800 NORTHAVEN RD		Dallas	TX	75230	
JHAWER, SHANTANU		Address on File						
JHT Holdings, Inc.	Attn Christopher Reehl	10801 Corporate Drive	PO Box 58 1025		Pleasant Prairie	WI	53158	
Jillian Ashenbrenner		Address on File						
Jim Pagliaroli		Address on File						
Jinny Cha		Address on File						
Job Hilliard, WL Lyons LLC	Attn Mac Thomas	500 West Jefferson Street			Louisville	KY	40202	
JOCELYN FRANK FABIANCIC		Address on File						
Jocoy, Laura C.		Address on File						
JOE DOUGHERTY		Address on File						
JOE DOUGHERTY		Address on File						
JOE EMMANUEL		Address on File						
Joe Farach		Address on File						
Joe Foster Company LLC		25 Highland Park Village	Suite 100-880		Dallas	TX	75205	
Joe Joyner		Address on File						
Joe Kingsley		Address on File						
Joe Laganza		Address on File						
Joe Norton		Address on File						
Joe Scanton		CRT Capital Holdings LLC	262 Harbor Drive		Stamford	CT	06902	
JOEL ESHBAUGH		Address on File						
Joel Zeff Creative		PO Box 979			Coppell	TX	75019	
Johanna McBroom		Address on File						
JOHN A TOWNSEND, IOLTA	TAX PROCEDURE GROUP	5615 KIRBY DR, STE 830			Houston	TX	77005	
John Burer		Address on File						

APP-90359

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
John Caron		Address on File						
John Chant		Address on File						
John Crocker		Address on File						
John Duval Associates		400 East 56th St Ste 10-S			New York	NY	10022	
John Duval Associates		446 Milan Hill Rd			Red Hook	NY	12571	
John F. Yang	KLS Financial Advisors	127 Main Street, Suite A			Chatham	NJ	07928	
John F. Jack Yang	Daniel P. Wmikka	Loewinsohn Flegle Deary Simon LLP	12377 Merit Drive, Suite 900		Dallas	TX	75251	
John F. Jack Yang		Address on File						
John F. Warren, Dallas County Clerk	Attn Central Records	600 Commerce St--B1			Dallas	TX	75202	
John Fink		Address on File						
JOHN FRUSHA		Address on File						
JOHN GALANTE		Address on File						
John Gavih		Address on File						
John Guagliardo		Address on File						
John Hancock Life Insurance		PO Box 894764			Los Angeles	CA	90189-4764	
John Hare		Address on File						
JOHN HENNEGAN		Address on File						
John Holmes		Address on File						
John Honis		Address on File						
John Howard		Address on File						
JOHN HUNTINGTON		Address on File						
John Ly		Address on File						
John Martin		Address on File						
JOHN MELTON		Address on File						
John Morgan		Address on File						
JOHN MORRIS		Address on File						
John Partchenko		Address on File						
John Paul Raffo		Address on File						
John Perkins		Address on File						
John R. Ames, CTA		Records Bldg, 500 Elm St	PO Box 139033		Dallas	TX	75313-9033	
John R. Ames, CTA		PO Box 139066			Dallas	TX	75313-9066	
John R. Watkins		Address on File						
John Reineberg		Address on File						
John Seng		Address on File						
John Yang		Address on File						
JOHN, KYLE		Address on File						
Johnston Tobey Baruch, P.C.		3308 Oak Grove Avenue			Dallas	TX	75204	
Jolles Associates, Inc.		PO Box 930			Great Falls	VA	22066	
JON BURKE		Address on File						
JON MARTIN		Address on File						
JON TAYLOR		Address on File						
Jones Day		Address on File						
Jones Reporting Company Inc		Two Oliver Street			Boston	MA	02109	
Jones Roach & Caringella, Inc.		10920 Via Frontera Ste 440			San Diego	CA	92127-1732	
JONES, DAVID		Address on File						

APP-90460



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Jones, Michael		Address on File						
Jones, Owen		Address on File						
JONES, ROBERT		Address on File						
Jones, Terrence O.		Address on File						
Jordan Fraker Photography		8806 San Fernando Way			Dallas	TX	75218	
Jordan Kahn Music Company		3941 Legacy Drive	#204 A-225		Plano	TX	75023	
Jordan Malouf		Address on File						
Jordan Thompson		Address on File						
Jordan, Hyden, Womble & Culbreth P.C.		500 N Shoreline, Ste 900N			Corpus Christi	TX	78471	
Jordan, Micah		Address on File						
JORDEN BURT		Address on File						
JORGE JARAMILLO		Address on File						
Jose Antonio Blanco & Asociados		Valentin Vergara 1675	1602 Florida		Buenos Aires			ARGENTINA
Jose Ontiveros		Address on File						
Josef Yehia		Address on File						
JOSEPH BIDJOKA		Address on File						
Joseph Kevin Ciavarra		Address on File						
Joseph R Pinkston III		Address on File						
Josh Bock		Address on File						
Josh Phillips		Address on File						
Josh Terry	Attn Rakhee V. Patel, Winstead PC	Address on File						
Josh Terry		Address on File						
Joshua & Jennifer Terry	c/o Brian P. Shaw, Esq.	Rogge Dunn Group, PC	500 N. Akard Street, Suite 1900		Dallas	TX	75201	
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan	Brian P. Shaw	500 N. Akard St. Suite 1900			Dallas	TX	75201	
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan		Address on File						
Joshua Tree Feeding Program Inc		1601 W Indian School Rd			Phoenix	AZ	85015	
Joy Squad Dallas		1725 Prescott Drive			Flower Mound	TX	75028	
JP Morgan		WSS GLOBAL FEE BILLING	PO BOX 26040		New York	NY	10087-6040	
JP Morgan		ITS Fee Billing	PO Box 911953		Dallas	TX	75391-1953	
JP MORGAN HEDGE FUND SERVICES		ONE BEACON ST., 19TH FLR			Boston	MA	02108	
JP Sevilla		Address on File						
JPMorgan Chase Bank	Worldwide Securities Services	600 Travis Street, 50th Floor			Houston	TX	77002	
JPMorgan Clearing Corp	ATTN Metrotech Center North	1 MetroTech Center # 1			Brooklyn	NY	11201	

001-7491

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
JPMORGAN FCS		13455 Noel Rd, Ste 1150			Dallas	TX	75240	
JPMORGAN FCS		WSS GLOBAL FEE BILLING	PO BOX 26040		New York	NY	10087-6040	
JT Magen & Company Inc		44 West 28th Street	11 th floor		New York	NY	10001	
Judy Chamberlin Entertainment		2604 Medline Ct			Southlake	TX	76092	
Jumpline, Inc. Web Hosting		PO Box 8789			St Petersburg	FL	33738-8789	
JUN HONG HENG		Address on File						
JUNG, KEVIN		Address on File						
Junior Achievement of Dallas	Altn Shelley Strickland	1201 W Executive Dr			Richardson	TX	75081	
JUNIOR LEAGUE OF DALLAS		8003 INWOOD RD			Dallas	TX	75209	
Justin Carfora		Address on File						
Justin Gould		Address on File						
Justin Nabours		Address on File						
Justin Smith		Address on File						
Juvenile Diabetes Research Foundation		200 Vesey St Frnt			New York	NY	10281-8000	
JW Cole Financial, Inc.		11811 N. Tatum Blvd	Ste 3055		Phoenix	AZ	85028	
JW Marriott Essex House NY		160 Central Park South			New York	NY	10019	
K & L Gates LLP		Suite 2800	1717 Main Street		Dallas	TX	75201	
K&L Gates LLP	A. Lee Hogewood, III	4350 Lassiter at North Hills Ave., Suite 300			Raleigh	NC	27609	
K&L Gates LLP	Altn Artouh Varshosaz	1717 Main Street, Suite 2800			Dallas	TX	75201	
K&L Gates LLP	James A. Wright III	State Street Financial Center	One Lincoln Street		Boston	MA	02111-2950	
Kadlack & Associates	Stephen G. Topetzes	1601 K Street, NW			Washington	DC	20006	
KAHR REAL ESTATE SERVICES LLC		555 Republic Dr, suite 115			Plano	TX	75074	
KAI CHEN		139 FULTON ST	STE 319		New York	NY	10038	
Kane Environmental Engineering, Inc.		Address on File						
KANE RUSSELL COLEMAN & LOGAN PC		8816 Big View Dr			Austin	TX	78730	
Kansas Corporate Tax Association		901 MAIN ST STE 5200			DALLAS	TX	75202-3705	
Kapil Mathur		Department of Revenue	915 SW Harrison Street		Topeka	KS	66612-1588	
Kaplan Voekler Cunningham & Frank PLC		229 E. William	Suite 211		Wichita	KS	67202-4027	
KAREL, TRAVIS		Address on File						
Karen Weiss		PO Box 2470			Richmond	VA	23218-2470	
Kari Kovelan	Michael P. Hutchens, Esq.	Address on File						
Karl Eisleben		Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Karthik Bhavaraju		Address on File						
Kase Kinney		Address on File						
kasina, LLC		581 Avenue of the Americas	5th Floor		New York	NY	10011	

APP-90382

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP		1633 BROADWAY			New York	NY	10019-6799	
Kastle Systems		PO BOX 75160			Baltimore	MD	21275-5160	
Kathryn Plouff		Address on File						
Katten Muchin Rosenman LLP		600 Madison Avenue, 17th Floor			New York	NY	10022	
KattenMuchinRosenman LLP		525 W Monroe St			Chicago	IL	60661-3693	
Kathik Bhavaraju		Address on File						
KAUFFMAN, PAUL		Address on File						
Kaufman County		2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Kaufman County		Lineberger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
Kavita Naik		Address on File						
KCD Financial		3061 Allied St, Ste B	Suite B		Green Bay	WI	54304	
KCD Financial, Inc.		3061 Allied St.			Green Bay	WI	54304	
KEARNEY, JOSEPH		Address on File						
KEARNEY, JOSEPH D.		Address on File						
KEITH BECKMAN		Address on File						
Keith Bowers		Address on File						
Keith Dunlap		Address on File						
Keith Gorman		Address on File						
Keith Schneider		Address on File						
Kelan Advisors		PO Box 122			Lexington	MA	02420	
Keller Williams		Address on File						
Kellie Stevens		Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
KELLOGG		KELLOGG ALUMNI CLUB	7040 BROOKSHIRE DR.		Dallas	TX	75230	
Kellogg Huber Hansen Todd Evans		1615 M Street N.W.	Ste 400		Washington	DC	20036-3209	
Kelly Bennett		Address on File						
Kelly Correll		Address on File						
Kelly Hart & Halliman		201 Main Street, Suite 2500			Fort Worth	TX	76102	
Kelly Hart & Pitre		301 Main Street, Suite 1600			Baton Rouge	LA	70801	
Kelly Hart Pitre		400 Poydras Street, Suite 1812			New Orleans	LA	70130	
Kelsey Ellenberg		17510 West Grand Parkway South	Suite 510		Sugarland	TX	77479	
KEN KUNIMOTO		Address on File						
Ken Owen & Associates		801 West Ave			Austin	TX	78701-2207	
Ken Paxton Campaign		1505 Elm Street, #1601			Dallas	TX	75201	
Kendall + Landscape Architecture		6976 Santa Barbara Dr			Dallas	TX	75214-2561	
Kendall Best		Address on File						
Kennecott Funding Ltd		330 Madison Ave, 11th Floor			New York	NY	10017	
Kennedy DMC Austin		5810 Trade Center Dr	Suite 500		Austin	TX	78744	
KENNETH BELLAIRE		Address on File						

APPX 7469

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kenneth Daewoo Park		Address on File						
Kenneth L Maun	Tax Assessor Collector	Collin County	PO Box 8046		McKinney	TX	75070	
Kenneth L. Maun		PO Box 8046			McKinney	TX	75070-8046	
Kenneth Tharp		Address on File						
Kenny Juarez		Address on File						
Kensho Technologies, Inc.		17 Dunster St	Suite 300		Cambridge	MA	02138	
KENT CAPPS		Address on File						
Kent Gatzki		Address on File						
Kentucky State Treasurer	Division of Securities	1025 Capital Center Drive, Suite 200			Frankfort	KY	40601	
KERA		3000 Harry Hines Blvd			Dallas	TX	75201	
Kercsmar & Feltus PLLC		6263 N. Scottsdale Rd.	Suite 320		Scottsdale	AZ	85250	
Kerns, Brian		Address on File						
Kerri Keamey		Address on File						
KEVIN CLEARY		Address on File						
Kevin Dowd		Address on File						
Kevin Dunwoodie		Address on File						
KEVIN ETHRIDGE		Address on File						
KEVIN LATIMER		Address on File						
Kevin Messerle		Address on File						
Kevin Potts		Address on File						
Kevin Price		Address on File						
KEVIN SHAHBAZ		Address on File						
KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110	
KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114	
Keybank National Association	ATTN KREC Loan Services	4910 Tiedman Road	3rd Floor		Brooklyn	OH	44144	
KFORCE PROFESSIONAL STAFFING		PO BOX 2277997			Atlanta	GA	30384-7997	
KidLinks		6387B Camp Bowie Blvd	#278		Fort Worth	TX	76116	
KidLinks Foundation		5485 Belt Line Rd	Suite 400		Dallas	TX	75254-7604	
Kiely, Thomas		Address on File						
Kicullen & Company		150 N. Radnor Chester Rd.	Suite C210		Radnor	PA	19087	
KILLEBREW, MATT		Address on File						
Kim & Chang		Seyang Building, 223 Naeja-dong	Jongno-gu Suite #B		Seoul		110-720	South Korea
Kim Dawson Agency		1645 Stemmons Freeway			Dallas	TX	75207	
Kim Leslie Shafer		Address on File						
Kim R. Kunz		Address on File						
Kim, Austen		Address on File						
KIM, HELEN		Address on File						
Kinder, Travis		Address on File						
KING & SPALDING LLP		1180 Peachtree St NE			Atlanta	GA	30309-3521	
KING & SPALDING LLP		PO Box 116133			Atlanta	GA	30368-6133	United Kingdom
King & Wood Mallesons LLP		10 Queen Street Place			London		EC4R 1BE	
Kingwood Administrative Services		15 Golf Linds Ct			Kinwood	TX	77339	

001-748

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kingwood Forestry Service, Inc		PO Box 1290			Monticello	AR	71657	
Kingwood Forestry Services, Inc		145 Greenfield Drive			Monticello	AR	71655	
Kinney Recruiting LP		106 E 6th St Ste 300			Austin	TX	78701	
Kinsley & Associates, LLC		6732 West Coal Mine Avenue	#500		Littleton	CO	80123	
Kirkland & Ellis		777 S Figueroa St Ste 3700			Los Angeles	CA	90017	
Kirkland & Ellis		153 E 53RD ST	CITIGROUP CENTER		New York	NY	10022-4611	
Kirkpatrick Lockhart Preston		SUITE 2800	1717 MAIN ST		Dallas	TX	75201	
Gates Ellis		1601 K Street NW			Washington	DC	20006-1600	
Kirkpatrick Lockhart Preston		2121 Ave of the Stars, Flr 33			Los Angeles	CA	90067	
Gates Ellis		551 Fifth Ave 18th Flr			New York	NY	10176	
Klee, Tuchin, Bogdanoff & Stern		8117 Preston Rd, Ste 300			Dallas	TX	75225	
Kleinberg, Kaplan, Wolff & Cohen		Address on File						
Kline & Kline		Address on File						
Klisares, Michael		61 Heather Lane			Williston	VT	05495	
KLOS, DAVID								
Klostors Trading Corporation								
KMS Financial Services, Inc.	Attn Megan Slater	2001 Sixth Avenue, Suite 280			Seattle	WA	98121-9833	
Knect365 US, Inc.		PO Box 3685			Boston	MA	02241-3685	
KNIGHT ELECTRICAL SERVICES CORP		599 11th Avenue			New York	NY	10036	
KNIGHT ELECTRICAL SERVICES CORP		111 8TH AVE	STE 526		New York	NY	10011-5298	
Knights of Columbus		2280 Springlake Road			Dallas	TX	75234	
Knott, Brandon		Address on File						
Knott, Brandon		Address on File						
Knox, Haley		Address on File						
KNUTSON, DEREK		Address on File						
Koch Companies Public Sector, LLC		PO Box 93901			Chicago	IL	60673	
Kody Krause		Address on File						
Komen Dallas Race for the Cure	ATTN GARI PHILLIPS	12820 HILLCREST	STE C105		Dallas	TX	75230	
Komen Dallas Race for the Cure		765 NorthPark Center			Dallas	TX	75225	
Korea Chontha Translation Co., Ltd.		1024 Manhattan Bldg. 36-2	Yeungdeungpo-gu		Seoul		150-746	South Korea
Korea Standard Transl Center Co. Ltd.		S-701, Garden 5 Works	Munjeong-dong Songpa-gu		Seoul		138-200	South Korea
KORNGUT, BRYAN		Address on File						
KORTLANDER, MATTHEW		Address on File						
KORTLANDER, MATTHEW A.		Address on File						
Kouzmenko, Svetlana		Address on File						
Kovack Securities Inc.		6451 N. Federal Hwy	Suite 1201		Ft. Lauderdale	FL	33308	

001-749

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kovelan, Kari		Address on File			Monvale	NJ	07645	
KPMG LLP		3 Chesnut Ridge Rd						
KRAMER LEVIN NAFTALIS & FRANKEL LLP		1177 AVENUE OF THE AMERICAS			New York	NY	10036-2714	
Krishnan, Prasad		Address on File						
Kroll Associates, Inc.		475 Sansome Street	Suite 510		San Francisco	CA	94104	DENMARK
Kromann Reumert		Sundkrogsgade 5			Copenhagen		DK-2100	
Kruse & Associates, Ltd.		180 North LaSalle Street, Ste 3700			Chicago	IL	60601	
Krytzer, Damon		Address on File						
KUCHLER, TOM		Address on File						
Kuehn, Richard		Address on File						
KULWICH, STEPHANIE		Address on File						
Kuperman, Orr & Albers PC		2801 Via Fortuna	Suite 430		Austin	TX	78746	
KURATTI, MOHAN		Address on File						
KURT DAUM		Address on File						
KURT DAUM		Address on File						
KURT PLUMER		Address on File						
Kurtosis Systems Inc.		Address on File	3rd Floor		New York	NY	10011	
KWOK, NAM		Address on File						
L.A. Fuess Partners		3333 Lee Pkwy, Ste 300			Dallas	TX	75219	
L.C. Kirk & Co		101 W Argonne	Ste 16		Saint Louis	MO	63122	
LABADIE, MICHAEL		Address on File						
Lackey Hershman LLP	Paul Lackey, Esq.	Stinson LLP	3102 Oak Lawn Avenue, Ste 777		Dallas	TX	75219	
Lackey Hershman LLP		3102 Oak Lawn, Ste 777			Dallas	TX	75219-4241	
LAFFER ASSOCIATES		103 Murphy Court			Nashville	TN	37203	
LAH Investments, LLC		4 Circle Drive			Rumson	NJ	07660	
Lamba, Menka		Address on File						
LAMENSDORF, JONATHAN		Address on File						
Lamplighters Parents Association		11611 Inwood Road			Dallas	TX	75229	
Landmark Graphics Corp		PO Box 301341			Dallas	TX	75303-1341	
Landmark Graphics Corp		2107 CityWest Blvd	Building 2		Houston	TX	77042-2827	
Landmark Graphics Corporation		10200 Bellaire Blvd			Houston	TX	77072-5299	
Landon Patterson		Address on File						
Landpro Corporation		21755 I-45 North	Building 7		Spring	TX	77388	
Landry, John		Address on File						
Lanier Worldwide, Inc.		PO Box 105533			Atlanta	GA	30348-5533	
Larkin, William		Address on File						
LAROCHE PETROLEUM CONSULTANTS, LTD		4600 GREENVILLE AVE	STE 160		Dallas	TX	75206	
LaRoche Petroleum Consultants, Ltd.		2435 N. Central Expwy	Suite 1500		Richardson	TX	75080	
LARRY LINDSEY		Address on File						
Lars Enstrom		Address on File						
LARSEN, JESS S.		Address on File						
LARSON & MCGOWIN INC.		254 NORTH JACKSON ST	PO BOX 2143		Mobile	AL	36652	

001-730

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Laser App		222 Valley Creek Blvd, Ste 300			Exton	PA	19341	
Laser App		3190 Shelby Street	Suite D-100		Ontario	CA	91764	
LATENTZERO INC		160 Federal Street	16 th Floor		Boston	MA	02110	
LATENTZERO INC		PO BOX 415437	16TH FLR		Boston	MA	02241	
LATENTZERO INC		Dept CH 16755			Palatine	IL	60055-6755	
Lateral Group NA, LLC		5516 Collection Ctr Drive			Chicago	IL	60693	
Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000			Washington New York	DC NY	20004 10022-4834	
Latham & Watkins LLP	Jamie Wine	885 Third Ave.						
Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100			Los Angeles Philadelphia	CA PA	90071 19170-8181	
LATHAM & WATKINS LLP		PO BOX 7247-8181						
Latham and Watkins LLP	Asif Attanwala	330 North Wabash Ave, Suite 2800			Chicago	IL	60611	
LATIMER, KEVIN		Address on File						
Latin Markets		10 W. 37th St	7th Floor		New York	NY	10018	
LatinFinance		Subscriptions	PO Box 4009		Chesterfield	MO	63006-4009	
Lattig, Larry		Address on File						
Lauren A. Coleman		Address on File						
Lauren Brady		Address on File						
LAUREN HOLLAND		Address on File						
Lauren Powell		Address on File						
Lauren Roche		Address on File						
Lauren Seiker		Address on File						
Lauren Selevan		Address on File						
Lauren Theoford	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	United Kingdom
Law Debenture Corporate Services Limited		Fifth Floor	100 Wood Street		London			
LAW JOURNAL PRESS		PO BOX 18105			Newark	NJ	07191-8105	
Law Office of Michael R. Boling		2305 W. Parker Rd	Suite 203		Plano	TX	75023	
Law Office of Sean F. Oshea		90 Park Ave, 20th Flr			New York	NY	10016	
Law Offices of Art Brender		600 Eighth Avenue			Ft. Worth	TX	76104	
LAW OFFICES OF CHAPMAN & CUTLER		PO BOX 71291			Chicago	IL	60694	
Law Offices of Charles Renfrew		710 Sansome St			San Francisco	CA	94111-1704	
LAW OFFICES OF CHRISTOPHER NOLLAND		1717 MAIN ST	STE 5550 LB 39		Dallas	TX	75201	
LAWLER, TIMOTHY		Address on File						
Lawrence A. Hamermesh		Address on File						
Lawrence Labanowski		Address on File						
LAWRENCE, SUZANNE		Address on File						
Lawyers Title of Arizona, Inc.		3131 E. Camelback Rd	Suite 220		Phoenix	AZ	85016	
LB GROUP, LLC	ATTN J LYONS BREWER	274 RIVERSIDE AVE			Westport	CT	06880	
LE, ELI		Address on File						
LEAK, ELIZABETH		Address on File						
LEAP Foundation		9101 N Central Expressway	Suite 600		Dallas	TX	75231	

APPX-90367



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
LED ENTERPRISES, INC.		11131 SHADY TRAIL			Dallas	TX	75229	
LEDERMAN, SHAWN		Address on File						
Lee Lord		Address on File						
Lee Park and Arlington Hall Conservancy		3333 Turtle Creek Blvd.			Dallas	TX	75219	
Lee, Dylan		Address on File						
Lee, Jae		Address on File						
LEE, JEFFREY		Address on File						
Lee, Shawn		Address on File						
Lee, Woengjun		Address on File						
Legal Concierge, Inc.		3975 McCreary Road			Parker	TX	75002	
LegalLink Dallas		PO Box 277951			Atlanta	GA	30384	
LegalLink Dallas		PO Box 538481			Atlanta	GA	30353-8481	
Legalpeople LLC		134 N. LaSalle Street, Ste 800			Chicago	IL	60602	
LegalSource LS, LLC		601 West 5th St, Ste 240			Los Angeles	CA	90071	
LEGG, BRIAN		Address on File						
Leif M Clark Consulting PLLC		PO Box 2676			San Antonio	TX	78299	
LEMME, MATTHEW		Address on File						
LEMUS, LUIS		Address on File						
LEMUS, LUIS C.		Address on File						
LENGE, ANDREW		Address on File						
Lenz & Staehelin		Route de Chene 30	CH-1211		Geneva		6	Switzerland
LEO, EDWARD		Address on File						
Leonard Budyonny		Address on File						
LESJIE GILB TAPLIN LIVING TRUST		Address on File						
Leslie Kwang		Address on File						
Leung, Timothy		Address on File						
LEVENTON, ISAAC		Address on File						
Levinger PC		1445 Ross Avenue	Suite 2500		Dallas	TX	75202	
Levinger PC		1700 Pacific Ave Ste 2390			Dallas	TX	75201-7371	
Levy & Salomao Advogados		AV. Brog.Faria Lima, 2601-12oAndar	CEP 01452-924		Sao Paulo-SP			BRAZIL
Lewis J. Shuster		Address on File						
Lewis Silkin LLP		5 Chancery Lane	Cliffords Inn		London		EC4A 1BL	United Kingdom
Lewis, Rice & Fingersh, L.C.		500 N Broadway, Ste 2000			Saint Louis	MO	63102-2147	
Lexecon		332 S. Michigan Ave.			Chicago	IL	60604-4397	
LexisNexis		PO Box 733106			Dallas	TX	75373-3106	
Lexitas		P.O. Box 734298	Dept. 2012		Dallas	TX	75373-4298	
LHWL		PO Box 38011			Dallas	TX	75238	
Li, Chaoyi		Address on File						
Liberty CLO Ltd.	JPMorgan Chase Bank	600 Travis Street	50th Floor	Worldwide Securities Services-Liberty CLO, Ltd.	Houston	TX	77002	Cayman Islands
Liberty CLO Ltd.	Liberty CLO, Ltd. c/o Walkers SPV Limited	Walker House, PO Box 908GT, Mary Street	George Town, Grand Cayman	The Directors	Grand Cayman			

001-732

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Liberty CLO Ltd.		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Liberty Life Assurance Co of Boston		Group Benefits	PO Box 2658		Carol Stream	IL	60132-2658	
Liberty Life Assurance Company of Boston		100 Liberty Way			Dover	NH	03821-0000	
Liberty Mutual Insurance Company		175 Berkley St			Boston	MA	02116-0000	
LIDDLE, BRIANNE		Address on File						
Life Fitness		156 Oak Trail			Coppell	TX	75019	
LIFE INSURANCE COMPANY OF NORTH AMERICA		PO BOX 13701			Philadelphia	PA	19101-3701	
Lighthouse Document Solutions		723 Main St	Suite 430		Houston	TX	77002	
Lighthouse Document Solutions		2520 Caroline			Houston	TX	77004	
Lightpath Capital, Inc.		1453 Third Street Promenade	Suite 315		Los Angeles	CA	90401	
Lincoln Discovery Services, Inc.		42 Nevada Ave			Long Beach	NY	15161	
Lincoln Financial Advisors Corp.	Attn Trish Kendregan, FBO David Chazin	1300 S. Clinton Street, 1H-53			Fort Wayne	IN	46802	
Lincoln Financial Advisors Corp.		1 Independent Drive	Suite 2901		Jacksonville	FL	32202	
Lincoln Financial Advisors Corp.		Trish Kendregan	1300 S. Clinton St, IH-53		Fort Wayne	IN	46802	
Lincoln Financial Advisors Corp.		18400 Von Karman, Ste 400			Irvine	CA	92612	
LINDEN, RICHARD		Address on File						
Lindsey McCully		Address on File						
Lindsey Norman		Address on File						
Linear Technologies		259 West 30th Street	Suite 201		New York	NY	10001	
Linear Technologies, Inc.		259 West 30th Street, Suite 201			New York	NY	10001	
LinkedIn Corporation		62228 Collections Center Drive			Chicago	IL	60693-0622	
LinkedIn Corporation		1000 West Maude Avenue			Sunnyvale	CA	94085-0000	
Linsco/Private Ledger		9785 Towne Centre Dr			San Diego	CA	92121-1968	
LINVEL, SHANNON		Address on File						
Lipper Inc		PO Box 417148			Boston	MA	02241	
LiquidFiles		PO Box 2403			North Parramatta	NSW	01750	AUSTRALIA
Lisa Bock		Address on File						
Lisa Joseph		Address on File						
LISA RIDLEY		Address on File						
Litigation Paralegals, LLC		1717 McKinney Avenue	Suite 700		Dallas	TX	75202	
Litigation Research		15 Golf Links Court			Kingwood	TX	77339-5335	
Litigation Solution, Inc.		901 Main St Concourse 121			Dallas	TX	75202	
Litigation Research	ATTN Litigation Research	15 Gif Lnks Ct			Kingswood	TX	77339	
Little Forney Crossing, Ltd.	c/o Standridge Companies, Ltd	3008 E. Hebron Pkwy, Bldg 300			Carrollton	TX	75010	

APPX-90389

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Littler Mendelson, PC		PO Box 45547			San Francisco	CA	94145-0547	
LIU, JEFF		Address on File						
Live Healthy America		1300 Walnut Street	Suite 100		Des Moines	IA	50309	
LiveWire Technologies, Inc.		PO Box 550			Little Elm	TX	75068	
Lizarazo, Mireya		Address on File						
Llaughing Llama Productions	Attn Robert Briscoe	11 Moller St			Tenafly	NJ	07670	
LLOYD GROUP		PO BOX 1374 MIDTOWN STATION			New York	NY	10018	
LLOYD, ANDREA K.		Address on File						
LNR and Associates		9426 Chimney Corner Lane			Dallas	TX	75243	
Loan Syndications and Trading	Attn Alicia Sansone	366 Madison Ave, 15th Floor			New York	NY	10017	
Loan Syndications and Trading		360 MADISON AVE, 16TH FLR			New York	NY	10017	
Locke Liddell & Sapp LLP	ATTN LORENA DELUCA	PO Box 911541			Dallas	TX	75391-1541	
Lockton Companies of Dallas		PO Box #671195			Dallas	TX	75267-1195	
Loews Coronado Bay	Jessica Gaines	Loews Business Service Center	424 Church Street, Suite 300		Nashville	TN	37219	
Loews Coronado Bay	Loews Coronado Bay Hotel	4000 Coronado Bay Road			Coronado	CA	92118	
Loews Coronado Bay Resort		4000 Coronado Bay Road			Coronado	CA	92118	
Loews Las Vegas Resort		101 Montelago Blvd			Henderson	NV	89011	
Logan Allin		Address on File						
LogMeIn, Inc.		PO Box 50264			Los Angeles	CA	90074-0264	
LogLink		3001 LBJ Freeway Ste 103			Dallas	TX	75234	
LOHRDING, BRIAN		Address on File						
Loiben, Tara		Address on File						
LOMBARDI, CHRISTOPHER		Address on File						
London Stock Exchange		10 Paternoster Square			London		EC4M 7LS	United Kingdom
Longhorn Credit Funding, LLC	c/o Lord Securities Corp.	48 Wall Street, 27th Floor	Attn Secretary		New York	NY	10005	
Longhorn Credit Funding, LLC		874 Walker Rd, Ste C			Dover	DE	19904-0000	
Looper Reed & McGraw P.C.		1601 Elm St, Ste 4600			Dallas	TX	75201	
Loren Jackson, District Clerk	Att Civil/Family Post Trial	PO Box 4651			Houston	TX	77210-4651	
Lori Hosea		Address on File						
LOSEY, NICHOLAS		Address on File						
LOUGHLIN MEGHJI + COMPANY, INC.		148 MADISON AVE	8TH FLOOR		New York	NY	10016	
LOUGHLIN MEGHJI + COMPANY, INC.		220 West 42nd Street, 9th Floor			New York	NY	10036	
Louis Dessaint		Address on File						
LOVELACE, NAOMI		Address on File						
Lowenstein Sandler PC		65 Livingston Ave			Roseland	NJ	07068	
Loyal Source		3504 Lake Lynda Drive	Suite 175		Orlando	FL	32817	
Loyens Loeff		Address on File						
Loyola University- Barnett Professorship	ATTN Traci Wolff	Loyola University New Orleans	7214 St. Charles Ave., Campus Box 909		New Orleans	LA	70115	United Kingdom
LPGP Connect		98 Mereway Road			Twickenham		TW2 6RG	United Kingdom

001-7374

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
LPL Financial	Attn Accounts Receivable	PO Box 502308			San Diego	CA	92150-2308	
LPL Financial	Attn Client Comp Dept	4707 Executive Dr			San Diego	CA	92121-3091	
LPL Financial	Attn Comp Dept FBO Sid Lorio	4707 Executive Drive			San Diego	CA	92121-3091	
Lucas Associates, Inc.		PO Box 638364			Cincinnati	OH	45263-8364	
Lucas Group		PO Box 406672			Atlanta	GA	30384-6672	
LUCAS VOILES		Address on File						
LUCHEY, BRITTANY		Address on File						
LUCIDITY CONSULTING GROUP LP	ATTN ROBIN PARSONS	1300 LOOKOUT DRIVE	SUITE 225		Richardson	TX	75082	
Lucy Bannon	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
LUI, VINCENT		Address on File						
Luis Gomez		Address on File						
Luis Lopez		Address on File						
Lumenson Security, Inc.		PO Box 912806			Denver	CO	80291-2806	
Luna, Jose		Address on File						
LUNNEY, BRITTANY		Address on File						
Lutheran High School	c/o Hannah Culburtson	9531 Milltrail			Dallas	TX	75238	
Luu, Joye		Address on File						
LVOVICH, YARASLAV		Address on File						
Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	Lynn Pinker Cox & Hurst, LLP	2100 Ross Avenue, Ste 2700		Dallas	TX	75201	
LYNN, PHAM & ROSS, LLP		PO BOX 190466			Dallas	TX	75219-4129	
Lynne Fiske		Address on File						
Lynx Capital, LLC		10900 Wilshire Blvd Ste 300			Los Angeles	CA	90024	
Lyon Wealth Management Inc. LYON, RICHARD D.		14646 N Kierland Blvd, Ste 125	HighTower Advisors		Scottsdale	AZ	85254	
Lyons Brewer Group		Address on File						
LYRECO		274 Riverside Ave			Westport	CT	06880	
M Patrick McShan		DEER PARK - DONNINGTON WOOD			TELFORD SHROPSHIRE		TF2 7NB	United Kingdom
M&M The Special Events Company		Address on File						
M&S Technologies		9500 W 55th St Ste A			Countryside	IL	60525-7125	
M/S Media Productions Inc		2727 LBJ Freeway	Suite 810		Dallas	TX	75234	
MA Division of Unemployment Assistance		512 Main Street, Suite 1301			Fort Worth	TX	76102	
Mabry, Will		Revenue Service	19 StanifoRd St		Boston	MA	02114-2566	
Macaulley LLC		Address on File						
Macfarlanes		300 Delaware Avenue	Suite 760		Wilmington	DE	19801	
MACKENZIE PARTNERS, INC		10 Norwich St			London		EC4A 1BD	United Kingdom
MacroMavens		105 MADISON AVE			New York	NY	10016	
MacroMavens, LLC		180 W 20th Street	Suite 1700		New York	NY	10011-0000	
MADDEN, SAMUEL		180 W. 20th Street	Suite 1700		New York	NY	10011	
MaddenSewell, LLP		Address on File						
MAH, JEFFERY		1755 Wittington Place	Ste 300		Dallas	TX	75234	
		Address on File						

001-933

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
MAHMUD, GIBRAN		Address on File						
MailFinance		25881 Network Place			Chicago	IA	60673-1258	
Make-A-Wish Foundation of Metro New York		One Penn Plaza Ste 3600			New York	NY	10119	
MALCOLM M KNAPP, INC		46 E 92ND ST APT 5			NEW YORK	NY	10128-1371	
Malone Maxwell Borson Architects		718 North Buckner Blvd	Suite 400		Dallas	TX	75218	
Malwarebytes Corporation		10 Almaden Blvd, 10th Floor			San Jose	CA	95113	
Management Recruiters of Tallahassee		743 East Tennessee St			Tallahassee	FL	32308	
Management Search Inc		245 Peachtree Center Ave	suite 2500		Atlanta	GA	30303	
Manaswi Sharma		Address on File						
Manchester Grand Hyatt		PO Box 51914, Unit O			Los Angeles	CA	90051-6214	
MandateWire	ATTN Accounting	1430 Broadway, 12th Floor	Suite 1208		New York	NY	10018	
Manesh Shah		Address on File						
Mangia		50 West 57th Street			New York	NY	10019	
Mangin, Andrew		Address on File						
Manhattan Fire & Safety Corp.		242 West 30th Street	7th Floor		New York	NY	10001	
Manhattan Information Systems, Inc.		228 East 45th St			New York	NY	10017	
Manhattan Jewish Experience	Attn Danielle Yadaie	131 West 86th Street, Floor 11			New York	NY	10024	
Manian, Meagan		Address on File						
MANNING, ELLEN		Address on File						
MANO, JONATHAN		Address on File						
Mansoor Kazi		Address on File						
Manuel Lopez		Address on File						
Manulife Financial		PO Box 894764			Los Angeles	CA	90189-4764	
MANZO, MARC C.		Address on File						
MapAnything		5200 77 Center Dr, Ste 400			Charlotte	NC	28217	
Maples and Calder		UGLAND HOUSE	PO BOX 309GT S CHURCH ST	George Town	Grand Cayman			Cayman Islands
Maples Compliance Services (Cayman) Limi		PO Box 1093, Queensgate House			Grand Cayman		KY1-1102	Cayman Islands
Maples Fiduciary Services (Delaware) Inc.		4001 Kennett Pike, Ste 302			Wilmington	DE	19807	
MAPLES FINANCE		PO BOX 1093GT, QUEENSGATE HOUSE	SOUTH CHURCH ST		GEORGE TOWN		KY1-1104	Cayman Islands
MaplesFS	attn Peter Huber	Boundry Hall, Cricket Square	PO Box 1093		Grand Cayman		KY1-1102	Cayman Islands
MaplesFS Service Company Limited		PO Box 1093	Boundary Hall #110		GRAND CAYMAN		KY1-1102	Cayman Islands
Marble Care Unlimited		705 N. Bowser			Richardson	TX	75081	
Marc Carlsson		Address on File						
MARC FABER LIMITED		SUITE 3311-3313	TWO INTERNATIONAL FINANCE CENTER	8 FINANCE STREET	CENTRAL HONG KONG			HONG KONG
MARC KLYMAN		Address on File						
MARC MANZO		Address on File						
March of Dimes	attn Megan Fletcher	12660 Colt Road, Suite 200			Dallas	TX	75251	

001-70378

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Marcus Consulting, LLC		913 Westminster Way			Southlake	TX	76092	
Marcus Evans Inc.		Address on File						
Margaret Peggy Boswell		Address on File						
Margarita Masters		906 Sunnyvale Dr			Arlington	TX	76010-2936	
Maricopa County Treasurer		301 West Jefferson St	Rm 100		Phoenix	AZ	85003	
Marion A. Patterson		Address on File						
Mark Badros		Address on File						
Mark Divine	Koa Kai, LLC	PO Box 232307			Leucadia	CA	92023	
Mark Drucker		Address on File						
Mark Gargiulo - CFO		Address on File						
MARK GELNAW		Address on File						
Mark K. Okada	Sullivan Cromwell LLP	Brian D. Glueckstein	125 Broad Street		New York	NY	10004	
Mark Kiniry		Address on File						
Mark Okada		Address on File						
Mark Patrick	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Mark Rywelski		Address on File						
Mark Schonfeld, Esq.	Regional Director	Securities & Exchange Commission	3 World Financial Center, Suite 400		New York	NY	10281-1022	
Mark Simmelkjaer		Address on File						
Mark Turner		Address on File						
MARKET AXESS CORPORATION		LOCKBOX # 30023, GENERAL POST OFC	PO BOX 30023		New York	NY	10087-0023	
Market Builders, Inc.		433 Begonia Ave.	Suite A		Corona Del Mar	CA	92625	
Market76, Inc.		900 Grand Avenue			New Haven	CT	06511	
MarketResearch		6101 Executive Blvd Ste 110			Rockville	MD	20852	
Markets Group		10 W. 37th St.	7th Floor		New York	NY	10018	
Markham Fine Jewelers		8355 Gaylord Pkwy			Frisco	TX	75034	
Markit	Attn John Taylor	IHS Markit Legal Department	IHS Markit, 450 West 33rd St,	5th Floor	New York	NY	10001	United Kingdom
Markit Equities Limited	c.o Market Group Limited, Level 4	Ropemaker Place, 25 Ropemaker Street			London		EC2Y9LY	United Kingdom
Markit Group Limited		4th Fir Ropemaker Place	25 Ropemaker St		London		EC2Y9LY	United Kingdom
Markit Group Limited		Level 5	2 More London Riverside		London		SEI 2AP	United Kingdom
Markit Group Limited / Markit North Amer		2 More London Riverside	35th floor		London		SE12AP	United Kingdom
Markit North America Inc.		620 8th Ave			New York	NY	10018	United Kingdom
Markit Valuations Ltd		level 5	2 More London Riverside		London		SEI 2AP	United Kingdom
Markit WSO Corp	Kendra Montoya	15 Inverness Way East			Englewood	CO	80112	
MARKIT WSO CORPORATION		Three Lincoln Centre	5430 LBJ Fwy, Ste 800		Dallas	TX	75240	
MarksADR, LLC		4833 Rugby Ave, Ste 301			Bethesda	MD	20814	
MARQUESS & ASSOCIATES		15441 KNOLL TRAIL	STE 280 LB1		Dallas	TX	75248	
Marriott Business Services		PO Box 402642			Atlanta	GA	30384-2642	
Mars Printing		17426 Studebaker Rd			Cerritos	CA	90703	
MARSHALL HESS		Address on File						

APP-90379

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 100 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Marson, Stacy		Address on File						
Martin G. Salazar		Address on File						
Martin Podorsky		Address on File						
Martin, Andrew		Address on File						
Martin, Carla		Address on File						
MARTIN, DANIEL G.		Address on File						
MARTIN, WILLIAM		Address on File						
MARTINSON, MARK		Address on File						
Marty Mooney		Address on File						
Marval & O'Farrell		Av. Leandro N. Alem 928			Buenos Aires		01001	ARGENTINA
Mary Irving	Michael P. Hutchens, Esq.	Whitaker Chaik Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Mary Zappone		Address on File						
Maryam Rusch		Address on File						
Maryland Office of the Attorney General	Division of Securities	200 Saint Paul Place			Baltimore	MD	21202	
Marzullo Reporting Agency		345 North LaSalle	No 1605		Chicago	IL	60654	
MASON, DEANA		Address on File						
MASON, FREDERIC		Address on File						
MASON, FREDERIC		Address on File						
Mass. Dept. of Revenue	Attn Bankruptcy Unit	PO Box 9564			Boston	MA	02114	
MASSACHUSETTS DEPARTMENT OF REVENUE		PO Box 7025			Boston	MA	02204	
MASSACHUSETTS DEPARTMENT OF REVENUE		PO BOX 7065			Boston	MA	02204-7065	
Massachusetts Mutual Life Insurance Co		1295 State Street			Springfield	MA	01111	
Massand Capital, INC		130 East 18th Street #1P			New York	NY	10003	United Kingdom
MASSEYS LLP		Hillgate House	26 Old Bailey		London		EC4M 7QH	
MassMutual Financial Group		100 Bright Meadow Blvd			Enfield	CT	06082	
MassMutual Life Insurance Company		1000 N Central Expwy Ste 1000			Dallas	TX	75231-4177	
Massoud Karimzadeh		Address on File						
Mateo Hix		Address on File						
MATRIX RESOURCES INC.		PO BOX 101177			Atlanta	GA	30392	
Matt Culler		Address on File						
MATT DUNHAM		Address on File						
Matt Hurd		Address on File						
Matt McElligott		Address on File						
Matt McElligott Photography		1409 E. Windsor Drive			Denton	TX	76209	
MATTHEW BENDER & CO, INC		PO BOX 7247-0178			Philadelphia	PA	19170-0178	
Matthew Berry, Esq.	Office of General Counsel	Federal Communications Commission	445 12th Street, S.W.		Washington	DC	20554	
Matthew DiOrto	Michael P. Hutchens, Esq.	Whitaker Chaik Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Matthew Garrett		Address on File						

001-738



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Matthew Gould		Address on File						
Matthew Kirst		Address on File						
Matthew Murphy		Address on File						
MATTHEW SCHNABEL		Address on File						
Matthew Selman		Address on File						
MATTHEW WHITLEY		Address on File						
Mattos Filho Veiga Filho Marry Jr.		Address on File						
Maurice Robinson & Associates LLC		880 Apollo St Suite 125			El Segundo	CA	90245	
Maurice Robinson & Associates LLC		28 Dover Place			Manhattan Beach	CA	90266	
Mauricio Chavarriaga	c/o Highland Capital Mgmt.	245 Park Ave, 24th Flr			New York	NY	10167	
Mauricio Chavarriaga		Address on File						
Mauricio Delgado		Address on File						
MAWN, CHRISTOPHER		Address on File						
Max Russell Phinney		Address on File						
Maxim Group, LLC		405 Lexington Ave #2			New York	NY	10174	
MAY, DERRICK		Address on File						
MAYER BROWN LLP		2027 COLLECTION CENTER DR			Chicago	IL	60693-0020	
Mayer, Brown, Rowe & Maw LLP		1675 Broadway			New York	NY	10019-5820	
Mayeron, John		Address on File						
Mayo, Christopher L.		Address on File						
Mayors Intern Fellows Fund			3963 Maple Ave, Suite 390		Dallas	TX	75219	
Mazzeo Song & Bradham LLP		The Dallas Foundation						
MBA Reporting Services, Inc		708 Third Ave, 19th Fl			New York	NY	10017	
MBM Advisors, Inc.		555 Republic Drive	2nd Floor		Plano	TX	75074	
McCafferty, Christopher		440 Louisiana #2600			Houston	TX	77002	
McCague Borlack LLP		Address on File						
McClung, Elizabeth B.		130 King St. West Suite 2700			Toronto	ON	M5X1C7	CANADA
McCormick, Robert		Address on File						
McCormick, Robert		Address on File						
McDaniel, Patrick		Address on File						
McDermott, Bonner		Address on File						
McDermott investment Services, LLC		44 E Broad St, FL 2			Bethlehem	PA	18018	
McDermott Will & Emery LLP		Lockbox - New York PO Box 7247-6755			Philadelphia	PA	19170-6755	
McDermott Will & Emery LLP		PO BOX 2995			Carol Stream	IL	60132-2995	
McDermott Will & Emery LLP		227 West Monroe Street			Chicago	IL	60606-5096	
McDermott Will & Emery LLP		P.O. Box 6043			Chicago	IL	60680-6043	
McElroy & Company P.C.		16415 Addison Road	Suite 800		Addison	TX	75001	

APP-933

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
McFARLANE, PETER A		Address on File						
McFARLING, BRANDON		Address on File						
McGRANER, MATTHEW		Address on File						
McGraner, Matthew		Address on File						
MCGREGOR, MICHELLE		Address on File						
McGuireWoods LLP		800 E. Canal Street			Richmond	VA	23219-3916	
McIntosh Search Incorporated		6310 Lemmon Ave Ste 202			Dallas	TX	75209	
McKay, Brad		Address on File						
MCKEE NELSON LLP		ONE BATTERY PARK PLAZA	34TH FLR		New York	NY	10004	
McKool Smith		300 Crescent Court	Suite 1500		Dallas	TX	75201	
McKool Smith P.C.	c/o Travis DeArman	300 Crescent Court Ste 1500			Dallas	TX	75201	
McKool Smith, P. C.	Gary Cruciani, Esq.	McKool Smith	300 Crescent Court, Suite 1500		Dallas	TX	75201	
McLagan Partners		PO Box 905188			Charlotte	NC	28290-5188	
McLagan Partners		PO Box 100137			Pasadena	CA	91189-0137	
McLagan Partners Inc (Aon McLagan)		1600 Summer Street	Ste 601		Stamford	CT	06905-0000	
McLagan Partners, Inc.	Stephen Reuther	4 Overlook Point			Lincolnshire	IL	60069	
MCLOCHLIN, MICHAEL		Address on File						
MCLOCHLIN, MICHAEL P.		Address on File						
McMains, Aubree		Address on File						
McMillan Binch Mendelsohn		Brookfield Place Suite 4400			Toronto	ON	M5J2T3	CANADA
McNamara, John		Address on File	Bay Wellington Tower					
McRedmond, Edward		Address on File						
MCS Capital LLC c/o STC, Inc.		233 North Prospect St., Ste. 202			Hagerstown	MD	21740	
Meadows Collier Reed Cousins & Blau LLP		901 Main St. Suite 3700			Dallas	TX	75202	
MEANS, BRADLEY		Address on File						
Medanich, Michael		400 Regency Forest Drive, Suite 200			Cary	NC	27518	
Mediant Communications Inc.	Mediant Communications				New York	NY	10087-9976	
Mediant Communications LLC		PO Box 29976			Dallas	TX	75218-5004	
MedPost Urgent Care-East Dallas		9540 Garland Rd	Suite C408					
Meeks, Lucas		Address on File			Thame	United Kingdom		
MEETINGZONE LTD		OXFORD HOUSE	OXFORD ROAD					
MEGAN MCGEE		Address on File			New York	NY	10017	
Meister Seelig & Fein LLP		125 Park Avenue	7th Floor					
MELENDEZ, HELDER		Address on File						
MELISSA LOPEZ		Address on File						
Melody Po		Address on File						
Mendelsohn, Rosentzweig, Shact		1000 Sherbrooke St West, 27th Flr			Montreal	QC	H3A 3G4	CANADA
Mendenhall, Brad		Address on File						
MERCER (US) INC.	John Dempsey	1166 Avenue of the Americas			New York	NY	10036	

APP-9878

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Mercer Consumer	Attn DV1 Fin	PO Box 310293			Des Moines	IA	50331-0293	
Mercer Consumer	Wells Fargo Bank	c/o Regulux Lockbox Services 310293	666 Walnut Street		Des Moines	IA	50309	
Merchants Automotive Group, Inc.		1278 Hooksett Road			Hooksett	NH	03106	
Merchants Automotive Group, Inc.		PO Box 16415			Hooksett	NH	03106-6415	
Mercy Corps		P.O. Box 2669, Dept W			Portland	OR	97208-2669	
MEREDITH HERZFELD Mergent, Inc.		Address on File						
Mergemarket		PO Box 403123			Atlanta	GA	30384-3123	
Mergemarket (US) Limited (trading as Xt		895 Broadway	4th Floor		New York	NY	10003	
MERGERMARKET LTD		1501 Broadway	Suite 801		New York	NY	10036-0000	
MERGERMARKET LTD		11 West 19th Street	2nd Floor		New York	NY	10011	
Merit Court Reporters		3 E 28th ST	4th FLR		New York	NY	10016	
Merope Pentogenis		307 W 7th Street	Ste 1350		Fort Worth	TX	76102	
Merrill Communications LLC		Address on File						
Merrill Communications LLC		One Merrill Circle			Saint Paul	MN	55108	
MERRILL CORPORATION		CM-9638			Saint Paul	MN	55170-9638	
MERRILL LYNCH	Attn Blake Bollinger	CM-9638			Saint Paul	MN	55170	
MERRILL LYNCH	Attn Chad Kulm	569 Brookwood Village	Ste 501		Birmingham	AL	35209	
MERRILL LYNCH	Attn Jason Aversa	110 S Phillips Ave, Ste 101			Sioux Falls	SD	57104	
MERRILL LYNCH	Attn Lynae Carr	3100 Hingston Ave			Egg Harbor Township	NJ	08234	
MERRILL LYNCH	Attn Megan Arnold	1221 McKinney Street, Ste 3900			Houston	TX	77010	
MERRILL LYNCH	Attn Monty Willhite	60 E South Temple St, #200-61			Dallas	TX	75240	
MERRILL LYNCH	Attn Robert Luther	1100 Canal Street			Salt Lake City	UT	84111	
MERRILL LYNCH	Attn Tiffany Contreras	17225 El Camino Real, Ste 200			The Villages	FL	32162	
MERRILL LYNCH	C/O Girard Kovarik & Assoc	101 N. Clematis St, Ste 200			Houston	TX	77058	
MERRILL LYNCH		185 Asylum Street	City Place II, 14th Flr		West Palm Beach	FL	33401	
MERRILL LYNCH		NJ2-140-02-01			Hartford	CT	06103	
MERRILL LYNCH		4802 Deer Lake Dr E	1400 Merrill Lynch Drive		Pennington	NJ	08534	
MERRILL LYNCH		CMS CBRU FL9-801-01-02	CMS CBRU FL9-801-01-02		Jacksonville	FL	32246	
MERRILL LYNCH		21805 FIELD PARKWAY STE 220	4802 Deer Lake Dr E		Jacksonville	FL	32246	
Merrill Lynch Valuations LLC	Attn Richard Eimbinder	15514 Collections Center Drive			DEER PARK	IL	60010	
Merry Phengvath		450 E 4th Street			Chicago	IL	60693	
MERS Educational Conference	ATTN Bob Rust	Municipal Empee Retirement Syst of LA			Brooklyn	NY	11218	
MESERVE, NICHOLAS		Address on File	7937 Office Park Blvd		Baton Rouge	LA	70809	
Meta-e Discovery LLC	Paul McVoy	Meta-e Discovery	Six Landmark Square, 4th Floor		Stamford	CT	06901	

APP-9037

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Meta-e Discovery, LLC	Attn Paul H. McVoy	93 River Street			Millford	CT	06460	
Meta-e Discovery, LLC	Morrison Cohen LLP	Attn Joseph T. Moldovan and Sally Siconolfi	909 Third Avenue		New York	NY	10022	
Metalogix International		PO Box 83304			Pittsburgh	PA	15250	
METHVIN, JAMES		Address on File						
Metlife	Attn Placings Unit	1300 Hall Blvd.			Bloomfield	CT	06002	
Metlife	Attn Retail Life & DI Operations	18210 Crane Nest Dr, 5th Floor	Placings Unit		Tampa	FL	33647	
Metlife		PO BOX 371487			Pittsburgh	PA	15250-7487	
Metlife Investors USA Insurance Company		PO Box 13863			Philadelphia	PA	19101-0000	
MetLife SBC		5400 LBJ Freeway	Suite 1100		Dallas	TX	75240	
MetLife SBC		PO Box 804466			Kansas City	MO	64180-4466	
Metro Attorney Service Inc.		305 Broadway, 14th Flr			New York	NY	10007	
Metro-Repro, Inc.		PO Box 560092			Dallas	TX	75356-0092	
METT	Attn Jana Clemans	Pioneer Natural Resources	5205 N. OConnor Blvd, Suite 200		Irving	TX	75039-3746	
Meunier, Marc		Address on File						
MGL Consulting Corp.		10077 Grogans Mills Rd Ste 300			The Woodlands	TX	77380	
MHA Petroleum Consultants LLC		730 17th Street	Suite 410		Denver	CO	80202	
MIAO, EUGENE		Address on File						
MICHAEL & TERESA OLSON TRUST		Address on File						
Michael Blackburn		Address on File						
MICHAEL COLVIN		Address on File						
Michael Cummings		Address on File						
MICHAEL DEVICO		Address on File						
Michael Hasenauer		Address on File						
Michael Jeong		Address on File						
MICHAEL KELLY		Address on File						
MICHAEL LANE CUISINE, INC		8409 PICKWICK # 112			Dallas	TX	75225	
MICHAEL LATHAM		Address on File						
Michael Ly		Address on File						
Michael Malone Architects, Inc		5646 Milton St Suite 705			Dallas	TX	75206	
Michael Morris		Address on File						
Michael P Zarilli		Address on File						
MICHAEL PAGE INTERNATIONAL		8 BATIN RD			Slough Berkshire		SL1 3SA	United Kingdom
MICHAEL PASSMORE		Address on File						
MICHAEL PETERSON		Address on File						
Michael Phillips		Address on File						
Michael R. Coker Company		2700 Swiss Ave Suite 100			Dallas	TX	75204	
Michael Radovan		Address on File						
Michael S. Held		Address on File						
MICHAEL SHERIDAN		Address on File						
Michael Sorell		Address on File						

APP-90378

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
MICHAEL SZKODZINSKI		Address on File						
MICHAEL T DALBY IRA		Address on File						
Michael Tepitsky		Address on File						
MICHAEL WANG		Address on File						
MICHAEL WILCHER		Address on File						
Michael Paul Donaldson		Address on File						
Michelle French, Tax A/C		Address on File						
Michigan Department of Treasury		PO Box 30774			Lansing	MI	48909-8274	
Mick Law P.C.		816 South 169th Street			Omaha	NE	68118	
Microsoft Corporation		1950 N Stemmons Fwy	Suite 5010		Dallas	TX	75207	
Microsoft Corporation and Subsidiary of Microsoft Corporation	David P. Papiez	Fox Rothschild LLP	1001 4th Ave, Suite 4500		Seattle	WA	98154	
Microsoft Corporation and Subsidiary of Microsoft Corporation		Amber Brazier, Associate Paralegal	One Microsoft Way		Redmond	WA	98052	
Microsoft Services		One Microsoft Way			Redmond	WA	98052	
Microsoft Services		PO Box 844510			Dallas	TX	75284-4510	
MICRO-TEL		3700 Holcomb Bridge Rd	Suite 5		Peachtree Corners	GA	30092	
Mike Brennan		Address on File						
Mike Brohm		Address on File						
Mike Doyle		Address on File						
Mike Hurley		Address on File						
Mike Sharkey		Address on File						
Mike Wolbert		Address on File						
Milbank, Tweed, Hadley & McCloy LLP		1 CHASE MANHATTAN PLAZA			New York	NY	10005-1413	
Milberg LLP		One Pennsylvania Plaza	49th Floor		New York	NY	10119	
Miles Littlefield		Address on File						
Miller & Chevalier Chartered		P.O. Box 758604			Baltimore	MD	21275-8604	
Miller Buckfire & Co, LLC		601 Lexington Ave			New York	NY	10022	
Miller Korzenik Sommers Rayman LLP		1501 Broadway Ste 2015			New York	NY	10036-5600	
MILLER, DEBORAH		Address on File						
Miller, Egan, Molter & Nelson LLP		4514 Cole Avenue	Suite 1200		Dallas	TX	75205	
Miller, Egan, Molter & Nelson LLP		1402 San Antonio St.	Suite 100		Austin	TX	78701	
MILLIMAN CONSULTANTS AND ACTUARIES		1550 LIBERTY RIDGE DR	STE 200		WAYNE	PA	19087-5572	
Mills, James		Address on File						
MILTENBERGER, WILLIAM		Address on File						
Mindy Billinghurst		Address on File						
Miner, Christopher		Address on File						
Minnesota Revenue		Mail Station 1260			Saint Paul	MN	55145-1260	

APP-90379

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Minnesota State Treasurer		Minnesota Department of Commerce	857th Place East, Suite 500		Saint Paul	MN	55101	
Miramar OSC	Attn Leslie Henger	11763 Ashlock Way			San Diego	CA	92131	
Mirani, Parth		Address on File						
MISLAV TOLUSIC		Address on File						
Mississippi Secretary of State	Business Regulation & Enforcement Div	125 S. Congress Street			Jackson	MS	39201	
MISSISSIPPI STATE TAX COMMISSION		PO BOX 1033			Jackson	MS	39215	
Missouri Department of Revenue		PO Box 3020			Jefferson City	MO	65105-3020	
MISSOURI DIRECTOR OF REVENUE	TAXATION BUREAU	PO BOX 3365 (573)751-4541			Jefferson City	MO	65105-3365	
Missouri Secretary of State		Securities Division	600 West Main Street, 2nd Floor		Jefferson City	MO	65101	
Mitchell A. Hanwood & Partners		791 Park Ave Ste 4B			New York	NY	10021	
Mitchell, Krysta		Address on File						
Mitchener Turnipseed		Address on File						
MITTS, BRIAN		Address on File						
MJL ENTERPRISE		PO BOX 852563			Richardson	TX	75085	
MLF Lex Serv LP		4350 East West Highway			Bethesda	MD	20814	
MODERN HEALTHCARES								
DAILY DOSE		CIRCULATION DEPT	1155 GRATIOT AVE		Detroit	MI	48207-2912	
Mohring, Christopher		Address on File						
Molecular Insights		160 Second Street			Cambridge	MA	02142	
Moloney Securities		13537 Barrett Parkway Drive	Suite 300		Manchester	MI	63021	
Monarch Investigation Inc		PO Box 292265			Lewisville	TX	75029-2265	
Money-Media, Inc.	Attn Accounting	330 Hudson Street	7th Floor		New York	NY	10013	
Monster, Inc.		PO Box 90364			Chicago	IL	60696-0364	
MONSTERTRAK		14372 COLLECTIONS CENTER DR			Chicago	IL	60693	
Moody's Analytics		395 Oyster Point Blvd	Suite 215		South San Francisco	CA	94080	
Moody's Analytics		PO BOX 102597			Atlanta	GA	30368-0597	
Moody's Analytics		PO BOX 116714			Atlanta	GA	30368-0597	
Moody's Analytics		PO Box 116647			Atlanta	GA	30368-6647	
Moody's Analytics, Inc.	Attn Christopher R. Belmonte and Pamela A. Bosswick	c/o Duane Morris LLP	230 Park Avenue, Suite 1130		New York	NY	10169	
Moody's Analytics, Inc.	Sue McGeehan	7 World Trade Center	250 Greenwich Street		New York	NY	10007	
Moody's Analytics, Inc.		PO Box 102597			New York	NY	10007-0000	
Moody's Investor Service					Atlanta	GA	30368-0597	
Moody's Investors Service, Inc.	Attn Christopher R. Belmonte and Pamela A. Bosswick	c/o Duane Morris LLP	230 Park Avenue, Suite 1130		New York	NY	10169	
Moody's Investors Service, Inc.	Sue McGeehan	7 World Trade Center	250 Greenwich Street		New York	NY	10007	

APP-90384

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
Moody Investors Service, Inc.	Sue McGeehan	VP, Collections, Finance Dept.	7 World Trade Center at 250 Greenwich Street		New York	NY	10007	
MOORE & VAN ALLEN PLLC		100 NORTH TRYON ST	STE 4700		Charlotte	NC	28202-4003	
MOORE, CALEB		Address on File						
MOORE, WILLIAM C.		Address on File						
Morgan Lewis & Bockius LLP		PO Box 8500 S-6050			Philadelphia	PA	19178-6050	
Morgan Stanley	Attn Accounts Receivable	PO Box 860			New York	NY	10008-0860	
Morgan Stanley	Attn Adam Razov	855 Franklin Ave.			Garden City	NY	11530	
Morgan Stanley	Attn Diana Sigona	1585 Broadway, 23rd Flr			New York	NY	10036	
Morgan Stanley	Attn Jonathan Canter	10960 Wilshire Blvd, Ste 2000			Los Angeles	CA	90024	
Morgan Stanley	Attn Margaret Oshea-NW Managers Mtg	1585 Broadway, 23rd Floor			New York	NY	10036	
Morgan Stanley	Attn MF Billing Dept	1300 Thames St, 4th Flr			Baltimore	MD	21231	
Morgan Stanley	Attn Michael Lawrence	6037 La Flocha			Rancho Santa Fe	CA	92067	
Morgan Stanley	Attn Michelle Dolan	2 Jericho Plaza			Jericho	NY	11753	
Morgan Stanley	Attn Robyn Owens	370 17th Street, Suite 2800			Denver	CO	80202	
Morgan Stanley		111 S. Pflingsten Road	Suite 200		Deerfield	IL	60015	
Morgan Stanley		200 Crescent Court	Ste 900		Dallas	TX	75201	
Morgan Stanley		14850 N Scottsdale Rd	Ste 600		Scottsdale	AZ	85254	
Morgan Stanley		733 Bishop Street	Ste 2800		Honolulu	HI	96813	
MORGAN, JOHN		Address on File						
MORGANS, JONATHAN		Address on File						
MORLEY CAMPBELL		Address on File						
Morningstar, Inc.		22 W Washington St			Chicago	IL	60602-0000	
Morningstar, Inc.		2668 PAYSphere Circle			Chicago	IL	60674	
Morningstar, Inc.		135 South LaSalle St Dept. 2668			Chicago	IL	60674-2668	
Morningstar, Inc.		5133 Innovation Way			Chicago	IL	60682-0051	
Morris James LLP		500 Delaware Avenue	Suite 1500	PO Box 2306	Wilmington	DE	19899-2306	
Morris, Manning, & Martin LLP		1600 Atlanta Financial Center	3343 Peachtree Road, NE		Atlanta	GA	30326-1044	
MORRIS, NICHOLS, ARSHT & TUNNELL LLP		1201 NORTH MARKET ST	PO BOX 1347		Wilmington	DE	19899-1347	
MORRIS, NICHOLS, ARSHT & TUNNELL LLP	William M. Lafferty	Kevin M. Coen	1201 N. Market Street		Wilmington	DE	19801	
Morrison & Foerster		1290 Ave of the Americas			New York	NY	10104-0050	
Morrison Cohen LLP	Attn Joseph T. Moldovan and Sally Siconolfi	909 Third Avenue			New York	NY	10022	
Morstad		79 East Putnam Ave	Outdoor Traders Building		Greenwich	CT	06830	
Mortensen, Christopher		Address on File						
Morton, David C.		Address on File						
MOSTLY SMOKED		VITTORIA HOUSE	2A TOWCESTER RD		BOW London	TX	E3 3ND	United Kingdom
Motus Red LLC		7018 Hursey			Dallas	TX	75205	
Mourant Ozannes		Address on File						

APP-7081



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Move Solutions, Ltd.		1473 Terre Colony Ct, Dept DA			Dallas	TX	75212	
MoveWorks, Inc.		4945 Sharp Street			Dallas	TX	75247	
MP Advisory		43 Vila Nova Pauliceia			Sao Paulo-SP			BRAZIL
MPulse Maintenance Software		PO Box 22906			Eugene	OR	22906	
MQ Services Ltd.		Chancery Hall	52 Reid St		Hamilton		HM 12	BERMUDA
MQ Services Ltd.		PO Box HM 1737			Hamilton		HM GX	BERMUDA
MQ Services Ltd.		PO BOX HM 809			Hamilton		HM GX	BERMUDA
MRB Research Partners Inc.		122 East 42nd Street	Suite 2310		New York	NY	10168	
MRI Contract Staffing		5151 Beltline Rd	Suite 550		Dallas	TX	75254	
MRI Contract Staffing		88276 Expedite Way			Chicago	IL	60695-0001	
MS Society of Long Island		40 Marcus Dr.	Suite 100		Melville	NY	11747	
MSCI Inc.		PO Box 414631	250 Greenwich St, 49th floor		Boston	MA	02241-4631	
MSCI Inc.		7 World Trade Center			New York	NY	10007-0000	
MT State Auditor, Securities Comm.		840 Helena Avenue			Helena	MT	59601	
MTV Staying Alive Foundation		1305 Wycliff Ave	Suite 120		Dallas	TX	75207	
Muck Holdings LLC		c/o Crowell & Moring LLP	590 Madison Avenue		New York	NY	10022	
MULLER, MARY	Attn Paul Haskel	Address on File						
Multichannel News		PO Box 5667			Harlan	IA	51593-1167	
MUNDASSERY, APPU		Address on File						
Munger Tolles & Olson LLP		355 South Grand Ave			Los Angeles	CA	90071-1560	
Munsch Hardt Kopf & Harr, P.C.	Davor Rukavina, Esq., Thomas D. Berghman, Esq., Julian P. Vasek, Esq.,	500 N. Akard St., Ste. 3800			Dallas	TX	75201	
Munsch Hardt Kopf & Harr, P.C.	Davor Rukavina, Julian P. Vasek	3800 Ross Tower	500 N. Akard Street Suite 402		Dallas	TX	75202-2790	
Murano Connect LP		252 West 38th Street			New York	NY	10018	
Murder Mystery Texas		6304 Innsbrooke Dr			Arlington	TX	76016	
Murphy, George		Address on File						
MURPHY, MATTHEW		Address on File						
MURRAY HILL CENTER		14185 Dallas Parkway Suite 1200			Dallas	TX	75254	
SOUTHWEST INC		Address on File						
MURRAY, ANDREW		Address on File						
Murray, Mason		Address on File						
Murray, Wesley		Address on File						
Muscular Dystrophy Association	Attn Janice	PO Box 38			Terrell	TX	75160	
Musser, Carley		Address on File						
Muthu Dorai		Address on File						
Mxtoolbox		12710 Research Blvd	Ste 225		Austin	TX	78759	
MY HOUSE OF FINE EATS & CATERING		2025 PROMENADE CENTER			Richardson	TX	75080	
Myers Bigel Sibley & Sajovec, P.A.		PO Box 37428			Raleigh	NC	27627	
Myers Park Country Club		2415 Roswell Avenue			Charlotte	NC	28209	
Myron Corp.		PO Box 660888			Dallas	TX	75266-0888	

APP-90382

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
N.C. DEPARTMENT OF REVENUE		PO BOX 25000			Raleigh	NC	27640-0002	
N9NE Group Dallas-Ghostbar		2440 Victory Park Ln, 33rd Floor			Dallas	TX	75219	
NAI OLYMPIA PARTNERS		320 NORTH MERIDIAN ST	STE 400		Indianapolis	IN	46204	
NAIFA - Greater Washington DC		600 State Street	Suite A		Cedar Falls	IA	50613	
Nalin Yogasundram		Address on File						
Namaro Graphics Designs		PO Box 148			Rhinebeck	NY	12572	
NANCY SMITH-WELLS, CSR		PO BOX 1284			South Pasadena	CA	91031	
NAPE Expo, LP		PO Box 224531			Dallas	TX	75222	
NAPONIC, JILL		Address on File						
NARAYAN HEGDE		Address on File						
NARY RADHAKRISHNAN		Address on File						
NASD Regulation, Inc.		701 Market St	W8705 c/o Mellon Bank, Rm 3490		Philadelphia	PA	19106	
NASD, CRD-IARD		PO Box 7777-W8705			Philadelphia	PA	19175-8705	
NASD, CRD-IARD		PO BOX 7777-W9995			Philadelphia	PA	19175-9995	
Nasdaq Information, LLC		LBX# 80200	PO Box 780200		Philadelphia	PA	19178-0200	
Nasdaq OMX	C/O Wachovia Bank	#90200	PO Box 8500		Philadelphia	PA	19178-0200	
NASDAQ Stock Market		PO Box 7777 W1555			Philadelphia	PA	19106	
NASH, CLARISSA		Address on File						
Nasher Sculpture Center		2001 Flora Street			Dallas	TX	75201	
NASKAR, ANJALI		Address on File						
NASKAR, ANJALI		Address on File						
NASP	Attn Michelle	727 15th Street, NW	Suite 750		Washington	DC	20005	
Natalie Uto		Address on File						
Nathan Brooks		Address on File						
Nathan Burns		Address on File						
Nathan Hall		Address on File						
Nathan Hukill		Address on File						
NATHAN SPEICHER		Address on File						
NATHAN ZANG		Address on File						
NATIONAL COMPLIANCE SERVICES, INC.		355 NE 5TH AVE	STE 4		Delray Beach	FL	33483	
National Corporate Research Ltd		122 E 42nd St Fl 18			New York	NY	10168-1899	
National Depo		P.O. Box 404743			Atlanta	GA	30384-4743	
NATIONAL ECONOMIC RESEARCH ASSOC. INC		PO BOX 29677	GENERAL POST OFFICE		New York	NY	10087-9677	
National Economic Research Associate		PO Box 7247-6754			Philadelphia	PA	19170-6754	
National Financial Services Corp.	ATTN Emily Ivers-Mailzone ZE7F	82 Devonshire St.			Boston	MA	02109	
National Financial Services, LLC	Attn FI Operational Accounting	100 Salem St, Mail Zone O1S			Smithfield	RI	02917	
National Financial Services, LLC	Attn Thomas Smith-Vaughan	82 Devonshire Street			Boston	MA	02109	

APP-90389

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NATIONAL FLAG & DISPLAY CO.		22 W 21ST ST			New York	NY	10010	
National MS Society	Attn Cara Harfing	2105 Luna Rd, Ste 390			Carrollton	TX	75006	
National Multiple Sclerosis Society		PO Box 4527			New York	NY	10163	
National Regulatory Services		33443 Treasury Center			Chicago	IL	60694-3400	
National Stripper Well Association		PO Box 18336			Oklahoma City	OK	73154	
National Trust Management Services	Accounts Receivable	7957 Wellington Dr			Warrenton	VA	20186	
National Trust Management Services		PO Box 3322			Warrenton	VA	20188	
National Valuation Consultants, Inc.		7807 E. Peakview Ave, Ste 200			Centennial	CO	80111	
Nationwide Business Concepts		1439 W. Chapman Avenue	#64		Orange	CA	92868	
Nationwide Services		P. O. Box 23099			Ft. Lauderdale	FL	33307	
Natixis North America LLC		1251 Avenue of the Americas			New York	NY	10020	
NAU, STEVEN		Address on File						
NautaDutilh NV		Postbus 7113, 1007 JC						Netherlands
NAVEJAS, MARIANA		Amsterdam, Beethovenstraat 400			Amsterdam		1082 PR	
NAVEJAS, MARIANA		Address on File						
NAVIGANT CONSULTING INC		4511 PAYSHERE CIRCLE			Chicago	IL	60674	
Navigant 3, LLC		PO Box 5370			Wayland	MA	01778	
Navigant 3, LLC		1737 Washington st			E. Bridgewater	MA	02333	
NC Office of the Secretary of State		2 South Salisbury Street	Old Revenue Complex		Raleigh	NC	27601	
NEAR EARTH LLC		945 WEST ROAD	HOYT DAVIDSON		New Canaan	CT	06840	
Nebraska Department of Banking & Finance	Bureau of Securities	1526 K Street, Suite 300			Lincoln	NE	68508-2732	
NEEL MITRA		Address on File						
Neil Desai		Address on File						
Neil Menard		Address on File						
NELL GWYNN HOUSE APARTMENTS LTD		SLOANE AVE			London		SW3 3AX	United Kingdom
Nelson, Caitlin		Address on File						
Nelson, Kaitlin		Address on File						
NELSON, KRAMER		Address on File						
NELSON, KRAMER		Address on File						
NEOFUNDS BY NEOPOST		PO BOX 30193			Tampa	FL	33630-3193	
Nesmith, Christopher		Address on File						
NESTLE WATERS POWWOW		PO BOX 727			CAMBERLEY		GU15 9WZ	United Kingdom
Netapp		1395 Crossman Ave			Sunnyvale	CA	94089-0000	
Netherland, Sewell & Associates, Inc.		2100 Ross Avenue	Suite 2200		Dallas	TX	75201	
Netherland, Swell & Associates, Inc.		1601 Elm St. Suite 4500			Dallas	TX	75201	

APP-90384  
 001788

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Netpro Computing Inc.		4747 N. 22nd St, #400			Phoenix	AZ	85016-4774	
NetWrix Corporation	Accounts Receivable	1460 Manning Parkway			Powell	OH	43065	
NEVADA COACHES, LLC		1550 S INDUSTRIAL RD			Las Vegas	NV	89102	
Nevada Dept of Taxation		PO Box 52609			Phoenix	AZ	85072-2609	
Nevada Secretary of State		2250 Las Vegas Blvd N Ste 400			N Las Vegas	NV	89030-5873	
NEW CONCEPT		Securities Division CROOKED COTTAGE, NEWCHAPEL RD	LINGFIELD		SURREY		RH7 6BJ	United Kingdom
New Edge Networks		Unit 10 PO Box 5000			Portland	OR	97208-5000	
NEW ERA		2935 Talisman			Dallas	TX	75229	
New Hampshire Department of State	Bureau of Securities Regulation	107 North Main Street	Room 204, State House		Concord	NH	03301-4951	
New Horizons Computer Learning Center		PO Box 671164			Dallas	TX	75267-1164	
New Mexico Securities Division		P.O. Box 25101			Santa Fe	NM	87504	
NEW YORK CITY DEPARTMENT OF FINANCE		345 ADAMS ST			Brooklyn	NY	11201	
NEW YORK CITY DEPARTMENT OF FINANCE		PO Box 3931			New York	NY	10008-3931	
NEW YORK CITY DEPARTMENT OF FINANCE		PO Box 5150			Kingston	NY	12402-5150	
New York Financial Writers Association		PO Box 338			Ridgewood	NJ	07451-0338	
New York State Corporation Tax	NYS Corporate Tax	Processing Unit	P.O. Box 22093		Albany	NY	12201	
New York State Department of Law		New York Office of the Attorney General	120 Broadway, 23rd Floor		New York	NY	10271	
New York State Department of State		Misc. Records Bureau	41 State St		Albany	NY	12231	
New York State Income Tax		W A HARRIMAN CAMPUS			Albany	NY	12227	
New York State Income Tax		Extension Request PO Box 4125			Binghamton	NY	13902-4126	
Newbridge Financial Inc.	ATtn Scott Weeks - Accountant	5200 Town Center Circle	Tower 1, Ste 306		Boca Raton	FL	33486	
Newbridge Securities Corporation		1451 W Cypress Creek Rd, Suite 204			Ft. Lauderdale	FL	33309	
Newbridge Securities Corporation	Attn Robert Spitler-CFO	5200 Town Center Circle Tower 1	Ste 306		Boca Raton	FL	33486	
NewOak Advisors LLC		485 Lexington Ave, 25th Floor			New York	NY	10017	
NewOak Capital		485 Lexington Ave, 25th flr			New York	NY	10017	
News Communications		4th Flr, Chinyang Bldg	90-3 Chungjeongno 2-ga,		Seodamun-gu		120-012	SOUTH KOREA
NexBank	John Damilowicz	2515 McKinney Ave	Ste 1100		Dallas	TX	75201	
NexBank Capital Advisors		2515 McKinney Ave, Ste 1100			Dallas	TX	75201	

APP-7085

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NexBank Capital, Inc., NexBank Securities, Inc., NexBank Title, Inc. and NexBank	Jason M. Rudd and Lauren K. Drawhorn	Wick Phillips Gould & Martin, LLP	3131 McKinney Avenue, Suite 500		Dallas	TX	75204	
NEXBANK SECURITIES, INC		2515 McKinney	Suite 1700		Dallas	TX	75201	
NEXBANK SECURITIES, INC		13455 NOEL RD	22ND FL		Dallas	TX	75240	
NexBank SSB	dba NexBank Credit Services	Grant Smith	2515 McKinney Ave.	11th Floor	Dallas	TX	75201	
NexBank SSB		2515 McKinney Ave. Suite 1100			Dallas	TX	75201	
NEXBANK, SSB	ATTN MARGIA SANDS	13455 NOEL RD	STE 2220		Dallas	TX	75240	
NexPoint Advisers, L.P.	Altn Davor Rukavina, Esq. and Julian P. Vasek, Esq.	Munsch Hardt Kopf & Harr, P.C.	3800 Ross Tower	500 N. Akard Street	Dallas	TX	75202-2790	
NexPoint Advisers, L.P.		200 Crescent Court	Suite 700		Dallas	TX	75201	
NexPoint Latin America Opportunities Fund	K&L Gates LLP	Stephen G. Topetzes	1601 K Street, NW		Washington	DC	20006	
NexPoint Latin America Opportunities Fund	K&L Gates LLP	James A. Wright III	State Street Financial Center	One Lincoln Street	Boston	MA	02111-2950	
NexPoint Latin America Opportunities Fund	Stephen G. Topetzes	K&L Gates LLP	1601 K Street, NW		Washington,	DC	02006	
Nextel Communications		PO Box 54977			Los Angeles	CA	90054-0977	
NexVest, LLC	Jason Rudd	3131 McKinney Ave Suite 100			Dallas	TX	75204	
NexVest, LLC		2515 McKinney Ave Suite 1100			Dallas	TX	75201	
Ney Castro		Address on File						
NGO, HONGVIEN		Address on File						
Nguyen, Hung		Address on File						
NGUYEN, KRISTINE		Address on File						
NGUYEN, TONY KHOI		Address on File						
NH Dept of State	Bureau of Securities Regulation	107 N. Main St, State House Room 204			Concord	NH	03301	
Nicholas Headley		Address on File						
Nicholas Headley		Address on File						
NICHOLAS OLENEC		Address on File						
Nicholas T. Meserve		Address on File						
NICHOLAS TRUYENS		Address on File						
NICK ALFERMANN		Address on File						
Nick Meserve		Address on File						
NICK PAULEIT		Address on File						
Nickey L. Oates Company		25 Highland Park Village	Suite 100		Dallas	TX	75205	
Nicklas, James		Address on File			Dallas	TX	75254	
NICODEMUS WINATA		14181 NOEL RD			Dallas	TX	75254	
Nicole Lacues		Address on File						
Nikolayev, Yegor		Address on File						
Niles Chura		Address on File						
Niles K. Chura		Address on File						
NILSEN, CHRISTOPHER		Address on File						
Nirav Batavia		Address on File						

APPX-90986

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Nisen & Elliott LLC		200 West Adams St			Chicago	IL	60606	
Nitro Software, Inc.		150 Spear St Ste 1500			San Francisco	CA	94105-5115	
NIXON PEABODY LLP	ATTN BOBBI HALL	100 SUMMER ST			Boston	MA	02110	
NJ DIVISION OF TAXATION	REVENUE PROCESSING CENTER	PO BOX 642	PART		Trenton	NJ	08646-0642	
NMS Communications LLC		443 12th Street	5C		Brooklyn	NY	11215	
NMS MANAGEMENT, INC.		500 NORTH BROADWAY	STE 236		Jericho	NY	11753	
NOAH MAYER		Address on File						
NOBLE, SHELBY		Address on File						
Noel, Kirby		Address on File						
Noelle Williams		Address on File						
Nonna Knows Catering		1931 Market Center Blvd Apt 1323			Dallas	TX	75207-3500	
Noonmark Capital		9 Hall Avenue			Larchmont	NY	10538	
NORRIS, DUSTIN		Address on File						
NORRIS, DUSTIN		Address on File						
North Carolina Department of Revenue		PO Box 25000			Raleigh	NC	27640-0520	
North Ridge Securities		112 Madison Ave, 5th Floor			New York	NY	10016	
NorthPark Center		8687 North Central Expressway			Dallas	TX	75225	
Northwestern University	Attn Maureen Fenty	1800 Sherman Avenue, Suite 400			Evanston	IL	60201	
Norton Rose		Address on File						
Notable Solutions, Inc.		9715 Key West Avenue	Suite 200		Rockville	MD	20850	
Nouveau		2270 Springlake Rd	Suite 400		Dallas	TX	75234	
Nova Engineering, Inc		2625 N. Josey Lane, Suite 112			Carrollton	TX	75007	
Novack and Macey LLP		100 N Riverside Plaza			Chicago	IL	60606-1501	
NOW Advisors		1320 Greenway Dr	Suite 758		Irving	TX	75038	
NPB Financial Group, LLC		3500 W. Olive Avenue	Suite 300		Burbank	CA	91505	
NTR Review		407 East maple Street			Cumming	GA	30040	
Numara Software Inc		PO Box 102280			Atlanta	GA	30368-2280	
Numara Software Inc		PO BOX 933754			Atlanta	GA	31193-3754	
Nutter, McClellenn & Fish, LLP	Attn Ian Roffman	Seaport West	155 Seaport Blvd		Boston	MA	02210	
NWCC, LLC	c/o of Michael A. Battle, Esq.	Barnes & Thornburg, LLP	1717 Pennsylvania Ave N.W. Ste 500		Washington	DC	20006-4623	
NWCC, LLC	James Peterson	375 Park Avenue, 36th Floor			New York	NY	10152	
NWCC, LLC	Jonathan D. Sundheimer	Barnes and Thornburg LLP	11 S. Meridian St.		Indianapolis	IN	46204	
NYC DEPARTMENT OF FINANCE		PO Box 3644			New York	NY	10008	
NYC DEPARTMENT OF FINANCE		PO Box 3646			New York	NY	10008	
NYC DEPARTMENT OF FINANCE		PO Box 3922	General Corporation Tax		New York	NY	10008-3922	
NYC DEPARTMENT OF FINANCE		PO Box 3931			New York	NY	10008-3931	
NYC DEPARTMENT OF FINANCE		59 Maiden Lane, 19th Floor			New York	NY	10038-4502	

APPX 90987

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NYC DEPARTMENT OF FINANCE		PO Box 5040			Kingston	NY	12402-5040	
NYC DEPARTMENT OF FINANCE		PO Box 5060			Kingston	NY	12402-5060	
NYC DEPARTMENT OF FINANCE		PO Box 5070			Kingston	NY	12402-5070	
NYC DEPARTMENT OF FINANCE		PO BOX 5100			Kingston	NY	12402-5150	
NYC DEPARTMENT OF FINANCE		PO BOX 5150			Kingston	NY	12402-5150	
NYC FIRE DEPARTMENT		CHURCH STREET STATION	PO BOX 840		New York	NY	10008-0840	
NYEMASTER GOODE LAW FIRM		700 WALNUT	STE 1600		Des Moines	IA	50309-3899	
NYIAC		150 E. 42nd St, 17th Floor			New York	NY	10017	
NYS Assessment Receivables		PO Box 4127			Binghamton	NY	13902-4127	
NYS Unemployment Insurance		PO Box 4301			Binghamton	NY	13902-4301	
NYS Workers Comp Board DB		One Exchange Plaza	55 Broadway Suite 201		New York	NY	10006	
NYSE ARCA, LLC		PO Box 223529			Pittsburgh	PA	15251-2529	
NYSE MARKET, INC		Grand Central Station	PO BOX 4695		New York	NY	10163	
NYSE MARKET, INC		Box #223695			Pittsburgh	PA	15251-2695	
NYSE MARKET, INC		BOX #4006	PO BOX 8500		Philadelphia	PA	19178-4006	
NYSIF Disability Benefits	DCC	1 Watervliet Ave. EXT			Albany	NY	12206	
NYSIF Disability Benefits		PO Box 5239			New York	NY	10008-5239	
Oak Tree Securities, Inc.		4049 First Street	Suite 129		Livermore	CA	94551-4949	
Ober, Kaler, Grimes & Shriver		100 Light Street			Baltimore	MD	21202	
Objective Group, Inc.		201 South Biscayne Blvd, 28th Floor			Miami	FL	33131	
OBJECTIVE PARADIGM CORPORATION		805 N MILWAUKEE AVE STE 300			Chicago	IL	60622	
OBRIEN, JUSTIN	ATTN RYAN POLLOCK	Address on File						
OBRIEN, MICHAEL J		Address on File						
OC CRUISER, Inc		1439 W Chapman Ave #260			Orange	CA	92868	
Oce Imagistics Inc		PO Box 856193			Louisville	KY	40285	
OConnor, Shannon		Address on File						
OConnors		3800 Buffalo Speedway	Ste 500		Houston	TX	77098	
Office Depot, Inc		DEPT 56-4201182804	PO BOX 689020		Des Moines	IA	50368-9020	
Office Depot, Inc		Dept. 56 - 4201182804 PO Box 9020			Des Moines	IA	50368-9020	
Office Depot, Inc		PO Box 70025			Los Angeles	CA	90074-0025	
OFFICE EQUIPMENT								
FINANCE SERVICES		PO BOX 790448			Saint Louis	MO	63179-0448	
Office Expo		2025A Midway Rd			Carrollton	TX	75006	
Office of Secretary of State		1019 Brazos Street			Austin	TX	78701	
Office of the Attorney General	Michael B. Mukasey, Esq.	U.S. Department of Justice	950 Pennsylvania Avenue, N.W.		Washington	DC	20530-0001	

APPX 70788



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Office of the Attorney General	Securities Division		200 St Paul Place		Baltimore	MD	21202	
Office of the General Counsel	Re Prime Brokerage Services		520 Madison Avenue, 16th Floor		New York	NY	10022	
Office of the General Counsel	Pension Benefit Guaranty Corp.		1200 K Street, N.W.		Washington	DC	20005-4026	
Office of the Securities Comm. KS	Securities Division		1300 SW Arrowhead Rd PO BOX 89		Topeka	KS	66604-4019	
OGLETREE DEAKINS			918 S PLEASANTBURG DR (29607)		Columbia	SC	29202	
OGLETREE DEAKINS			PO BOX 167		Greenville	SC	29602	
Ogletree Deakins Nash Smoak & Stewart PC					Columbia	SC	29202	
OHANNA, DAVID			P.O. Box 89 Address on File					
OHC Advisors Inc			12060 SW 129th CT Ste 200		Miami	FL	33186-4582	
Ohio Division of Securities			77 South High Street		Columbus	OH	43215	
Oil & Gas Information Systems			5801 Edwards Ranch Road		Fort Worth	TX	76109	
Oil & Gas Journal			Pennwell Corporation		Chicago	IL	60680-4207	
Oil and Gas Investor			PO Box 3001		Northbrook	IL	60065-3001	
Okada, Luke			Address on File					
Oklahoma Department of Securities			204 N. Robinson Ave., Ste. 400		Oklahoma City	OK	73102-7001	
Oklahoma Independent Petroleum Assoc.					Oklahoma City	OK	73104	
OKLAHOMA TAX COMMISSION	GENERAL COUNSELS OFFICE				OKLAHOMA CITY	OK	73102	
OKLAHOMA TX COMMISSION					Oklahoma City	OK	73126-0930	
OKOLITA, MATTHEW			Address on File					
Okta Inc			100 1st St Fl 6		San Francisco	CA	94105-4632	
Okta, Inc.			301 Brannan St		San Francisco	CA	94107	
Old Republic National Title Ins. Co.			8201 Preston Rd		Dallas	TX	75225	
Olander Reporting, Inc.			1522 K St NW Ste 720		Washington	DC	20005	
Olive & Ivy			7135 E Camelback Rd		Scottsdale	AZ	85251	
OLIVER CASTELINO			Address on File					
OLSON,CANNON, GORMLEY, & DESRUISSEAU			9950 WEST CHEYENNE AVE Prestonwood Tower		Las Vegas	NV	89129	
OM5-DALLAS			5151 Bellline Rd.	Suite 550	Dallas	TX	75254	
OMelveny & Myers LLP			400 South Hope St, 18th Floor		Los Angeles	CA	90071-2899	
Omgeo LLC			2967 Collections Center Dr		Chicago	IL	60693	
On Course Promotion			6865 Pear Tree Dr		Carlsbad	CA	92011	
Onelogin, Inc.			848 Battery St		San Francisco	CA	94111-1504	
On-Site Sourcing, Inc.			PO Box 75495		Baltimore	MD	21275	
Opal Financial Group			132 W 36th St Rm 200		New York	NY	10018-8840	
Open Text Inc.	c/o JP Morgan Lockbox		24685 Network Place		Chicago	IL	60673-1246	
Opentext			275 Frank Tompa Drive		Waterloo	ON	N2L 0A1	Canada

APPX 70789

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
OppenheimerFunds, Inc.	Altn Accounts Payable	6803 S. Tucson Way, Bldg 2 Garden Level			Centennial	CO	80112	
Options Group		121 East 18th St			New York	NY	10003	
Options Price Reporting Authority		PO Box 95718			Chicago	IL	60694-0001	United Kingdom
Opus 2 International Inc	Mr Matthew Finney Matthew Finney, Credit Controller	5th Floor, 5 New Street Square			London		EC4A 3BF	United Kingdom
Opus 2 International, Inc.		5 New Street Square			London		EC4A 3BF	United Kingdom
Opus 2 International, Inc.		100 Pine Street	Suite 560		San Francisco	CA	94111	
ORACLE AMERICA, INC		PO BOX 71028			Chicago	IL	60694-1028	
ORACLE AMERICA, INC		PO BOX 203448			Dallas	TX	75320-3448	
Oracle America, Inc.		500 Oracle Parkway			Redwood Shores	CA	94065-0000	
Oracle America, Inc., Successor in Interest to Sun Microsystems	Shawn M. Christianson, Esq.	Buchalter, a Professional Corporation	55 2nd St., 17th Fl.		San Francisco	CA	94105	
Oracle Healthcare Advisors Inc.		12060 SW 129th Ct Ste 201			Miami	FL	33186-4582	
Orbis Marketing, Inc.		21550 Oxnard Street	Suite 850		Woodland Hills	CA	91367	
Orchard Group Productions		301 Park Forest Ct			Hurst	TX	76053	
Oregon Department of Revenue		955 Center St NE			Salem	OR	97301	
ORENT, COURTNEY		Address on File			Edgewater	MD	21037	
Organizational Talent		3752 Colliers Dr						
Orrick, Herrington & Sutcliffe LLP		4253 Collections Center Dr			Chicago	IL	60693	
OSD Investments, LLC		8951 Synergy Dr., Ste 225			McKinney	TX	75070	
OUTLOOKSOFT CORPORATION		ONE STAMFORD PLAZA	11TH FLR		Stamford	CT	06901-3281	
OutSource Management	c/o Cathy Wylet, Meeting Planner	14410 N. 10th Place			Phoenix	AZ	85022	
Ouyang, Kaixi		Address on File						
OVATION TRAVEL GROUP	ATTN ANDREA KELLY	71 FIFTH AVE	11TH FLR		New York	NY	10003	
Ovis Creative		483 10th Ave	Suite 230		New York	NY	10018	
Owens, David		Address on File						
OXANA BROWN		Address on File						
Oxer Technologies		59 Franklin Street	Suite 5R		New York	NY	10013	
PA Consulting Group		1750 Pennsylvania Ave Ste 100			Washington	DC	20006-4506	
PACER Service Center		PO Box 71364			Philadelphia	PA	71364	
PACER Service Center		PO BOX 70951			Charlotte	NC	28272-0951	
PACER Service Center		PO Box 277773			Atlanta	GA	30384-7773	
PACER Service Center		P.O. Box 5208			Portland	OR	97208-5208	
Pachulski Stang Ziehl & Jones LLP		10100 Santa Monica Blvd	Ste 1300		Los Angeles	CA	90067	
Pacific Life Annuities & Mutual Funds		700 Newport Center Drive			Newport Beach	CA	92660-6397	
Paciugo Catering		1215 Viceroy Drive			Dallas	TX	75247	
Packerland Brokerage Services Inc.		432 Security Blvd			Green Bay	WI	54313-9709	

APP-90990

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PADILLA, ANDREW		Address on File			Nuremberg		90411	Germany
Paessler		Thurn-und-Taxis-Str. 14						United Kingdom
Pageant Media		Dunstan House 14a St Cross St			London		EC1N 8XA	
PAIPANANDIKER, CHET		Address on File						
Pallico LLC		420 Lexington Avenue	Suite 1425		New York	NY	10170	
Palisade Capital Management		One Bridge Plaza	Suite 695		Fort Lee	NJ	07024	
PALLEY, RENNICK		Address on File						
Palm Beach Investment		13638 Via Flora	Suite A		Delray Beach	FL	33484	
Research Grp Inc.		Address on File						
PALMER, JAMES								
PAM Capital Funding LP	c/o Maples & Calder	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PAM Capital Funding LP	c/o Queensgate SPV Services Limited	PO Box 1093GT / Suzanne St. Thomas	Compass Center, 2nd Flr, Crewe Road	George Town	Grand Cayman			Cayman Islands
PAM Capital Funding, LP / Ranger Asset M	c/o Maples and Calder, PO Box 309	Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd.	c/o Maples & Calder	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd.	c/o Queensgate SPV Services Limited	PO Box 1093, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd. / Ranger Asset Managem	c/o Maples and Calder, PO Box 309	Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Panhandle Producers Royalty Ownrs Assoc.		3131 Bell Street	Suite 209		Amarillo	TX	79106	
PaperCut Software		308 SW 1st Ave Ste 300			Portland	OR	97204-3432	
International Pty Ltd		60 N. Prospect Avenue			Lynbrook	NY	11563-1395	
PAR Plumbing		360 Park Avenue South	16th Floor		New York	NY	10010	
Paradigm								
Paradise Bakery and Cafe		13710 Dallas Parkway, Suite H			Dallas	TX	75240	
Paradox Sports		710 10th Street	Suite 200		Golden	CO	80401	
Paragon Photocopying, Co.		1700 Commerce Ste 200			Dallas	TX	75201	
PARCELS INC		PO BOX 27			Wilmington	DE	19899	
PARIVEDA SOLUTIONS		PO BOX 671060			Dallas	TX	75267	
Park Cities Quail 2016 Dinner & Auction		25 Highland Park Village	Suite 100-417		Dallas	TX	75205	
Park, Jun		Address on File						
Parker Poe Adams & Bernstein LLP		401 S. Tryon St, Ste 3000	Three Wells Fargo Center		Charlotte	NC	28202	
Parkinsons Disease Foundation		Gift Processing Center	PO Box 96268		Washington	DC	20090-6268	
Parkland Securities, LLC	ATin Blayne Andersen	300 Parkland Plaza			Ann Arbor	MI	48103	
Parks Coffee		PO Box 110209			Carrollton	TX	75011-0209	
Parkway Bent Tree Partners, Ltd		17130 Dallas Parkway	Suite 240		Dallas	TX	75248	
Parmentier, Andrew		Address on File						
Parmentier, Andrew		Address on File						
Parmentier, Andrew		Address on File						

APPX 7793

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PARNELL, CATHERINE		Address on File						
PARS International Corp	Attn Permissions A/R	253 West 35th Street, 7th Floor			New York	NY	10001	
Parth Shah		Address on File						
Partner Engineering & Science, Inc.		2154 Torrance Blvd	Suite 200		Torrance	CA	90501	
Partridge Snow & Hahn, LLP		40 Westminster Street	Suite 1100		Providence	RI	02903	
Party Frills		219 E White St			Anna	TX	75409	
PASSMORE, MICHAEL		Address on File						
Pat & Emmitt Smith Charities		16000 North Dallas Pkwy	Suite 550N		Dallas	TX	75248	
Pate & Knarr		PO Box 1907			Oklahoma City	OK	73101-1907	
PATEL, VISHAL		Address on File						
PATRICK BOYCE		Address on File						
Patrick Bressler		Address on File						
Patrick Conner		Address on File						
Patrick Daugherty	c/o Thomas A. Uebler	McCollom DEmilio Smith	2751 Centerville Rd #401		Wilmington	DE	19808	
Patrick Daugherty	c/o Thomas A. Uebler, Esq.	McCollom DEmilio Smith	2751 Centerville Rd #401		Wilmington	DE	19808	
Patrick Daugherty		Address on File						
Patrick Daugherty/Andrew K. York	Dylan O. Drummond	Gray Reed & McGraw, LLP	1601 Elm Street	Suite 4600	Dallas	TX	75201-7212	
Patrick Hagaman Daugherty	Jason Kathman	2701 Dallas Parkway Suite 590			Plano	TX	75093	
Patrick Hagaman Daugherty	Pronske and Kathman	Jason P. Kathman	2701 Dallas Parkway Suite 590		Plano	TX	75093	
Patrick J. Elverum		Address on File						
PATRICK KELLY		Address on File						
PATRICK, MARK		Address on File						
Patrina Corporation		45 Broadway	Ste 1440		New York	NY	10006	
Patton Boggs LLP		2550 M St NW			Washington	DC	20037	
Paul D. Kauffman		Address on File						
Paul D. Peterson, Ltd.		3040 Woodbury Drive			Woodbury	MN	55129	
Paul DiMartino		Address on File						
Paul Hastings, Janofsky & Walker LLP		55 Second St, 24th Flr			San Francisco	CA	94105-3441	
Paul Kauffman	Jason P. Kathman	Pronske & Kathman, P.C.	2701 Dallas Parkway, Suite 590		Plano	TX	75093	
PAUL KAUFFMAN		Address on File						
Paul Kauffman		Address on File						
PAUL KUNDEL		Address on File						
PAUL N. ADKINS		Address on File						
Paula Shober		Address on File						
PAUS2 (Investments) GP Ltd.	Attn Eric Pedde	c/o Alberta Investment Management Corporation	1100-10830 Jasper Avenue		Edmonton	AB	T5J2B3	Canada
Paws Cause 2015	Attn Paws Cause 2015	2400 Lone Star Drive			Dallas	TX	75212	

APPX-90992

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 119 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Paxstone Capital LLP	Athn Kasper Kemp Hansen	483 Green Lane 4005 NW Expressway, STE 500			London		N13 4BS	United Kingdom
PayCom Payroll, LLC		10802 Farnam Drive	Suite 100		Oklahoma City	OK	73116	
PayFlex Systems USA, Inc.		1400 American Ln # 1900			Omaha	NE	68154	
PayLocity		3850 N. Wilke Rd.	Suite 110		Schaumburg	IL	60173-5452	
Paylocity Corporation		10711 Preston Rd			Arlington Heights	IL	60004-0000	
Payne & Smith, LLC		PO Box 670805			Dallas	TX	75230	
Payne & Smith, LLC		PO Box 49283			Dallas	TX	75367-0805	
PayScale Inc		DEPT 77430, PO BOX 77000			San Jose	CA	95161-9283	
PBGC		PO Box 979120			Detroit	MI	48277-0430	
PBGC		PO Box 382808			Saint Louis	MO	63197-9001	
PC Connection		1521 Gordon Petty Dr			Pittsburgh	PA	15250-8808	
PC Serv LLC/SharePoint Solutions	Accounts Recievable	PO Box 1588			Brentwood	TN	37027	
PC Serv, LLC / SharePoint Solutions		1209 Orange St			Brentwood	TN	37024-1558	
PCMG Trading Partners XXIII, L.P.	c/o The Corporation Trust Company	19020 88th Avenue West			Wilmington	DE	19801	
PCS Securities, Inc.		108 S Jackson St Ste 300			Edmonds	WA	98026	
Peach Labs, Inc.		Address on File			Seattle	WA	98104-2872	
Peacock, Carissa		Address on File						
Pearson, James M.		Address on File						
Pearson, Kyle		Address on File						
PEGGY FRANCIS		Address on File						
Peller		Dreikonigsstrasse 45	Postfach 2016		Zurich		CH-8027	SWITZERLAND
Peltekian, Michael		Address on File						
Peltekian, Michael		Address on File						
PELZEL, TERRY		Address on File						
Penant Management GP, LLC	c/o Highland Capital Management, L.P.	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Penland, Nathan		Address on File						
Pension Benefit Guaranty Corporation	Attn M. Baird	Office of the General Counsel	Suite 3305		Washington	DC	20005	
Pension Benefit Guaranty Corporation	Lori Butler, Assistant General Counsel	1200 K Street, N.W., Suite 3513			Washington	DC	20005	
Pension Benefit Guaranty Corporation		Department 77430	PO Box 77000		Detroit	MI	48277-0430	
PensionDanmark		Langelinie Alle 43			Copenhagen		02100	Denmark
Pensionsforsikringsakties	Attention Head of Legal							
PensionDanmark		c/o Fox Rothschild LLP	Two Lincoln Centre	5420 LBJ Freeway, Suite 1200	Dallas	TX	75240	
Pensionsforsikringsaktieselska b	Attn David Grant Crooks	Crain Communication Inc.	115 Gratiot		Detroit	MI	48207-2997	
Pensions & Investments		Subscriber Services			Detroit	MI	48277-0940	
Pensions & Investments		Department 77940			Detroit	MI	48277-0940	
Pensions & Investments		PO BOX 79001	DRAWER #7718	SUBSCRIBER SERVICES	Detroit	MI	48279-7718	

APPX-90799

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PENTAGROUP FINANCIAL, LLC		5959 CORPORATE DR	STE 1400		Houston	TX	77036	
PENTON TECHNOLOGY MEDIA		221 E 29TH ST			Loveland	CO	80538	
Pepper Hamilton LLP		1201 Market St, Ste 1600			Wilmington	DE	19899	
Pepperdine University PEREIRA, TOM	ATTN Stacy Taylor	Pepperdine School of Law Address on File	24255 Pacific Coast Hwy		Malibu	CA	90263	
Perino, Inc		450 W 42nd Street	Apt 46M		New York	NY	10036	
Perkins Coie LLP	Attn Client Accounting	1201 Third Avenue, Suite 4900			Seattle	WA	98101	
Perot Museum of Nature and Science		2201 North Field Street			Dallas	TX	75201	
Perot Museum of Nature and Science		PO Box 151469			Dallas	TX	75315	
Pershing LLC	Alternative Invest Dept. - Zamana Khan	300 Colonial Center Parkway, 3rd Floor			Lake Mary	FL	32746	
Pershing LLC	Attn Brittany Crowley	300 Colonial Center Parkway			Lake Mary	FL	32746	
Pershing LLC	Attn Genesis Garola	One Pershing Plaza, 8th Fl			Jersey City	NJ	07399	
Pershing LLC	Attn IBD - 15th Floor	One Pershing Plaza			Jersey City	NJ	07399	
Personnel Concepts		PO Box 3353			San Dimas	CA	91773	
PERTRAC FINANCIAL SOLUTIONS, LLC		2650 Thousand Oaks, Ste 1340			Memphis	TN	38118	
PERTRAC FINANCIAL SOLUTIONS, LLC		10403 DOUBLE R BOULEVARD			Reno	NV	89521	
Pestotnik + Gold LLP		501 W. Broadway	Suite 1850		San Diego	CA	92101	
Petals & Stems Florist		13319 Montfort	LBJ at Montfort		Dallas	TX	75240	
PETER CHUNG		Address on File						
PETER FERGUSON		Address on File						
PETER NOLAN		Address on File						
PETER PESTILLO		Address on File						
Peter Roman		Address on File						
PetroCap III and SLP	Marc Lombardi	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap III and SLP	Sarah Schultz	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap III and SLP	Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
Petrocap Inc		2602 McKinney Avenue	Suite 400		Dallas	TX	75204	
Petrocap Incentive Partners III GP, LLC	Attn Lane Britain	Petrocap Incentive Holdings III, LP	3333 Lee Parkway, Suite 750		Dallas	TX	75219	
Petrocap Incentive Partners III GP, LLC	Marc Lombardi, Sarah Schultz, Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap Partners II GP, LLC	Attention William L. Britain	2602 McKinney Avenue	Suite 400		Dallas	TX	75204-0000	
Petrocap Partners II GP, LLC	Attn Lane Britain	Petrocap Incentive Partners II, LP	3333 Lee Parkway, Suite 750		Dallas	TX	75219	
PetroCap Partners II, GP, LLC	PetroCap, LLC	William L. Britain	2602 McKinney Avenue, Suite 400		Dallas	TX	75204	

APPX 90994

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PetroCap Partners III, L.P.	Marc Lombardi, Sarah Schultz, Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap Partners III, L.P.		3333 Lee Parkway	Suite 750		Dallas	TX	75219	
Petroleum Club of Midland		PO Box 10527			Midland	TX	79702-7527	
Petsmart Charities, Inc.		PO Box 96426			Washington	DC	20077-7227	
PFERTNER, JIM		Address on File			Philadelphia	PA	19182-8789	
PFPC DISTRIBUTORS		PO BOX 828789			Philadelphia	PA	19182-8810	
PFPC DISTRIBUTORS		PO BOX 828810			Philadelphia	PA	19182-8810	
Phase 3 Marketing and Communications		Dep# 7052	PO Box 2153		Birmingham	AL	35287-7052	
PHELAN, KEVIN		Address on File						
PHIL GALPIN		Address on File						
Phil Rochefort		Address on File						
Philadelphia Biblical University	Attn Mr. Tim Hui	200 Manor Ave			Langhorne	PA	19047-9989	
PHILET FOODS		5331 E MOCKINGBIRD LN	STE 413		Dallas	TX	75206	
Philip Settini		Address on File						
Philippine American Physicians		PO Box 690695			Orlando	FL	32869	
Phillips, Michael		Address on File						
Phoenician Operating LLC		6000 East Camelback Road			Scottsdale	AZ	85251	
PicFlips, LLC		8553 N Beach St #280			Fort Worth	TX	76244	
Pillsbury Winthrop Shaw Pittman LLP		PO Box 7880			San Francisco	CA	94120-7880	
Pink Ribbon Cleaning Services		PO Box 541141			Dallas	TX	75354	
Pinnacle Aviation Charter		14988 North 78th Way	Suite 106		Scottsdale	AZ	85260	
Pinnacle Business Systems		609 S. Kelly Avenue, Suite E-7			Edmond	OK	73003	
Pinnacle Group International		PO BOX 2800, # 265			Carefree	AZ	85377	
Pinnacle International		5420 LBJ, Ste 390			Dallas	TX	75240	
Pinnacle International		PO Box 2800, #265			Carefree	AZ	85377	
Pinnacle Office Products LLC		8024 Glenwood Ave	Suite 200		Raleigh	NC	27612	
Pinnacle Office Products LLC		8024 Glenwood Ave Ste 200	STE 200		Raleigh	NC	27612	
PIONEER INVESTMENT MANAGEMENT		60 STATE STREET			Boston	MA	02109	
Pipos Travel Corp.		2333 Brickell Ave.	Mezz UL4		Miami	FL	33129	
PIRA Energy Group		3 Park Ave, 26th Flr			New York	NY	10016-5989	
Piriform Inc.		590 Madison Avenue	21st Floor		New York	NY	10022	
Pirtozzini & Hillman, Inc.		274 Madison Ave			New York	NY	10016	
Pirtle Design		506 Union St			Hudson	NY	12534-2816	
Pitney Bowes Credit Corp.		PO Box 856460			Louisville	KY	40285-6460	
PITNEY BOWES FINANCIAL SERVICES LLC		PO BOX 371887			Pittsburg	PA	15250-7887	
Pitney Bowes Global Financial Services		PO Box 371874			Pittsburgh	PA	15250-0000	
Pitney Bowes Inc.		PO Box 371896			Pittsburgh	PA	15250-7896	

APPX-90795



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Pitney Bowes- Purchase Power		PO Box 371874			Pittsburgh	PA	15250-2648	
PITTMAN, TABOR J.		Address on File						
Pivotal Research Group LLC	Jeff Shelton	c/o 12 John Street			Demarest	NJ	07627	
Pivotal Research Group LLC		12 John Street			Demarest	NJ	07627	
PJ Mechanical Service & Maint. Corp.		135 W. 18th Street			New York	NY	10011	United Kingdom
Planatech Solutions Ltd.		Grosvenor Gardens House	35/37 Grosvenor Gardens		London		SW1W 0BY	
Plano East Golf Booster Club	Attn Brian Flanagan	700 Bear Creek Dr.			Murphy	TX	75094	
Plano Party Animals		600 Legacy Drive	Suite 111		Plano	TX	75023	
PLANT DECOR		PO BOX 8			Ponder	TX	76259-0008	
Plant Interscapes, Inc.		6436 Babcock Rd.			San Antonio	TX	78249	
PlantKeeper		PO BOX 226142			Dallas	TX	75222-6142	
Platinum Litigation Solutions, LLC		Subscriber Services	PO Box 07938		Detroit	MI	48207-9944	
Platinum Parking		325 N. Saint Paul Street	Suite 1100		Dallas	TX	75201	
Platypus Studios	Attn Mark Baldi	300 Crescent Court	Level G1, LB#102		Dallas	TX	75201	
Plexus Groupe LLC		21805 W Field Parkway, Ste 300			Deer Park	IL	60010	
Plimus, Inc.		142 N. Milpitas Blvd #435			Milpitas	CA	95035-4401	
PLS Inc.		PO Box 4987			Houston	TX	77210-4987	
PLUM, KEITH		Address on File						
PLUMER, KURTIS		Address on File						
PMC Commercial Trust		17950 Preston Road	Ste 600		Dallas	TX	75252	
PMC Service Company		2425 DilliaRd St			Grand Prairie	TX	75051	
PNC Global Investment Servicing		PO Box 828789			Philadelphia	PA	19182-8789	
PNP Productions		8312 Westlawn Avenue			Los Angeles	CA	90045	
POER, MARY		Address on File						
POGLITSCH, JON		Address on File						
POGRANICHNY, PAUL		Address on File						
Point Multimedia LLC		501 Elm Street	Suite 350		Dallas	TX	75202	
Pollock, Staci		Address on File						
Polsen, Gregory		Address on File						
Pope, Hardwicke, Chrisite, Schell, Kelly & Taplett LLP		500 W 7th Street	Ste 600		Fort Worth	TX	76102	
POPE, JAMES		Address on File						
POPE, THERESA		Address on File						
Portfolio Media, Inc		860 Broadway	6th Floor		New York	NY	10003	
POST, ROBERT		Address on File						
Potbelly Sandwich Works, LLC		222 Merchandise Mart Plaza	23rd FL		Chicago	IL	60654	
POTTER ANDERSON & CORROON LLP	Timothy R. Dudderar	Hercules Plaza, 6th Floor	1313 North Market Street		Wilmington	DE	19801	
Potter, Anderson & Corroon POWELL, ETHAN K.		1313 North Market St PO Box 951			Wilmington	DE	19899-0951	

APPX-90396

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 123 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PR Newswire		PO Box 5897			New York	NY	10087-5897	
PR Newswire Association, LLC		602 Plaza	Three Harborside Financial Center		Jersey City	NJ	07311-0000	
PRACTICING LAW INSTITUTE		810 SEVENTH AVE			New York	NY	10019	
PRACTICING LAW INSTITUTE		PO Box 26532			New York	NY	10087-6532	
Prairie Rose Studio		PO Box 1316			Commerce	TX	75429	
PRAMOD RAJU		Address on File						
Precise Land Surveying, Inc.		4625 Eastover Dr			Mesquite	TX	75149	
Premier Wealth Strategies	Attn: Jon Rustad	8777 E. Via de Ventura, Ste 140			Scottsdale	AZ	85258	
Premiere Global Services		PO Box 404351			Atlanta	GA	30384-4351	
Premiere Speakers Bureau, Inc.		109 International Drive	Suite 300		Franklin	TN	37067	United Kingdom
Preqin Ltd.		Scotia House	33 Finsbury Square		London		EC2A 1BB	United Kingdom
Preqin Ltd.		PO Box 200918			Pittsburgh	PA	15251-0918	
Presbyterian Hospital of Dallas		PO Box 910013			Dallas	TX	75391	
Prescott Legal Search		PO Box 1024140			Atlanta	GA	30368-4140	
Presidential Process Service Inc		419 Park Ave South	Suite 700		New York	NY	10016	
Preston Florist		14856 Preston Rd Ste 110			Dallas	TX	75240	
Preston Hollow Catering		3419 Westminister	#235		Dallas	TX	75205	
Preston Hollow Elementary PTA		6423 Walnut Hill Lane			Dallas	TX	75230	United Kingdom
PRI Association		5th Floor	25 Camperdown Street		Whitechapel		E1 8DZ	United Kingdom
PRICE, BRIAN		Address on File						
Price, Kevin		Address on File						
PRICE, WHITNEY		Address on File						
Pricewaterhouse Coopers, LLP		8 Cross St. #17-00	PWC Singapore Building		Singapore		048424	SINGAPORE
Pricewaterhouse Coopers, LLP		P.O. Box 952282			Dallas	TX	75395	
Pricewaterhouse Coopers, LLP		PO Box 75647			Chicago	IL	60675-5647	
PricewaterhouseCoopers	c/o John Wander, Vinson Elkins LLP	2001 Ross Avenue	Suite 3900		Dallas	TX	75201	United Kingdom
PRICEWATERHOUSECOOPER RS		SOUTHWARK TOWERS	32 LONDON BRIDGE ST		London		SE1 9SY	United Kingdom
PricewaterhouseCoopers LLP		One North Wacker			Chicago	IL	60606-0000	
Prime Brokerage Services		Jefferies LLC	520 Madison Avenue		New York	NY	10022	
Primedia		PO Box 96985			Chicago	IL	60693	
Princeton Club of NY		15 West 43rd Street			New York	NY	10036-7497	
Princeton Search LLC		d/b/a PrincetonOne	PO Box 52265		Newark	NJ	07101-0220	
Principal Financial Group		PO Box 477			Appleton	WI	54912-0477	
Principal Life		Dept. 400 PO Box 14416			Des Moines	IA	50306-3416	

APP-90397

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PrintComm		1161 Executive Drive West			Richardson	TX	75081	
PrintGlobe		PO Box 975659			Dallas	TX	75397-5659	
Privcap LLC		86 Chambers Street	7th Floor		New York	NY	10007	
Probe Ministries		2001 W. Plano Pkwy	Suite 2000		Plano	TX	75075	
Probe Ministries		1900 Firman Dr Ste 100			Richardson	TX	75081-6796	
Professional Technologies, Inc.	Accounting Dept.	4950 N. OConnor Rd., 1st Floor			Irving	TX	75062-2778	
PROFESSIONALS PUBLISHING GROUP		1911 N US HWY 301	STE 140		Tampa	FL	33619	
PROFESSIONAL TECHNOLOGIES INCORPORATED		CORPORATE PLAZA 1, 1st floor	4950 North OConnor Rd		Irving	TX	75062-2778	
Professional Video Services, LLC		8 Canterbury Lane			Westfield	NJ	07090	
Progenics Pharmaceuticals, Inc.	Attn CEO	777 Old Saw Mill Road			Tarrytown	NY	10591	
Progressive Business Publication		370 Technology Drive	PO BOX 3019		Malvern	PA	19355	
Pronse and Kathman Proofpoint	Jason P. Kathman	2701 Dallas Parkway Suite 590			Plano	TX	75093	
Proposal Software, Inc.		892 Ross Drive			Sunnyvale	CA	94089	
Prosek Partners LLC		1140 US Hwy 287	Suite 400-102		Broomfield	CO	80020	
Proskauer Rose LLP		1552 Post Road			Fairfield	CT	06824	
Prospect News Inc.		Eleven Times Square			New York	NY	10036-8299	
Prospect News Inc.		6 MAIDEN LANE	9th floor		New York	NY	10038	
Prospect News Inc.		164 Prospect Park West #4R			Brooklyn	NY	11215	
Prosper Sports Association		1050 High Willow			Prosper	TX	75078	
ProStar Services, Inc		PO Box 110209			Carrollton	TX	75011	
Protection Networks		4887 Alpha Road, St 200			Farmers Branch	TX	75244-4632	
PROVIDEA CONFERENCEING LLC		PO Box 636132			Cincinnati	OH	45263	
PROVIDEA CONFERENCEING LLC		1297 Flynn Rd.	Suite 100		CAMARILLO	CA	93012	
Prudential		100 Mulberry St, Gateway Ctr			Newark	NJ	07102	
Prudential	Attn Nirsa Reyes	3, 14 flr			Louisville	KY	40285	
Pryor Cashman LLP		PO BOX 856138			New York	NY	10022	
PUBLIC COMPANY ACCTNG OVERSIGHT BOARD		PO BOX 631116			Baltimore	MD	21263-1116	
Puerto Rico Secretary of the Treasury		Securities Division	1492 Ponce de Leon Avenue, Suite 600		San Juan	PR	00907-1492	
Puglisi & Associates		850 Library Ave, Suite 204			Newark	DE	19711	
PUNCHSTOCK		8517 EXCELSIOR DR	STE 200		Madison	WI	53717	
PUNCHSTOCK		PO Box 953604			Saint Louis	MO	63195	
PURCELL, ONDJINA		Address on File						
PURCELL, ONDJINA A.		Address on File						
Purdy-McGuire		4300 Sigma Ste 200			Dallas	TX	75244-4416	
Pure Compliance		PO BOX 951839			Dallas	TX	75395	

APP-782

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Purshe Kaplan Sterling Investments, Inc.		18 Corporate Woods Blvd	4th Floor		Albany	NY	12211	
PUSATERI, MICHAEL		Address on File						
Putnam Lovell		1155 Metcalfe St, 4th Flr			Montreal	QC	H3B 4S9	CANADA
PwC Product Sales LLC		PO Box 952282			Dallas	TX	75395-2282	
Q&A RECRUITING		14241 N DALLAS PKWY, STE 550			Dallas	TX	75254	
Q.O.P.S.		PO Box 10429			Van Nuys	CA	91410	
Quadriga Partners, LLC	Attn Jason Ficken	100 Fillmore, Suite 425			Denver	CO	80206	
Quality High-Tech Services, Inc.		11807 Forestgate Dr			Dallas	TX	75243	
QUAN ZHANG		Address on File						
QUANTUM		DEPT 0596	PO BOX 120596		Dallas	TX	75312	
Queens Ballpark Co.	Attn Marc Candelaria	126-01 Roosevelt Ave.			Flushing	NY	11368	
Quest CE		10100 W. Innovation Drive	Suite 200		Milwaukee	WI	53226	
Quest Events		2591 Dallas Parkway	Suite 201		Frisco	TX	75034	
QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # x9811								
QUEST IRA, INC., FBO JON POGLITSCH, ACCT. # x0612		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # x8311		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO NEIL DESAI, ACCT. # x9211		17171 Park Row #100			Houston	TX	77084	
Quest Software		17171 Park Row #100			Houston	TX	77084	
Quick Trak Messengers		17171 Park Row #100			Houston	TX	77084	
Quinn Emanuel Trial Lawyers		287 West 17th Street	3rd Floor		Los Angeles	CA	90051-6039	
Quintairos, Prieto Wood & Boyer		865 S Figueroa St	10th FL		New York	NY	10019	
Quintairos, Prieto Wood & Boyer		9300 South Dadeland Blvd, 4th Floor			Los Angeles	CA	90017	
Quintairos, Prieto Wood & Boyer					Miami	FL	33156	
QVerity, Inc.		865 S. Figueroa St	10th FL		Los Angeles	CA	90017	
Rabbit Reproduction		740 Greenville Blvd.	Suite 400, PMB 154		Greenville	NC	27858	
Rachael Romine		PO Box 29764			Dallas	TX	75229	
RACHAL, TRAVIS		Address on File						
RACHAL, TRAVIS		Address on File						
Rademacher, Cole		Address on File						
Radianz Americas Inc	ATTN Head of Legal	620 Eighth Ave	45 th Floor		New York	NY	10018	
Radianz Americas Inc		PO Box 7247-6642			Philadelphia	PA	19170-6642	
Radianz Americas Inc		DEPT CH 19227			Palentine	IL	60055-9227	
Rafael Anchia		Address on File						
RAJU, PRAMOD		Address on File						
Rakhee V. Patel, Phillip Lamberson, Ammarie Chiarello								
Rally Point Media Strategies LLC		500 Windstead Building	2728 N. Harwood Street		Dallas	TX	75201	
RAMAMURTHY, SUNDAR		1320 North Veitch St	#1712		Arlington	VA	22201	
		Address on File						

APPX-90399

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1 Address on File	Address2	Address3	City	State	Zip	Country
Ramesh Swaminathan								
Rand Advisors Series I Insurance Fund	c/o Rand Advisors	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Rand Advisors, LLC / Atlas IDF LP, et al	Attn John Honis	87 Railroad Place	Ste 403		Saratoga Springs	NY	12866-0000	
Rand PE Fund I, L.P.	c/o Rand PE Fund Management, LLC	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Randal Stout Entertainment	2341 Hummingbird Trail				Grapevine	TX	76051	
RANDAL ZIEGENHAGEN	5317 ELLSWORTH AVE				Dallas	TX	75206	
Random Lengths	PO Box 867				Eugene	OR	97440-0867	
RANGEL, VICTOR	Address on File							
Ranger Creek Goose	209 Alex Way				Abilene	TX	79602	
Ransom, Garrett	Address on File							
Rapid7 LLC	120 Causeway St Ste 400				Boston	MA	02114-1314	
Rapid7 LLC	PO Box 347377				Pittsburgh	PA	15251-4377	
Ratcliffe for Congress	2931 Ridge Road, Ste 101		PMB #217		Rockwall	TX	75032	
RAWLINGS, OLSON, CANNON	GORMLEY & DESRUISSEAU AVE		9950 W CHEYENNE		Las Vegas	NV	89129	
Raymond Dougherty	Address on File							
Raymond James & Associates, Inc	Attn Kristin Koscho	880 Carillon Parkway			St. Petersburg	FL	33716	
Raymond James & Associates, Inc	Attn Treasury/RMB-M/F	PO Box 23591			St. Petersburg	FL	33742	
Raymond James & Associates, Inc		70 East Main St			Avon	CT	06001	
Raymond James & Associates, Inc		Granada Building, 5th Floor	1216 State Street, Suite 500		Santa Barbara	CA	93101	
Raymond James Financial	ALPG attn Todd Moulton	3610 N. University Ave, Ste 350			Provo	UT	84604	
Raymond James Financial	Attn Catina Cruz/RJ BP Dev Conf Free	PO Box 23613			St. Petersburg	FL	33742	
Raymond Joseph Dougherty	D. Craig Shew, PLLC	PO Box 1373			Ada	OK	74821-1373	
Raymond Joseph Dougherty		Address on File						
RBC Capital Markets, LLC	Attn Dave Hiron	4250 Executive Square, Ste 800			Lajolla	CA	92037	
RBC Capital Markets, LLC	Attn Jim Brick	60 South Street, P21			Minneapolis	MN	55402	
RCR Wireless News	Subscriber Services	Department 77940			Detroit	MI	48277-0940	
Real Capital Analytics	Real Capital Analytics	139 5th Ave			New York	NY	10010	
REAL ESTATE ALERT	REAL ESTATE ALERT	5 Marine View Plaza #400			Hoboken	NJ	07030	
Real Time Services	Real Time Services	452 West John Street			Hicksville	NY	11801-1301	
REALPOINT	REALPOINT	BOX #3001	200 WITMER RD		Horsham	PA	19044	
REALPOINT	REALPOINT	Receivable Management Services	4836 Brecksville Rd		Richfield	OH	44286	
Reasoning Mind	Reasoning Mind	5910 N. Central Expressway # 250			Dallas	TX	75206	
Rebecca A. Thompson	Rebecca A. Thompson	Address on File						
Rebecca Stropoli	Rebecca Stropoli	Address on File						
Record Press Inc.	Record Press Inc.	229 West 36th Street			New York	NY	10018	
Records Deposition Service	Records Deposition Service	1701 N Collins Blvd Ste 334			Richardson	TX	75080-3602	

APP-7034

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**  
The Charitable DAF Fund LP §

Appellant § 22-03052

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD  
VOLUME 10**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which



was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>				<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>				<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Vol. 8

001349

001352

001359

001361

001369

001381

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				

001. 22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Red Hat		100 East Davie Street			Raleigh	NC	27601-0000	
Red Oak Compliance Solutions LLC		1320 Arrow Point Dr Ste 411			Cedar Park	TX	78613-2095	
Red River CLO Corp.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Red River CLO Ltd c/o Ogier Fiduciary Services (Cayman) Limited		P.O.Box 1234,	Queensgate House South Church Street	George Town	Grand Cayman		KY1-1108	Cayman Islands
Red River CLO Ltd.	Attention The Directors	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Red River CLO Ltd. et al	U.S. Bank National Association Corporate Trust Services/CDO Department	One Federal Street, Third Floor			Boston	MA	02110	
Red River CLO Ltd. Grand Central Asset Trust	LaSalle Bank N.A., as Collateral Administrator	181 West Madison Street	Suite 3200	CDO Trust Services - Roy Hyskal	Chicago	IL	60602	
Red River CLO Ltd. Grand Central Asset Trust	U.S. Bank, National Association	One Federal Street	3rd Floor	Mr. Jackson Carneiro	Boston	MA	02110	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	Highland Special Opp. Holding Company	2 Galleria Towers 13455 Noel Road	Suite 1300		Dallas	TX	75240	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	LaSalle Bank N.A., as Collateral Administrator	181 West Madison Street	Suite 3200	CDO Trust Services - Maciej Zurawski	Chicago	IL	60602	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	U.S. Bank, National Association	One Federal Street	Third Floor	Mr. Jackson Carneiro	Boston	MA	02110	
Red River CLO Ltd. MMP-5 Funding, LLC IXIS Financial Products Inc.	IXIS Financial Products Inc.	9 West 57th Street	36th Floor		New York	NY	10019	
Red River CLO Ltd. MMP-5 Funding, LLC IXIS Financial Products Inc.	MMP-5 Funding, LLC	120 White Plains Road	Suite 115		Tarrytown	NY	10591	
Red River CLO Ltd. U.S. Bank National Association IXIS Financial Products Inc.	Red River CLO Ltd. Address c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1234	Queensgate House South Church Street	Red River CLO Ltd.	George Town		KY1-1108	Cayman Islands
Red River CLO Ltd., et al	c/o Ogier Fiduciary Services (Cayman) Limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Red River CLO, Ltd.	Red River CLO Ltd. c/o Ogier Fiduciary Services (Cayman) limited	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Red River CLO, Ltd.	U.S. Bank National Association Corporate Trust Services/CDO Department	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors c/o Ogier Fiduciary Services (Cayman) Limited	George Town			Cayman Islands
Red River CLO, Ltd. U.S. Bank National Association	U.S. Bank National Association Corporate Trust Services/CDO Department	One Federal Street, Third Floor	Ref Red River CLO Ltd		Boston	MA	02110	
Red River CLO, Ltd. U.S. Bank National Association	Red River CLO Ltd. U.S. Bank National Association	P.O. Box 1234	Queensgate House South Church Street	The Directors - Red River	George Town		KY1-1108	Cayman Islands

001-789



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Red Rock Strategic Partners		PO Box 35			Watkinsville	GA	30677	
Redbud E&P Inc.		2602 McKinney Ave	Ste 400		Dallas	TX	75204	
Redeemer Committee - Highland Crusader	Attn Eric Felton	731 Pleasant Ave.			Glen Ellyn	IL	60137	
Redeemer Committee Highland Crusader Fund	c/o Terri Mascherin, Esq.	Jenner & Block 6731 W. 121 St, Ste 226	353 N. Clark Street		Chicago	IL	60654-3456	
Redmond Law Firm		27271 Las Ramblas	Suite 200		Overland Park	KS	66209	
Redspin					Mission Viejo	CA	92691	
REED SMITH		Address on File						
REED SMITH		PO Box 360074M			Pittsburgh	PA	15251-6074	
REED SMITH		PO BOX 759052			Baltimore	MD	21275-9052	
REED WATSON		Address on File						
Reese Energy Consulting, Inc.		725 South Boulevard			Edmond	OK	73034	
Refinitiv	c/o Sarah E. Doerr	Refinitiv f/d/b/a Thomson Reuters	Moss & Barnett	150 5th St S, Suite 1200	Minneapolis	MN	55402	
Refinitiv US LLC		3 Times Square			New York	NY	10036	
Regulatory Compliance Watch		PO Box 9407			Gaithersburg	MD	20898-9407	
Regus Business Centre		Colleen Susini, Centre Manager	245 Park Ave, 39th Flr		New York	NY	10167	
Regus Management Group LLC		PO Box 842456			Dallas	TX	75284-2458	
Reid Collins & Tsai	William T. Reid, Esq.	Reid Collins & Tsai LLP	810 Seventh Avenue, Ste 410		New York	NY	10019	
Reid Collins & Tsai LLP		1301 S. Capital of Texas Hwy			Austin	TX	78746	
Reid Collins & Tsai LLP		4301 Westbank Drive	Building B Suite 230		Austin	TX	78746	
Reid Davis		Address on File						
REIS SERVICES, LLC		530 Fifth Ave 5th Floor			New York	NY	10036	
Reis, Inc.		5 West 37th St			New York	NY	10018	
Reis, Inc.		530 5TH AVE, 5TH FLR			New York	NY	10036	
REIT ZONE PUBLICATIONS, LLC		448 IGNACIO BLVD	STE 345		Novato	CA	94949	
Reiter, Jon		Address on File						
Relationship Science LLC		909 3rd Ave	FL 18		New York	NY	10022	
Relationship Science LLC		PO Box 347989			Pittsburgh	PA	15251-4989	
Ren Morrison Photography		5445 Canuth Haven 121			Dallas	TX	75225	
Rentacrate Incorporated		124 Prospect St.			Waltham	MA	02453	
Rentacrate Incorporated		22 Century Blvd	Suite 420		Nashville	TN	37214	
Rentacrate Incorporated		PO Box 32194			New York	NY	10087-2194	
Renfro, Tyler		Address on File						
Reorg Research, Inc.		1140 Broadway	Ste 201		New York	NY	10001	
Reorg Research, Inc.		11 East 26th Street	12th Floor		New York	NY	10010-0000	
Reporters Central LLC		363 Seventh Ave, 21st Fl			New York	NY	10001	
Republic Title of Texas, Inc.		2701 W. Plano Parkway, Suite 100			Plano	TX	75075	
Reputation Management Consultants		92 Corporate Park	Suite C-700		Irvine	CA	92606	
Rescue Cell Phone		280 Legacy Dr	#104		Plano	TX	75023	

APP-90382

**Exhibit C**

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Rescue Cell Phone Corporation		6121 Greenville Ave			Dallas	TX	75206	
Research in Motion Corporation		12432 Collections Center Dr			Chicago	IL	60693	
Resolutions, LLC.		222 Berkeley Street	Suite 1060		Boston	MA	02116	
Resort Capital Advisors		712 Intracoastal Dr			Ft. Lauderdale	FL	33304	
Resource Technologies Corp.		PO Box 3201			Troy	MI	48007-3201	
Restaurant Associates	Attn Jeanine Miller	1071 Fifth Avenue			New York	NY	10128	
Resulte Universal		5151 Belt Line Rd	Suite 455		Dallas	TX	75254	
REUTERS LOAN PRICING CORPORATION		GENERAL POST OFFICE	PO BOX 26803		New York	NY	10087-6803	
Rey Rodriguez		Address on File						
Reynolds Frizzell Black Doyle Allen		1100 Louisiana	Ste 3500		Houston	TX	77002	
Reynolds, Steven		Address on File						
RFPnetworks B.V.		Laan van Kronenburg 14			Amstelveen		1183AS	NETHERLAN DS
Rhinotek Computer Products		PO Box 6205			Carson	CA	90749	
Rhode Island Dept. Business Regulation		Securities Division	1511 Pontiac Ave. Bldg					
Rialto Capital Advisors, LLC		790 NW 107th Avenue	69, 1st Floor		Cranston	RI	02920	
RICCI, JENNIFER		Address on File	Suite 400		Miami	FL	33131	
Riccione Resources, Inc		17194 Preston Rd	Suite 102-390		Dallas	TX	75248-1221	
RICE, BRIAN		Address on File						
RICE, CHARLES		Address on File						
Rice, Christopher		Address on File						
Rich Bitterman		Address on File						
RICH DAPAAH		Address on File						
RICH MICHAEL		Address on File						
RICHARD & SYLVIA TUCKER TRUST		Address on File						
Richard Arnitz		Address on File						
RICHARD BARNES TRUST		Address on File						
Richard Egelhof		Address on File						
Richard Even		Address on File						
Richard Harris		Address on File						
Richard Layton & Finger		One Rodney Square	920 North King Street		Wilmington	DE	19801	
RICHARD LINDENMUTH		Address on File						
Richard M. Alderman		Address on File						
Richard Pines		Address on File						
Richard Redden		Address on File						
Richard Rinehart		Address on File						
RICHARD TUCKER		Address on File						
Richards Partners		8750 N Central Expy	Suite 100		Dallas	TX	75231-6437	
Richards, Paul		Address on File						
Richards, Paul A.		Address on File						
Richardson, Kellie		Address on File						
Richmond Communicatinos Group, Inc.		2750 Northhaven Rd Ste 202			Dallas	TX	75229	
Richofsky, Lori		Address on File						

APPX-90309

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
RICK DREW		Address on File						
Ricky Swadley	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Ricoh Americas Corporation		PO BOX 13852			Newark	NJ	07188-0852	
Ricoh Americas Corporation		PO Box 4245			Carol Stream	IL	60197-4245	
Ricoh Americas Corporation		PO BOX 73210			Chicago	IL	60673-7210	
Ricoh Americas Corporation		PO Box 660342			Dallas	TX	75266-0342	
Ricoh Americas Corporation		PO BOX 730366			Dallas	TX	75373-0366	
RICOH BUSINESS SOLUTIONS		First Floor	4667 N. Royal Atlanta Dr.		Tucker	GA	30084	
RICOH BUSINESS SOLUTIONS		PO BOX 73210			Chicago	IL	60673-7210	
Ricoh USA, Inc.		PO Box 827577			Philadelphia	PA	19182-7577	
Ricoh USA, Inc.		21146 Network Place			Chicago	IL	60673-1211	
Ricoh USA, Inc.		PO Box 660342			Dallas	TX	75266-0342	
Riddle, Cara		Address on File						
Ridgely, Taylor		Address on File						
RIDGELY, TAYLOR		Address on File						
RIDGELY, TAYLOR		Address on File						
RIDGEWAY, BRIAN		Address on File						
Rigzone.com, Inc.		Address on File						
Rigzone.com, Inc.		14531 FM 529, Ste 225			Houston	TX	77095	
RINGHEIMER, JEREMY		Address on File						
RIORDAN, TERRENCE		Address on File						
RIORDAN, TERRENCE C.		Address on File						
Rios, Heriberto		Address on File						
Ripe4Offices		13-19 Circus Rd			London		NW8 6PB	United Kingdom
Ripple Effect Strategies, Inc.		503 E. Jackson St.	St. Johns Wood Suite 235		Tampa	FL	33602-4904	
RISI		PO BOX 16586			North Hollywood	CA	91615-6586	
Risk Metrics Group		PO Box 2621			Buffalo	NY	14240-2621	
Ritch, Lauren N.		Address on File						
Riveron Consulting, LLC		2515 McKinney Avenue	Suite 1200		Dallas	TX	75201	
RL Consulting		19228 Charandy Drive			Leesburg	VA	20175	
RME		PO Box 261237			Tampa	FL	33685-1237	
ROARK, BRANDEN		Address on File						
ROB BUCK PHOTOGRAPHS, INC		3411 CLEARVIEW DR			Austin	TX	78703	
ROB PEDERSON		Address on File						
Robbins, Russell, Englet, Orseck, Untereiner & Sauber LLP		2000 K Street, NW	4th FL		Washington	DC	20006	
Robert A. Leonard		Address on File						
Robert Carey		Address on File						
Robert Flink		Address on File						
ROBERT GAGE		Address on File						
ROBERT GEORGE		Address on File						
Robert Half Finance and Accounting		2613 Camino Ramon			San Ramon	CA	94583	
Robert Half Finance and Accounting		PO Box 743295			Los Angeles	CA	90074-3295	

APP-90304

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Robert Half Legal		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Half Legal		File 73484	PO Box 60000		San Francisco	CA	94160-3484	
Robert Half Management Resources								
Robert Half Management Resources		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Half Technology		PO Box 60000			San Francisco	CA	94160-3484	
Robert Half Technology		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Hargheheimer		FILE 73484	PO Box 60000		San Francisco	CA	94160-3484	
Robert M. Garza & Associates, Inc.		Address on File						
ROBERT MUNROE		1001 Hot Springs Dr			Allen	TX	75013	
Robert Pederson		Address on File						
Robert Peiser		Address on File						
Robert Roland		Address on File						
Robert Sullivan		Address on File						
ROBERT THOMPSON		Address on File						
Robert William Chanda		Address on File						
Roberta L. Fisher		Address on File						
Robin Russell, Joseph P. Rovira		600 Travis Street, Suite 4200			Houston	TX	77002	
Robust Advisors, Inc.	Hunton Andrews Kurth LLP	7 DeGraaf Court			Mahwah	NJ	07430	
ROBY, JOHN		Address on File						
Rochelle McCullough, LLP		325 North St. Paul Street, Suite 4500			Dallas	TX	75201	
Rockwall CDO II Ltd.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rockwall CDO II, Ltd. Investors Bank & Trust Company	Investors Bank & Trust Company	200 Clarendon Street	CDO Services Group		Boston	MA	02116	
Rockwall CDO II, Ltd. Investors Bank & Trust Company	Rockwall CDO II Ltd. c/o Maples Finance Limited	P.O. Box 1093GT, Boundary Hall	Cricket Square George Town, Grand Cayman	Attention The Directors- Stratford CLO Ltd.	Grand Cayman			Cayman Islands
Rockwall CDO Ltd. JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	600 Travis Street	50th Floor	Worldwide Securities Services-Rockwall CDO Ltd.	Houston	TX	77002	
Rockwall CDO Ltd.	c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House	George Town	Grand Cayman			Cayman Islands
Rockwall CDO Ltd., et al		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rockwell CDO (Delaware) Corp.	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rockwell CDO I Ltd	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman		KY1-1108	Cayman Islands
Rockwell CDO II Ltd	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman		KY1-1108	Cayman Islands
Rockwell CDO, Ltd	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman		KY1-1108	Cayman Islands
Rod Laughlin		Address on File	South Church Street	George Town	Grand Cayman			
Rod Lim		Address on File						

APPX-7895

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
RODDA, SANDIE		Address on File						
RODDA, SANDIE K		Address on File						
Roderick Givens		Address on File						
Rodolfo Esquivel		Address on File						
Roe Golithly		Address on File						
Roerber, Blair A.		Address on File						
ROGER CHEN		Address on File						
ROGER LI		Address on File						
ROGGE DUNN GROUP, PC	Brian P. Shaw	500 N. Akard Street, Suite 1900			Dallas	TX	75201	
Romacorp. Inc.	David Short	1700 Alma Drive	Suite 400		Plano	TX	75075	
Ron Attar		Address on File						
Ron DVari		Address on File						
Ron Patterson Insurance		2435 N Central Expy Ste 1600			Richardson	TX	75080-2784	
Ronald McDonald House of Dallas		5641 Medical Center Dr			Dallas	TX	75235	
ROOS, PAUL		Address on File						
Ropes & Gray LLP		800 Boylston Street			Boston	MA	02199	
Ropes & Gray LLP		One International Place			Boston	MA	02110-2624	
Ropes & Gray LLP		PO Box 414265			Boston	MA	02214-4265	
Rosen Systems, Inc.		2323 Langford St.			Dallas	TX	75208	
Rosenthal, Monhait, & Goddess PA		Suite 1401, 919 Market St	PO Box 1070		Wilmington	DE	19899-1070	
Rosewood Crescent Hotel	Attn Ms Eva Delgadillo	PO Box 845576			Dallas	TX	75284-5576	
Rosewood Crescent Hotel		400 Crescent Court			Dallas	TX	75201	
Rosewood Crescent Hotel & Rosewood Crescent Hotel		Rosewood Mansion on Turtle Creek	400 Crescent Court		Dallas	TX	75201	
Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610			Dallas	TX	75201	
Ross Smith Energy Group		400, 407 - 8th Avenue			Dallas	TX	75201	
Ross Vaillancourt		Address on File			CALGARY	AB	T2P 4Z2	CANADA
ROSS, JAMES		Address on File						
Roth Staffing Companies, LP		PO Box 848761			Los Angeles	CA	90084-8761	
ROTHSTEIN, JASON		Address on File						
Rothstein, Kass & Company, P.C.		9171 Wilshire Blvd, Ste 500			Beverly Hills	CA	90210-5591	
Roubini Global Economics, LLC		131 Varick St., Ste 1005			New York	NY	10013	
Roubini Global Economics, LLC		PO Box 10087			Uniondale	NY	11555	
Rough Creek Lodge		PO Box 2400			Glen Rose	TX	76043	
Round Hill Country Club		3169 Roundhill Rd			Alamo	CA	94507	
ROURKE, KEVIN		Address on File						
ROWLETT HILL, LLP		25 HIGHLAND PARK VILLAGE	STE 100-448		Dallas	TX	75205	
Rowlett Law PLLC		100 HIGHLAND PARK VILLAGE	STE 200		Dallas	TX	75205	
Rowlett Law PLLC		12655 N Central Expwy Ste 421			Dallas	TX	75243	

APP-7906

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ROY SEROUSSI		Address on File			Long Island City	NY	11101	
Royal Dispatch Services Inc		43-22 Van Dam Street						
ROYAL PRINTING GROUP, INC.		2035 ROYAL LN	STE 250		Dallas	TX	75229	
RR Donnelley		PO Box 932721			Cleveland	OH	44193	
RR Donnelley		PO Box 538602			Atlanta	GA	30353-8602	
RR Donnelley Financial, Inc.		PO Box 932721			Cleveland	OH	44193	
RR Donnelley Financial, Inc.		PO Box 730216			Dallas	TX	75373-0216	
RR Donnelley Receivables, Inc		PO Box 13654			Newark	NJ	07188-0001	
RSM MCGladrey		5155 Paysphere Circle			Chicago	IL	60674	
RSM US LLP		5155 Paysphere Circle			Chicago	IL	60674	
RTB Media LLC		619 Willow Ave	Suite 3L		Hoboken	NJ	07030	
Rubin and Rudman LLP		50 Rowes Wharf			Boston	MA	02110	
Rudy Mora Brick Masonry		131 Rosegarden Dr.			McKinney	TX	75070	
RUGG, STACEY		Address on File						
Rugmakers Gallery, Inc.		4920 Cash Rd.			Dallas	TX	75247-6308	
RUSCH, MARYAM		Address on File						
Russ Kathrein		Address on File						
Russel Reynolds & Associates		Church Street Station	Post Office Box 6427		New York	NY	10249	
Russell Jones & Walker		61 Sandmere Rd	Clapham		London		SW1Y4UR	United Kingdom
Russell Reynolds Associates		Church Street Station	PO Box 6427		New York	NY	77100	
Russell W. May		Address on File						
Russell W. May		Address on File						
RUTLEDGE, ROBERT		Address on File						
Ryan Associates Technology LLC		21 Hillandale Dr			New Rochelle	NY	10804	
RYAN HIGHTOWER		Address on File						
Ryan Law		Address on File						
Ryan Lucero		Address on File						
Ryan Moore		Address on File						
Ryan O'Dowd Photography		3924 County Road 168			McKinney	TX	75071	
Ryan P. Newell (Connolly Gallagher LLP)		Connolly Gallagher LLP	1201 N. Market Street, 20th Floor		Wilmington	DE	19801	
RYAN VOTAW	Altn Jeffrey C. Wisler, Esq.	Address on File						
Ryan, Inc.		Address on File						
Ryder, Phillip		Address on File						
S&P Global Market Intelligence		33356 Collection Center Drive			Chicago	IL	60693-0333	
S&P Global Market Intelligence LLC		55 Water Street			New York	NY	10041-0000	
S. LeBlanc & Company		942 Shore Crest Rd.			Carlsbad	CA	92011	
Saagar Grover		Address on File						
Sachdev, Kunal		Address on File						
Sacred Heart in NYC		1 East 91st ST.			New York	NY	10128	
SACRS	c/o Strategic Local Govt Services, LLC	1415 L Street, Suite 1000			Sacramento	CA	95814	

APPX 9907

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Sadis & Goldberg	Stephen Huttler	551 Fifth Avenue, 21st Flr			New York	NY	10176	
SAEHLER, CHRISTOPHER J.		Address on File						
Sagar Vira		Address on File						
Sage Document Services Group LLC		2 West 45th Street	Ste 407		New York	NY	10036	
Sage Search Partners		3811 Turtle Creek Blvd	Suite 850		Dallas	TX	75219	
SagePoint Financial, Inc.	Attn Supervision-Reimbursement	2800 N Central Ave, Suite 1200	Suite 105		Phoenix	AZ	85004	
SagePoint Financial, Inc.		74 8th St. SE			Hickory	NC	28602	
SAKUNGEW, PON		Address on File						
Sal Villacorta		Address on File						
Salesforce.com		PO BOX 842569			Boston	MA	02284	
Salesforce.com		PO Box 5126			Carol Stream	IL	60197-5126	
Salesforce.com		PO Box 203141			Dallas	TX	75320-3141	
Salesmanship Club Chrtbl Golf Dallas Inc		106 E. Tenth St.			Dallas	TX	75203	
Sali Fund Management, LLC	Tom Nieman	6836 Austin Center Blvd.	Suite 320		Austin	TX	78731	
Salomon Smith Barney Inc.			Queensgate House		George Town			Cayman Islands
Highland Loan Funding V Ltd.	Highland Loan Funding V Ltd	P. O. Box 1093 GT	South Church Street	The Directors			KY1-1108	
Salomon Smith Barney Inc.								
Highland Loan Funding V Ltd.	Salomon Smith Barney	390 Greenwich Street	4th Floor	FI Structured Products Group	New York	NY	10013-2396	
Salus Valuation Group, Inc.		111 West Myrtle Ave	Unit 6		Foley	AL	36535	
Sam Engineering & Testing		1115 Luke St, Suite 100			Irving	TX	75061	
SAM GARCIA		Address on File						
Sam Graham		Address on File						
Sams Club		PO Box 9001152			Louisville	KY	40290-1152	
Sanborn, Brian		Address on File						
SANBORN, PATRICIA		Address on File						
SANCHEZ, RODERICK		Address on File						
SANDEEP GUPTA		Address on File						
SANDEEP GUPTA		Address on File						
Sandlapper Securities, LLC		406 N Pleasantburg Dr			Greenville	SC	29607-2128	
Sands Point Funding, Ltd.	c/o Guggenheim Partners	330 Madison Ave, 11th Floor			New York	NY	10017	
SANJEEV MEHTA		Address on File						
Santoyo Moore Wehmeyer P.C.		1020 NE Loop 410, Suite 320			San Antonio	TX	78209	
Sard Verbinen & Co.		630 Third Ave			New York	NY	10017	
Sard Verbinen & Co.		General Post Office	PO Box 26781		New York	NY	10087-6781	
Sard Verbinen, LLC		PO Box 26781			New York	NY	10087-6781	
Satuit Technologies Inc.		80 Washington St.	Unit M50		Norwell	MA	02061	
Satuit Technologies Inc.		100 Grossman Drive	Suite 302		Braintree	MA	02184	
Savvy Training & Consulting		4530 Independence Trail			Evergreen	CO	80439	
Sawko & Burroughs, P.C.		1172 Bent Oaks Drive			Denton	TX	76210	
Saxton Morgan		PO Box 2302			Addison	TX	75001	
Sayles Werbner		Address on File						
Sbaiti & Company PLLC	Mazin A Sbaiti	J.P. Morgan Chase Tower	2200 Ross Avenue	Suite 4900W	Dallas	TX	75201	
SBC		PO Box 660324			Dallas	TX	75266-0324	

APP-7992



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SBC Long Distance		PO Box 660688			Dallas	TX	75266-0688	
SBC Southwestern Bell		PO Box 5069			Saginaw	MI	48605-5069	
SC Department of Revenue		300A Outlet Pointe Boulevard			Columbia	SC	29210	
Scarab Consulting	AMEGY BANK NATIONAL ASSOCIATION	ASSIGNEE FOR SCARAB ACQUISITION, LLC	DEPT 338, PO BOX 4346		Houston	TX	77210-4346	
Scarab Consulting		Dept 338, PO Box 4346			Houston	TX	77210	
Scarab Consulting		504 Lavaca, Suite 910			Austin	TX	78701	
SCF Securities, Inc.		155 E. Shaw Avenue	Suite 102		Fresno	CA	93710	
SCHMIDT & STACEY CONSULTING Eng. Inc.		Address on File						
SCHNABEL, MATTHEW		400 City Place	2711 N. Haskell Ave.	Lock Box 29	Dallas	TX	75204	
School, Jennifer		Address on File						
SCHRAY, NATHAN		Address on File						
SCHRECK, DEANNE		Address on File						
Schroepfer Wessels Jolesch		Address on File						
SCHROTH, MELISSA		Address on File						
SCHULER, ELLIOT		Address on File						
SCHULER, KARISSA		Address on File						
Schulte Roth & Zabel LLP	James T. Bentley	919 Third Avenue			New York	NY	10022	
Schumacher Cargo Logistics, Inc.		550 W. 135th Street			Gardena	CA	90248	United Kingdom
SCI		31/507 Clerknwell Close			London		EC1R 0AT	
Scoop Reprint Source		30270 Rancho Viejo Road	Suite E		San Juan Capistrano	CA	92675	
Scott A. Snook		Address on File						
Scott B. Ellington	c/o David Neier, Winston Strawn LLP	200 Park Avenue			New York	NY	10166	
Scott B. Ellington	Scott Ellington c/o Francis A Smith, Ross & Smith PC	Plaza of the Americas	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
Scott B. Ellington		Address on File						
SCOTT COOPER		Address on File						
Scott Douglass & McConnico LLP		303 Colorado Street, Suite 2400			Austin	TX	78701	
Scott Ellington	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue		New York	NY	10018	
Scott Ellington	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Scott F. Kavanaugh		Address on File						
Scott F. Kavanaugh		Address on File						
Scott Harris		Address on File						
Scott Hoermann		Address on File						
Scott K Meyer		Address on File						
SCOTT KOHNEN		Address on File						
Scott McCurry		Address on File						
SCOTT NELSON		Address on File						
Scott Niebling Valuation Group		3930 East Ray Rd	Suite 180		Phoenix	AZ	85044	

APP-7999

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SCOTT ROSENTHAL		Address on File						
SCOTT SCHEIN		Address on File						
Scott Shpilberg		Address on File						
SCOTT TANDBERG		Address on File						
Scott Waggoner		Address on File						
Scura Paley Securities LLC		489 5th Ave, 15th Flr			New York	NY	10017	
Sea Island Company	c/o Group Billing, Acctg Dept	100 Cloister Drive			Sea Island	GA	31561	
SEAL Legacy Foundation		1401 McKinney	Ste 2222		Houston	TX	77010	
SEAMAN, CRISTINA		Address on File						
SeamlessWeb Professional Solutions, Inc.		PO Box 5439			New York	NY	10087-5439	
SeamlessWeb Professional Solutions, Inc.		PO Box 71649			Chicago	IL	60694-1649	
Sean Neumayer Photography		4321 S. Coolidge Ave			Tampa	FL	33611	
Search Finance		14001 Dallas Pkwy		Ste 1200	Dallas	TX	75240	
Seaver, Jeffrey		Address on File						
SEC Headquarters	Mail Stop 7010 / 2017 Annual Report	100 F Street, NE	Mail Stop 7010		WASHINGTON	DC	20549-2000	
Secretary of State	Division of Corporations	Franchise Tax	P.O. Box 7040		Dover	DE	19903	
Secretary of State		PO BOX 12887			Austin	TX	78711	
Secretary of State		1500 11th St	IRC Unit, 3rd FL		Sacramento	CA	95814	
Secretary of State		PO Box 13550			Austin	TX	78711-3550	
Secretary of State		PO Box 13697			Austin	TX	78711-3697	
Secretary of State		801 Capitol Way South	PO Box 40234		Olympia	WA	98504-0234	
Secretary of State of Illinois		Illinois Securities Department	421 E. Capital Ave., 2nd Fl.		Springfield	IL	62701	
SECRETARY OF STATE OF TEXAS	ACCOUNTS RECEIVABLE	PO BOX 12887			Austin	TX	78711-2887	
Secretary of the Commonwealth		Securities Division	One Ashburton Place, Rm. 1701		Boston	MA	02108	
Secretary of Treasury		P.O. Box 7040			Dover	DE	19903	
Secretary of Treasury		15th & Pennsylvania Avenue, N.W.			Washington	DC	20220	
Secure Concepts LLC		128 East BRDway #501			New York	NY	10002	
Secure Options, Inc.		5420 Bryan Street			Dallas	TX	75206	
Secure Options, Inc.		2156 W Northwest Hwy Ste 300			Dallas	TX	75220	
Secure Share Network LLC		3475 Piedmont Road NE, Ste 450			Atlanta	GA	30305	
Secure Source Inc.		710 South Kimball Ave			Southlake	TX	76092	
Secured Access Systems, LLC		1913 Walden Court			Flower Mound	TX	75022	
Securities & Exchange Commission		100 F Street, NE	Mail Stop 7010		WASHINGTON	DC	20549-2000	
Securities & Exchange Commission	Division of Trading & Markets	Office of General Counsel-Bankruptcy			Washington	DC	20549	
Securities America	Michael A. Berman, Esq.	12325 Port Grace Blvd.	100 F Street, N.E.		La Vista	NE	68128	
Securities America, Inc.	Altn Accounting Dept							
Cooper McManus		9870 Research Drive			Irvine	CA	92618-3302	

001-994

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Securities Commissioner State of ND		State Capitol	600 East Boulevard Avenue, 5th Floor		Bismarck	ND	58505-0510	
Securities Division, AZ Corp. Comm		Securities Division	1300 W Washington St #3		Phoenix	AZ	85007	
Securities Investor Protection Corp		PO Box 92185			Washington	DC	20090-2185	
Securities Service Network		115 Glastonbury Blvd			Glastonbury	CT	06033	
See Food Media LLC		496 Lagurdai Place # 4C			New York	NY	10012	
SEI Investments Distribution Co.	Attn Chris Rowan-SIDCO Acctng	One Freedom Valley Dr			Oaks	PA	19456	
SEIDEN KRIEGER ASSOCIATES, INC		375 PARK AVE			New York	NY	10152	
Selah Photography		5421 Shiver Road			Keller	TX	76244	
Select Security & Private Investigations		PO Box 1352			Rockwall	TX	75087	
Selig ADR, Inc		5009 Caroline St, Ste 100			Houston	TX	77004	
Sellman, Matthew		Address on File						
SERENI, ALEXIS J.		Address on File						
SERVOCORP		Level 19	Two International Finance Center		CENTRAL HONG KONG			HONG KONG
SERVOCORP		6 BATTERY ROAD	RAFFLES PLACE		Singapore		049909	SINGAPORE
Service Systems Associates SET, AUGUSTUS	Attn Robin Scichili	650 S RL Thornton Frwy			Dallas	TX	75203	
		Address on File						
Setfords Solicitors		14 Haydon Place			Guilford		GU1 4LL	United Kingdom
Seth Weinstein		Address on File						
Seton Hall University	Attn Bryan Felt	400 South Orange Ave			South Orange	NJ	07079	
Severson, Keith		Address on File						
SEVILLA, JEAN-PAUL		Address on File						
Seward & Kissel		One Battery Park Plaza			New York	NY	10004	
Seyfarth Shaw LLP		131 S. Dearborn Street, Suite 2400			Chicago	IL	60603	
ShadowTV, Inc.		630 9th Ave	Suite 1000		New York	NY	10036	
Shag Carpet Productions, Inc.		502 South 2nd Avenue			Dallas	TX	75226	
SHAH, AMOL		Address on File						
SHAHDA, CHRIS		Address on File						
SHAHDA, CHRISTOPHER		Address on File						
Shahzad Pirvani		Address on File						
Shakelford Melton & McKinley		3333 Lee Pkwy	10 th fl		Dallas	TX	75219	
Shane Tipton		Address on File						
Shannon, Gracey, Ratliff & Miller, LLP		420 Commerce St, Ste 500			Fort Worth	TX	76102	
SharePoint Solutions	Attn Accounts Receivable	PO Box 1588			Brentwood	TN	37024-1588	
SHARON EASLEY		Address on File						
SHARON SHUSTER		Address on File						
SHARRY, GREGORY		Address on File						
Shasta Land Management Consultants		1229 South Street			Redding	CA	96001	

001-795

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SHAWN LEDERMAN		Address on File						
Shawn Raver		Address on File						
Shayla Kelly		Address on File						
Shea & Carlyon Ltd		701 Bridger Ave #850			Las Vegas	NV	89101	
Shearman & Sterling LLP		5990 Lexington Ave			New York	NY	10022-6069	
Shelley Shackelford & Co.		5807 SANDHURST LN SUITE D			Dallas	TX	75206	
SHELLY RASTOGI		Address on File						
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP		333 S. Hope Street	48th Floor		Los Angeles	CA	90071	
SHIFFERD, CHARLES		Address on File						
Shoot2Sell		14681 Midway Rd	Ste 105		Addison	TX	75001	
Short, Lauren		Address on File						
SHIPILBERG, SCOTT		Address on File						
Shred-it USA		11101 Franklin Avenue	Suite 100		Franklin Park	IL	60131-1403	
Shred-it USA		28883 Network Place			Chicago	IL	60673-1288	
Shred-it USA		PO Box 730504			Dallas	TX	75373-0504	
Shred-it USA		PO Box 101007			Pasadena	CA	91189-1007	
SHUMWAY, CLAY		Address on File						
SHUSTER, SHARON		Address on File						
Siber Systems, Inc		3701 Pender Dr Ste 400			Fairfax	VA	22030-6045	
Siddharth Mehra		Address on File						
SIDLEY AUSTIN LLP		Address on File			Chicago	IL	60690	
SIEGEL, HAROLD		Address on File						
Siepe Services, LLC	Chris Doty	5440 Harvest Hill Road Suite 100			Dallas	TX	75230	
Siepe Services, LLC		5440 Harvest Hill Road Suite 100			Dallas	TX	75230	
Siepe Services, LLC		2200 Ross Ave, Ste 4700E			Dallas	TX	75201-0000	
Siepe, LLC		6135 Churchill Way			Dallas	TX	75230	
SIEVERT, AMY		Address on File						
Sigma Financial Corp	Attn Jackie Pascarella	1717 N. IH 35, Ste 150			Round Rock	TX	78664	
Sigma Financial Corporation		300 Parkland Plaza			Ann Arbor	MI	48103	
Signator Investors, Inc.		20 E Thomas Rd Ste 2000			Phoenix	AZ	85012-3129	
Signature Productions, Ltd.		5331 85th St.			Lubbock	TX	79424	
Sils Cummis & Gross		The Legal Center	One Riverfront Plaza		Newark	NJ	07102-5400	
Silva, Alison		Address on File						
Silver Scriptor LLC		PO Box 9012			Austin	TX	78766	
Silver Scriptor LLC		PO Box 61064			Seattle	WA	98141	
Silverman Communications Group					Glen Rock	NJ	07452	
SIMEK, DAVID		11 Carol Ct.						
SIMPSON, DAVID		Address on File						
Simon, Scott		Address on File						
Simpson Appraisal, Inc		6009 Belt Line Rd., Suite 145			Dallas	TX	75254	
SIMPSON THACHER & BARTLETT LLP		425 LEXINGTON AVE			New York	NY	10017-3954	
SIMPSON THACHER & BARTLETT LLP		PO Box 29008			New York	NY	10087-9008	
Sims, Austin		Address on File						

APP-7918

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SINGH, TANIA		Address on File						
SISK, JESSICA		Address on File						
Sitrick and Company Inc.		11999 Vincente Blvd	Penthouse		Los Angeles	CA	90049	
Sitrick and Company Inc.		1840 Century Park East Ste 800			Los Angeles	CA	90067	
SK Research, LLC		10320 Little Patuxent Parkway	12th Floor		Columbia	MD	21044	
Skadden, Arps, Slate, Meagher & Flom LLP		Four Times Square			New York	NY	10036	
Skadden, Arps, Slate, Meagher & Flom LLP		PO Box 1764			White Plains	NY	10602	
SK COMMUNICATION PRODUCTS, LLC		P.O. BOX 874843			Kansas City	MO	64187-4843	
Skybridge Alternatives Conference	Attn Jeanie Reyes	527 Madison Ave, 16th Flr			New York	NY	10022	
SkyBridge SALT LLC	Attn Jeanie Reyes	527 Madison Ave, 16th Floor			New York	NY	10022	
Skyline DFW Exhibits & Events		900 Avenue S			Grand Prairie	TX	75050	
Skyline Sector 5		525 113th Street			Arlington	TX	76011	
Slant Partners		3838 Oak Lawn Avenue	Suite 1550		Dallas	TX	75219	
Slayton International		One North Franklin Ste 2500			Chicago	IL	60606	
SlideGenius, Inc.		1660 Hotel Cir N # 175			San Diego	CA	92108-2807	
SloMo Lounge		4901 Harbor Court			Flower Mound	TX	75022	
Smallwood, Allan		Address on File						
Smarsh		921 SW Washington St	Suite 540		Portland	OR	97205	
Smarsh		PO Box 505265			Saint Louis	MO	63150-5265	
Smith Katzenstein Jenkins LLP		800 Delaware Avenue, Ste. 1000	P.O. Box 410		Washington	DE	19899	
SMITH, DAVID		Address on File						
Smith, Felicia		Address on File						
Smith, Ian		Address on File						
Smith, Jackson, Boyer & Bovard		9400 NCX, Ste 420 9400 N Central Expwy			Dallas	TX	75231-5063	
SMITH, SEAN		Address on File						
Smith, Theodore		Address on File						
SMS		WELLS FARGO BANK-IN CARE OF SMS	6480 ARGO ST		Dallas	TX	75214	
SMU Cox School of Business		Pitts Leadership Award	PO Box 750333		Dallas	TX	75275-0333	
Snapptraffic Consulting		9 Cherry Pl.			Huntington	NY	11743	
Snell & Wilmer LLP		One Arizona Center	400 E. Van Buren, Suite 1900		Phoenix	AZ	85004-2202	
SNI Companies		14241 Dallas Parkway	Suite 550		Dallas	TX	75254	
SNL Financial		PO BOX 414624			Boston	MA	02241-4624	
SNR Denton US LLP		233 S. Wacker Dr	Suite 7800		Chicago	IL	60606	
Snyder Kearney, LLC		10320 Little Patuxent Pkwy			Columbia	MD	21044	
Snyder, Evan		Suite 1200						
Social Matters		Address on File						
		PO Box 800357			Dallas	TX	75380-0357	

APPX 9917

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SOCIETY FOR HUMAN RESOURCE MANAGEMENT		PO BOX 79482			Baltimore	MD	21279-0482	
Society of St. Vincent de Paul, Inc	Diocesan Council of Dallas	10500 Steppington Drive, Suite 251			Dallas	TX	75230	
Software Shelf International, Inc		601 Cleveland Street, Suite 710			Clearwater	FL	33755	
Software Shelf International, Inc		PO Box 7343			Menlo Park	CA	94026	
SoftwareONE, Inc.		20875 Crossroads Cir.	Suite 1		Waukesha	WI	53186	
SoftwareONE, Inc.		PO Box 510944	15700 W. Cleveland Ave		New Berlin	WI	53151-0944	
Sohn Conference Foundation	c/o Garwood Events	225 106 Street, Ste 15M			New York	NY	10025	
Solarwinds		7171 Southwest Parkway	Bldg 400		Austin	TX	78735-0000	
SolarWinds, Inc		PO Box 730720			Dallas	TX	75373	
Solid Details LLC		2121 Santa Anna Ave.			Dallas	TX	75228	
Solomon R. Guggenheim Foundation		345 Hudson Street	12th Floor		New York	NY	10014	
SOLOW BUILDING COMPANY II, LLC		PO BOX 27112			New York	NY	10087-7112	
SOLOW BUILDING COMPANY II, LLC		PO Box 823812			Philadelphia	PA	19182-3812	
SOMMER FRAZIER		Address on File						
Sonny Bryans Smokehouse		2625 Seeloco St			Dallas	TX	75235-2608	
Sony Pictures Studio Group	A Sony Pictures Entertainment Company	File #54715			Los Angeles	CA	90074-4715	
Soto, Hailey		Address on File						
Source Code North America, Inc		Dept CH 16510			Palatine	IL	60055-6510	
Source, Inc.		PO Box 202414			Dallas	TX	75320	
SourceMedia		PO Box 4871			Chicago	IL	60680	
SourceMedia		PO Box 4634			Chicago	IL	60680-9598	
SourceMedia		PO Box 71633			Chicago	IL	60694-1633	
South Dakota Division of Securities		124 S. Euclid, Ste. 104			Pierre	SD	57501	
Southern Conference Teacher Retirement		PO Box 642			Sturbridge	MA	01566	
Southern Methodist University	Attn Erin Sutton	PO Box 750460			Dallas	TX	75275-0460	
Southfork CLO Ltd. JPMorgan Chase Bank, National Association	Attention The Directors-Strafford CLO Ltd.	Queensgate House, South Church Street, George Town		P.O. Box 1093GT	Grand Cayman			Cayman Islands
Southfork CLO Ltd. JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	600 Travis Street	50th Floor	Institutional Trust Services-Southfork CLO Ltd.	Houston	TX	77002	
Southfork CLO, Ltd.	The Directors	PO Box 1093 GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Southland Property Tax Consultants, Inc		201 S Main St Ste 1460			Fort Worth	TX	76102-3146	

APP-7918

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Southland Property Tax Consultants, Inc		777 Main Street	Suite 1960		Fort Worth	TX	76102-5323	
Southwest Ford Inc.		PO Box 234			Weatherford	TX	76086	
Southwest Glass, Inc.		2333 Glenda Lane			Dallas	TX	75229	
Southwest Reporting & Video Service		826 Heights Blvd.			Houston	TX	77007	
Southwest Search		PO Box 710596			Dallas	TX	75371-0596	
Southwest Securities, Inc.		1201 Elm St, Ste 3500			Dallas	TX	75270	
Southwestern Medical Foundation		Parkland Hall at Old Parkland	3889 Maple Ave, Ste 100		Dallas	TX	75219	
Sove Lavi		Kimberly Simeus	1212 Wyndham Hill Lane		Southlake	TX	76092	
SOWIN, JOSEPH		Address on File						
SOWIN, JOSEPH		Address on File						
Spears & Associates		8908 S. Yale	Suite 440		Tulsa	OK	74137	
Special Delivery Service, Inc.		5470 L.B.J. Freeway			Dallas	TX	75240	
Special Fund For Disability Benefits	Accounts-DB Penalty	328 State Street			Schenectady	NY	12305-2318	
Special Fund For Disability Benefits	Accounts-DB Penalty Room	301 20 Park St			Albany	NY	12207-1674	
Specialized Schedulers, Inc.		22334 SW 107th Ave			Tualatin	OR	97062	
SPECTOR, ANASTASIYA		Address on File						
SPECTRUM GAMING GROUP LLC		2 DONOVAN ROAD			Pennington	NJ	08534	
SPEICHER, NATHAN		Address on File						
Spence, Austin		Address on File						
Spherion		PO Box 100186			Atlanta	GA	30384-0186	
Spinner Printing Company		3335 Keller Springs #100			Carrollton	TX	75006	
Spin-Off Advisors, LLC		1327 W. Washington Blvd	Ste 4-G		Chicago	IL	60607	
Spoke LLC		3304 9th St. NE #1			Washington	DC	20017	
Spot Cooling Systems		1420 Century Dr Ste 800			Carrollton	TX	75006	
Spotlight Marketing								
Communications		18101 Von Karman Ave.	Third Floor		Irvine	CA	92612	
Springboard Network LLC		9900 Spectrum Drive			Austin	TX	78717-0000	
Sprint		PO Box 660092			Dallas	TX	75266-0092	
Square, Inc		1455 Market St.	Suite 600		San Francisco	CA	94103	
Squire Patton Boggs (US) LLP		PO Box 643051			Cincinnati	OH	45264	
ST JUDE CHILDRENS RESEARCH HOSPITAL		501 St. Jude Place			Memphis	TN	38105	
ST JUDE CHILDRENS RESEARCH HOSPITAL		4324 N BELTLINE RD	STE C-206		Irving	TX	75038	
St. Louis Cardinals		700 Clark St	Group Ticket Dept.		Saint Louis	MO	63102	
STA SVDP		6306 Kenwood Ave			Dallas	TX	75214	
Stacey Morimoto		Address on File						
STACEY RUGG		Address on File						
Staffelbach, Inc.		2525 McKinnon, Suite 800			Dallas	TX	75201	
STAGGS, JOE		Address on File						
Staltari, Mauro		Address on File						
Stan Lata		Address on File						

APP-7995



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Standard & Poors	Capital IQ	2542 Collection Center Dr			Chicago	IL	60693	
Standard & Poors/Capital IQ		33356 Collection Center Drive			Chicago	IL	60693-0333	
Standard Ins. Co. RAS Executive Benefits	Attn Glenda Wright-P4B	1100 SW 6th Ave			Portland	OR	97204	
Standard Ins. Co. RAS Executive Benefits		INDIVIDUAL CLIENT SERVICES	PO BOX 711		Portland	OR	97207-0711	
Standard Ins. Co. RAS Executive Benefits		PO BOX 5674			Portland	OR	97228-5674	
Standard Insurance Company		1100 SW 6th Ave			Portland	OR	97204	
Standard Insurance Company		PO Box 2707			Portland	OR	97208-3358	
Standard Insurance Company		PO BOX 3358			Portland	OR	97208-3358	
Standard Research Corporation		4430 Tyne Blvd			Nashville	TN	37215	
STANLEY ACCESS TECH LLC		PO BOX 0371595			Pittsburgh	PA	15251-7595	
Stanton Advisors LLC		300 Coles Street	Apt. 802		Jersey City	NJ	07310	
Stanton Law Firm PC	James Stanton	1717 Main St., Suite 3800			Dallas	TX	75201	
Stanton Law Firm PC		4350 Beltway Drive			Addison	TX	75001	
Stanton LLP		1717 Main St, Ste 3800			Dallas	TX	75201	
Stanton LLP		9400 N Central Expwy	Ste 1304		Dallas	TX	75231	
Staples Credit Plan		Dept. 22 - 0008144217 PO Box 9020			Des Moines	IA	50368-9020	
Star Displays		16914 FM 2920			Tomball	TX	77377	
Star Pro Staffing		8600 Preston Rd Apt 113			Dallas	TX	75225-3529	
State Auditor		1900 Kanawha Boulevard East	Building 1, Room W-100		Charleston	WV	25305	
STATE BAR OF TEXAS		PO Box 5075			Saginaw	MI	48605-5075	
State Bar of Texas		PO Box 12487			Austin	TX	78711-2487	
State Bar of Texas		PO BOX 13007	MCLE DEPT		Austin	TX	78711-3007	
State Bar of Texas		PO Box 149335			Austin	TX	78714-9335	
State Comptroller		111 E 17th St			Austin	TX	78774-0001	
State Comptroller		Comptroller of Public Accounts	111 E 17th St		Austin	TX	78774-0100	
State Fair of TX Youth Livestock Auction		PO Box 150009			Dallas	TX	75315	
State Insurance Fund		PO Box 4779			Syracuse	NY	13221-4779	
State Insurance Fund		PO Box 5261	Disability Benefits		Binghamton	NY	13902-5261	
State of Alaska		Securities Section, Division of Banking	333 W. Willoughby Ave., Ste. 9		Juneau	AK	99801	
STATE OF ARKANSAS ADMINISTRATION	DEPT OF FINANCE & ADMINISTRATION	PO BOX 919	CORPORATION INCOME TAX SECTION		Little Rock	AR	72203-0919	
STATE OF CALIFORNIA, FRANCHISE TAX BOARD		PO BOX 942867			Sacramento	CA	94267-0011	
State of Delaware	Division of Corporations	PO Box 5509			Binghamton	NY	13902-5509	

APP-8016

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
STATE OF MARYLAND	Dept of Assessments & Taxation	Personal Property Division	PO Box 17052		Baltimore	MD	21297-1052	
STATE OF MICHIGAN	COMPOSITE RETURN	PO BOX 30058	MICHIGAN DEPT OF TREASURY		Lansing	MI	48909	
STATE OF MICHIGAN	Corp. Securities & Comm Licensing Bureau	525 W. Allegan Street	Audit & Exam Division		Lansing	MI	48909	
STATE OF MICHIGAN	MICHIGAN DEPARTMENT OF TREASURY	DEPT 77375	PO BOX 77000		Detroit	MI	48277-0375	
STATE OF MICHIGAN		PO Box 30774			Lansing	MI	48909-8274	
State of New Hampshire		New Hampshire Dept. of State	107 N. Main Street, Rm 204, State House		Concord	NH	03301-4951	
STATE OF NEW JERSEY	DEPT OF LABOR AND WORKFORCE	PO BOX 929	DIV OF REVENUE PROCESSING		Trenton	NJ	08646-0929	
STATE OF NEW JERSEY		New Jersey Dept of Law & Public Safety	153 Halsey Street, 6th Floor		Newark	NJ	07102	
STATE OF NEW JERSEY		REVENUE PROCESSING CENTER	PO BOX 642		Trenton	NJ	08646-0642	
State of New Jersey-CBT	Division of Tax Revenue Proc Center	PO Box 66			Trenton	NJ	08646-0666	
State of Oregon	Div of Finance & Corporate Securities	350 Winter St NE, Rm 410	Labor & Industries Bldg 401 Adams Avenue, Suite 280		Salem	OR	97301	
State Securities Commissioner of Alabama		Registration Division			Montgomery	AL	36104	
State Street Bank and Trust Company	CDO Services Group	200 Clarendon Street	Mail Code EUC-108		Boston	MA	02116	
State Street Bank and Trust Company		PO Box 5607			Boston	MA	02206-5607	
State Street Corporation		PO Box 5013			Boston	MA	02206-5013	
State Street Corporation		PO Box 5607			Boston	MA	02206-5607	
State Street Global Exchange LLC	State Street Bank and Trust Company	Elkins McSherry LLC	One Lincoln Street		Boston	MA	02111	
State Street Global Markets, LLC		One Lincoln Street			Boston	MA	02111	
Status Labs.com		151 South 1st	Suite 100		Austin	TX	78704	
Stax Media, Inc.		4630 Soquel Drive	Suite 5		Soquel	CA	95073	
Stefan Peller		Address on File						
Stellar Adventures		PO Box 8329			Scottsdale	AZ	85252	
Stenstrom-Schneider, INC		13748 Neutron Rd			Dallas	TX	75244-4412	
Stephanie Catalano		Address on File						
Stephanie Vitello	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
STEPHEN LORENZ		Address on File						
Stephen M. Fremgen		Address on File						
Stephoe & Johnson LLP		1330 Connecticut Ave, N.W.			Washington	DC	20036-1795	
STERLING VALUATION GROUP, INC		590 MADISON AVE	5TH FLR		New York	NY	10022	
STEVE LEACH		Address on File						
Steve Mackay		Address on File						
Steve Thel		Address on File						
STEVE ZIMMERMAN		Address on File						

APP-8017

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Steven Delarosa STEVEN GART		Address on File						
Steven Haltom	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC PO Box 650772	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Steven J White MD		5910 Stoneshire Ct			Dallas	TX	75265-0772	
Steven J. Kaplan, P.C.		Address on File			Dallas	TX	75252	
Steven Johnson		Address on File						
STEVEN SUN		Address on File						
Stevens, Kellie		Address on File						
Stevens, Kellie		Address on File						
Stewart F. House Photography		2600 Bunker Hill Cr			Plano	TX	75075	
Stewart, Phoebe		Address on File						
Stewart, Phoebe L.		Address on File						
STEWART, STEVEN a.		Address on File						
STF Services Corporation		PO Box 3251			Syracuse	NY	13220-3251	
STIKEMAN ELLIOT		5300 Commerce Court West	199 Bay Street West		Toronto	ON	M5L 1B9	CANADA
Stillman & Friedman, P.C.		425 Park Avenue	26th Floor		New York	NY	10022	
Stinson Leonard Street LLP	Stinson LLP	Attn Paul Lackey	3102 Oak Lawn Avenue, Suite 777		Dallas	TX	75219	
Stinson Leonard Street LLP		PO Box 843052			Kansas City	MO	64184	
Stinson LLP	Attn Paul Lackey	3102 Oak Lawn Avenue, Suite 777			Dallas	TX	75219	
Stinson LLP	Deborah Deitsch-Perez, Michael P. Aigen	3102 Oak Lawn Avenue, Suite 777			Dallas	TX	75219	
Stinson LLP	Paul M. Hoffmann	1201 Walnut Street, Suite 2900			Kansas City,	MO	64106-2150	
STINSON MORRISON HECKER LLP		PO Box 219492			Kansas City	MO	64121	
Stone, David		Address on File						
Stone, Kenneth		Address on File						
Stoneypher, Abbie		Address on File						
Stonelake Capital Holdings, LP	Attn Blake Wilson	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn Jacob Becker	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn John A. Kiltz	3200 Gracie Kiltz Lane, Suite 500			Austin	TX	78758	
Stonelake Capital Holdings, LP	Attn Kenneth E. Aboussie, Jr.	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn W. Hunter Sage, Esq.	200 Park Place, 4200 Westheimer, Suite 900			Houston	TX	77027	
Stonelake Capital Holdings, LP	Attn William C. Wilshusen	Haynes & Boone, LLP Address on File	2323 Victory Avenue, Suite 700		Dallas	TX	75219	
STOOPS, CLIFFORD		Address on File						
Stout Management Company		10151 Park Run Drive			Las Vegas	NV	89145	
Stradley Ronon Stevens & Young, LLP		2005 Market Street	Suite 2600		Philadelphia	PA	19103-7018	
Strand Advisors Inc.		1209 Orange Street			Wilmington	DE	19801-0000	

APP-8013

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Strand Advisors, Inc.	Attn James Seery	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strand Advisors, Inc.	Attn John Dubel	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strand Advisors, Inc.	Attn Russell Nelms	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strasburger & Price, L.L.P.	ATTN Eileen Gabay	52 Vanderbilt Avenue	8th Floor		New York	NY	10017	
Strategas Research Partners LLC		52 Vanderbilt Ave	8th Fl		New York	NY	10017	
Strategas Securities LLC		500 W CYPRESS CREEK RD	STE 420		Ft. Lauderdale	FL	33309	
STRATEGIC ALLIANCE GROUP, LLC		2650 Thousand Oaks Blvd	Suite 1340		Memphis	TN	38118	
Strategic Financial Solutions		5004 Crestway Drive			Austin	TX	78731	
Strategic Growth, Inc		1300 Summit Ave Ste 512			Fort Worth	TX	76102-4419	
Strategic Insight Group								
STRATEGIC WORKFORCE SOLUTIONS		PO BOX 32960			Hartford	CT	32960	
Stratford CLO Ltd.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Stratford CLO Ltd. State Street Bank and Trust Company	State Street Bank and Trust Company	200 Clarendon Street			Boston	MA	02116	
Stratford CLO Ltd. State Street Bank and Trust Company	Stratford CLO Ltd.	P.O. Box 1093GT, Boundary Hall	Cricknet Square George Town, Grand Cayman	Attention The Directors- Stratford CLO Ltd.	Grand Cayman			Cayman Islands
Stratford CLO Ltd.	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street Ste 125	George Town	Grand Cayman		KY1-1108	Cayman Islands
Stratos Legal Services, LP	Attn P. Hudson	4295 San Felipe			Houston	TX	77027	
Stratus Energy Group		1206 San Antonio Street			Austin	TX	78701	
Stroh Systems Group		631 Park Ave			King of Prussia	PA	19406	
STRONGZEK, JILLIAN N.		Address on File						
Strong Pipkin Bissell & Ledyard, L.L.P.		1400 San Jacinto Building, 595 Orleans			Beaumont	TX	77701-3255	
Stroock & Stroock & Lavan LLP		180 Maiden Lane			New York	NY	10038	
Structural and Steel Products, Inc		3001 W Pafford Street			Fort Worth	TX	76110-0000	
Structure Tone Southwest, Inc.		3333 Weiborn St, Ste 200			Dallas	TX	75219	
Structured Credit Investor		507 Clerkenwell Workshops	27/31 Clerkenwell Close		Farrington		EC1R 0AR	United Kingdom
Studio Movie Grill		5405 Bellline Rd			Dallas	TX	75248	
STUECHELI, GREGORY		Address on File						
Stuhsatz, Amy		Address on File						
Stutman Treister & Glatt PC		1901 Avenue of the Stars	12th Floor		Los Angeles	CA	90067-6013	
Styx International, Ltd.		875 Third Avenue	10th Floor		New York	NY	10022	
Styx Partners, LP		875 Third Avenue	10th Floor		New York	NY	10022	
Success CE		2 Corporate Plaza Drive	Suite 100		Newport Beach	CA	92660	
Succession Resource Group		PO Box 1573			Tualatin	OR	97062	

APP-8013

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 146 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Sue McGeehan	VP, Collections, Finance Dept.	7 World Trade Center at 250 Greenwich Street			New York	NY	10007	
Sui Hook Goy	Ni Advisors, Inc.	1138 Cadillac Ct.			Nilipitas	CA	95035	
Suicide and Crisis Center of North Texas	Brian D. Glueckstein	10625 Northboro			Dallas	TX	75230	
Sullivan Cromwell LLP		125 Broad Street			New York	NY	10004	
SULLIVAN, JOURDAN		Address on File						
Summit Brokerage Services, Inc.	Attn Compliance/Payroll	595 South Federal Highway	Ste 500		Boca Raton	FL	33432	
Summit Brokerage Services, Inc.		500 S. Federal Highway	Suite 500		Boca Raton	FL	33432	Cayman Islands
Summit Management Limited		23 Lime Tree Bay Avenue	Suite #4-210	Govenors Square	Philadelphia	PA	19170-7184	
Sun Life Assurance Company of Canada		PO Box 7247-7184						
Sunbelt Securities, Inc.		2700 Post Oak Blvd, Suite 1700			Houston	TX	77056	
Sundance Painting		3702 N Buckner Blvd			Dallas	TX	75228-5612	
SunDiego Charter Company		522 W 8th Street			National City	CA	91950	
SUNEET AGARWAL		444 WASHINGTON BLVD			Jersey City	NJ	07310	
SunGard		Bank of America Lockbox Services	15138 Collections Center Dr		Chicago	IL	60693	
Sungard Availability Services		91233 Collection Center Drive			Chicago	IL	60693	
Sungard Protegent	Automated Securities Clearance LLC	15138 Collections Center Dr			Chicago	IL	60693	
Sunil Devarakonda		111 East 125th Street, Apt 3 E			New York	NY	10035	
SunTrust Robinson Humphrey Inc.	Attn Documentation	SunTrust Robinson Humphrey	711 5th Avenue 14th Fl.		New York	NY	10022-0000	
Superior Search & Staffing		5001 Spring Valley Rd Ste 1000 W			Dallas	TX	75244	
Supermarket News		PO Box 15548			North Hollywood	CA	91615-5548	
SURGENT, THOMAS		Address on File						
Susan Burton Consulting, LLC		4127 Towne Green Circle			Addison	TX	75001	
Susan Leahy		Address on File						
SUSMAN GODFREY LLP		1000 Louisiana	Ste. 5100		Houston	TX	77002	
Sutherland Asbill & Brennan LLP		700 Sixth Street NW	Suite 700		Washington	DC	20001	
Sutherland Asbill & Brennan LLP		999 Peachtree Street NE			Atlanta	GA	30309-3996	
Swadley, Emily		Address on File						
SWADLEY, RICK		Address on File						
Swank Audio Visuals		400 Crescent Court			Dallas	TX	75201	
Sweeney, Katelyn		Address on File						
SWIXMED		Zurichbergstrasse 20			Zurich		08032	SWITZERLAN
Sybari Software, Inc.		353 Larkfield Rd			East Northport	NY	11731	D

APP-80320

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Symphony Communication Services LLC		1117 S California Ave			Palo Alto	CA	94304-0000	
Synnex Corporation		5845 Collections Center Dr			Chicago	IL	60693	
Sysco Food Services		PO Box 560700			Lewisville	TX	75056-0700	
System Electric		1278 Montalvo Way			Palm Springs	CA	92262	
T.H. Quest, Inc.		5001 Spring Valley Rd.	Ste 400-E		Dallas	TX	75244	
T4 Capital Talent, LLC		272 E. Deerpath Rd	Suite 236		Lake Forest	IL	60045	
TACA The Arts Community Alliance	Attn Julie Bice	One Arts Plaza	1722 Routh Street, #115		Dallas	TX	75201	
TAK-CHEUNG DAVIDSON WAN		5050 S LAKE SHORE DR, APT #1509			Chicago	IL	60615	
Talkingbox DMG, LLC		284 Sport Hill Road			Easton	CT	06612	
TAMALE SOFTWARE, INC		320 CONGRESS ST			Boston	MA	02210	
TANDBERG, SCOTT		Address on File						
Tanner Morgan		Address on File						
Tara Allen		Address on File						
TARAs LIMO & AIRPORT SERVICE		PO BOX 795581	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75379-5581	
Tarrant County	Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP			Dallas	TX	75207	
TARSHA, DANIEL S.		Address on File						
TARUN K BHATT		Address on File						
Tax & Accounting-R&G		PO BOX 71687			Chicago	IL	60694-7687	
TAX EXECUTIVES INSTITUTE, INC		PO BOX 9407			Uniondale	NY	11555-9407	
Taylor Porter		Address on File						
Taylor, Brian		Address on File						
TAYLOR, GREGORY		Address on File						
TCS Central Region GP LLC	ATTN Kelly Thomas	5001 Spring Valley	Suite 600W		Dallas	TX	75244	
TCS Corporate Services	Allied Capital Partners	PO Box 676649			Dallas	TX	75267	
TCS Corporate Services		PO Box 671160			Dallas	TX	75267-1160	
TD Ameritrade Trust Company	Attn FFC RMT	PO Box 17748			Denver	CO	80217-0748	
TDA Associates, Inc.		2101 Sardis Rd N, Suite 109			Charlotte	NC	28227	
TDIndustries		PO Box 300008			Dallas	TX	75303-0008	
Technology Team, LLC		1120 South Freeway	Suite 215		Fort Worth	TX	76104	
Ted Kanarek		Address on File						
Telecom Strategies Inc		6404 Highland Drive			Chevy Chase	MD	20815	
TELOS Performance Center		13701 Dallas Pkwy			Dallas	TX	75240	
Temple Emanu-El	Attn Rick Rosenberg	8500 Hillcrest			Dallas	TX	75225	
Tennessee Department of Revenue		500 Deaderick Street	Andrew Jackson State Office Building		Nashville	TN	37242	
Tennessee Dept of Commerce & Insurance		Securities Division	500 James Robertson Parkway, Suite 680		Nashville	TN	37243	
TERRELL, ARTIS		Address on File						
Terrie Rabinowitz, L.C. S.W.		7186 Promenade Dr Apt 801			Boca Raton	FL	33433-6977	
Terry Jackson		Address on File						
Terry Jackson		Address on File						
Terry Swagerty		Address on File						
Terry, Doris A.		Address on File						

001-8031

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TERRY, JOSHUA N.		Address on File						
TESLA, NIKOLA		Address on File						
Texas Alliance of Energy Producers		900 8th Street, Suite 400			Wichita Falls	TX	76301	
Texas Best Meats		PO Box 4810			Wichita Falls	TX	76308	
Texas Best Meats		7043 Seymour Hwy			Wichita Falls	TX	76310	
Texas Commerce Bank, N.A.		600 Travis Street	8th Floor, Texas Commerce Tower	Global Trust Services	Houston	TX	77002	
Texas Comptroller of Public Accounts		PO Box 149348			Austin	TX	78714-9348	
Texas Department of Insurance	Financial Regulation Division	Company Licensing and Registration	333 Guadalupe		Austin	TX	78701	
Texas Dept of Licensing and Regulation		PO Box 12157			Austin	TX	78711	
TEXAS DEPT OF STATE HEALTH SERVICES		LOCKBOX-DSHS ASBESTOS/DEMO NOTIFICATION	PO BOX 12190		Austin	TX	78711-2190	
Texas Entertainment Group		103 N Kirby St			Garland	TX	75042	
Texas LawBook LLC		3888 Everwood Lane			Addison	TX	75001	
TEXAS ROOF MANAGEMENT, INC		728 LINGCO DR			Richardson	TX	75081	
Texas Secretary of State	Accounts Receivable	PO Box 12887			Austin	TX	78711-2887	
Texas Secretary of State		PO Box 13697			Austin	TX	78711	
Texas State Comptroller		9241 LBJ FREEWAY	STE 205		Dallas	TX	75243	
Texas State Comptroller		PO Box 12030			Austin	TX	78711-2030	
Texas State Securities Board		Securities Commission of Texas	208 E 10th, Room 610		Austin	TX	78701	
TEXPERS		13111 Northwest Freeway	Suite 100		Houston	TX	77040	
Thackray Williams LLP		32-40 Widmore Rd	Bromley		Kent	NC	BR1 1RY	United Kingdom
Tharrington Smith LLP		PO Box 1151			Raleigh		27602	
The American Cancer Society		18505 West Twelve Mile Rd			Southfield	MI	48076	
The Ashcroft Lawfirm, LLC		950 North Glebe Road			Arlington	VA	22203	
The Ashcroft Lawfirm, LLC		1100 Main Street	Suite 2710		Kansas City	MO	64105	
The Aspen Institute		Society of Fellows	1000 N. Third Street		Aspen	CO	81611	
The Badge of Honor Memorial Foundation		David Blanchard	3131 Maple Ave		Dallas	TX	75201	
The Bailey Group		PO Box 1395			Whitehouse Station	NJ	08889	
The Bank of New York Mellon		Director and Managing Counsel	240 Greenwich Street, 18th Floor		New York	NY	10286	
The Bank of New York Mellon Trust Compan	Elizabeth Stern				Houston	TX	77002-0000	
The Bank of New York Trust Co.	Global Corp. Trust	601 Travis, 16th floor			Houston	TX	77002	
The Bermuda Monetary Authority		600 Travis Street, 50th Floor			Houston	TX	77002	
The Bowman Law Firm, LLC		43 Victoria Street			Hamilton		HM 12	Bermuda
The Bradbury Group		840 Tom Wheeler Lane			McEwen	TN	37101	
		10661 Rockley Rd			Houston	TX	77099	

APP-8032



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Brattle Group		44 Brattle St			Cambridge	MA	02138-3736	
The Bretton Woods Institute		R.R. #1 Simcoe			Toronto	ON	N3Y 4J9	CANADA
The Bryant Park Hotel		40 W. 40th Street			New York	NY	10018	
THE BUREAU OF NATIONAL AFFAIRS, INC		PO Box 419889			Boston	MA	02241-9889	
The Bureau of National Affairs, Inc.(Blo		1801 South Bell Street			Arlington	VA	22202-0000	
The Burnett Companies Consolidated, Inc.		PO Box 973940			Dallas	TX	75397	
The Cake Guys		730 Big Stone Gap Rd	Suite B		Duncanville	TX	75137	
The Cayman Islands Monetary Authority		171 Elgin Ave, SIX Cricket Square		George Town	Grand Cayman			Cayman Islands
The Charlotte Observer		600 S. Tryon Street			Charlotte	NC	28202	
The Chart Store		11768 Tarrynot Ln			Carmel	IN	46033	
The Claro Group, LLC		123 N Wacker Dr Ste 2100			Chicago	IL	60606-1747	
THE CLUEN CORPORATION		135 5TH AVE FL 4			NEW YORK	NY	10010-7157	
The Crystal Charity Ball		Mrs. Mark D Leyendecker, Underwriting	3838 Oak Lawn Avenue, Suite L 150		Dallas	TX	75219	
The Cystic Fibrosis Foundation		4040 North Central Expressway	Ste 730		Dallas	TX	75204	
The da Vinci School	Attn Christi Warren	10909 Midway Rd			Dallas	TX	75229	
The Dallas Morning News		Subscriptions Dept.	PO Box 630054		Dallas	TX	75263-0054	
The Darden School	Attn Development- CFR	PO Box 7726			Charlottesville	VA	22906-7726	
The Day Group		The 401 Centre	302 Regent Street		London		W1B3HH	United Kingdom
The Deal LLC		105 Madison Ave	5th floor		New York	NY	10016	
The Deal LLC		PO BOX 26356			New York	NY	10087-6356	
The Deal LLC		PO Box 3502			Northbrook	IL	60065-9850	
The Devon Trust II		#2800	715 - 5th Avenue SW		Calgary	AB	T2P 2X6	CANADA
The DI Wire Publishing LLC		18101 Von Karman Ave	Suite 300		Irvine	CA	92612	
The Dugaboy Investment Trust	Grant Scott, Trustee	4140 Park Lake Ave., Suite 600			Raleigh	NC	27612	
The Economist		Subscription Center	PO Box 46978		Saint Louis	MO	63146-6978	
The Economist		Subscriptions Department	PO Box 58522		Boulder	CO	80322-8522	
The Efficient Business LLC		13601 Preston	Ste 250E		Dallas	TX	75240	
The Efficient Business LLC		14800 Quorum Dr	Suite 560		Dallas	TX	75254-7679	
The Emblem Source, LLC		4575 Westgrove Drive	Suite 500		Addison	TX	75001	
The Englishmans Interiors		14655 Midway Rd			Addison	TX	75001	
The Executive Centre		Tokyo Ginko Kyokai Bldg 15th Floor	1-3-1 Marunouchi		Chiyoda-ku	Tokyo	100-0005	JAPAN
The Expert Series LLC		317 Madison Avenue	Suite 920		New York	NY	10017	
The Family Place	Attn Shivangi Pokharel	PO Box 7999			Dallas	TX	75209	
THE FRANCHISE TAX BOARD		PO BOX 942867			Sacramento	CA	94267-0001	
THE FRANK W. NORRIS FOUNDATION		PO Box 6071			Athens	GA	30604	
THE FRANK W. NORRIS FOUNDATION		Warnell School of Forestry	and Natural Resources		Athens	GA	30602-2152	
THE FREDONIA GROUP		767 BETA DR			Cleveland	OH	44143	

APP-8029

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Garden Gate		2615 Routh Street			Dallas	TX	75201	
The Garden Gate		2303 Farrington	#100		Dallas	TX	76207	
The General Counsel Forum		PO Box 131263			Dallas	TX	75313	
The Greitens Group		4500 West Pine Boulevard			Saint Louis	MO	63108	
The Griffith Law Firm		4925 Greenville Ave	Suite 200		Dallas	TX	75206	
The Gym		921 W. Mayfield Rd.	Suite 112		Arlington	TX	76015	
The Hanover Insurance Group		PO Box 580045			Charlotte	NC	28258-0045	
The Harry Walker Agency, Inc.		355 Lexington Ave	Flr 21		New York	NY	10017	
THE HARTFORD		PO BOX 2907			The Hartford	CT	06104-2907	
THE HARTFORD		PO Box 660916			Dallas	TX	75266-0916	
The Hockaday School	Altn Holly Hook	11600 Welch Road			Dallas	TX	75229	
The Hogan Firm		1311 Delaware Ave			Wilmington	DE	19806	
The House Oldtown Brasserie		6936 E. Main St.			Scottsdale	AZ	85251	
The Intl Stock Exchange Authority Ltd		PO Box 623, Helvetoa Court	Block B, 3rd Floor	Les Echelons	St Peter Port	GUERNSEY	GY1 1AR	United Kingdom
The Irish Stock Exchange plc		28 Anglesea Street			Dublin		D02 XT25	IRELAND
The Island Hotel		690 Newport Center Drive			Newport Beach	CA	92660	
The Joule		1530 Main Street			Dallas	TX	75201	
The Junior League of Dallas		PO Box 12707			Dallas	TX	75226	
The Kaplan Group		2250 King Ct, Suite 50			San Luis	CA	93401	
The Kiplinger Tax Letter		PO Box 62300			Tampa	FL	33662-2300	
The Kiplinger Tax Letter		PO Box 3299			Harlan	IA	51593-0479	
The Ladders	Accounting Dept	137 Varick St			New York	NY	10013	
THE LAKESHORE COMPANIES		1081 MOMENTUM PL			Chicago	IL	60689-5310	
The LDM Group, LLC		Renaissance Tower	1201 Elm Street, Ste. 4201		Dallas	TX	75270	
The Leukemia & Lymphoma Society		1311 Mamaroneck Ave, Suite 310			White Plains	NY	10605	
The Leukemia & Lymphoma Society		8111 LBJ Freeway	Suite 425		Dallas	TX	75251	
The Loan Syndications and Trading Assoc		366 Madison Ave	15th Floor		New York	NY	10017	
The Mark and Pamela Okada Family Exempt Trust #1	Brian D. Glueckstein	Sullivan Cromwell LLP	125 Broad Street		New York	NY	10004	
The Markets.com		PO Box 9420			Uniondale	NY	11555-9420	
The Matchbox Studio		3013 Canton Street			Dallas	TX	75226	
The McCarlton Foundation		331 W. 25th Street			New York	NY	10001	
The Medleth Group		PO Box 96370			Houston	TX	77213	
The Money Management Institute		1101 17th St, NW Ste 703			Washington	DC	20036	
The Money Management Institute		PO Box 759231			Baltimore	MD	21275-9231	
The Montessori School of Raleigh		7005 Lead Mine Road			Raleigh	NC	27615	

APP-803

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Morgan Library & Museum		225 Madison Avenue			New York	NY	10016	
The NASDAQ OMX Group Inc.		Lockbox 90200	PO Box 8500		Philadelphia	PA	19178-0200	
The NASDAQ Stock Market LLC	c/o Wells Fargo Bank	Lockbox 80200/PO Box 8500			Philadelphia	PA	19178-0200	
The National due Diligence Alliance		West8 Tower	10205 Westheimer Rd, Ste 500		Houston	TX	77042	
The Neighbors Law Firm P.C.		2500 Regency Parkway			Cary	NC	27518	
The New York Times		PO Box 4039			Woburn	MA	01888-4039	
The New York Times		PO BOX 371456			Pittsburgh	PA	15250-7456	
The nGage Company, LLC	Attn Phil McKay	170 Pine Point Rd			Scarborough	ME	04074	
The Oechsli Institute		PO Box 29385			Greensboro	NC	27429	
The Optimal Networking Event, LLC		5 Block Court			Randolph	NJ	07869	
The Optimal Networking Event, LLC		PO Box 191			Mt. Freedom	NJ	07970-0191	
The Original Butt Sketch		PO Box 4495			Dallas	TX	75208-4495	
The Paley Center for Media	Attn Accounting Department	25 West 52nd Street			New York	NY	10019	
The Party New York		137 Avenue A	Suite 2E		New York	NY	10009	
The Paul Revere Life Ins. Co.		PO Box 740590			Atlanta	GA	30374-0590	
The Pension Bridge, Inc		4504 S Ocean Blvd			Highland Bch	FL	33487-4233	
THE PLACEMENT GROUP, INC.		6060 North Central Expressway	Suite 524		Dallas	TX	75206	
THE PLANT PLACE		10704 Goodnight Lane			Dallas	TX	75220	
The Plexus Groupe		21805 Field Parkway	Suite 300		Deer Park	IL	60010	
The Plumbing Mechanical Fire Prot. Co		60 North Prospect Avenue			Lynbrook	NY	11563-1395	
The Promise House	Attn Christy Cerralvo	RBC Capital Markets	2711 N Haskell Ave, Ste 2500		Dallas	TX	75240	
The Real Estate Council		Three Lincoln Center	5430 LBJ Frwy, Suite 100		Dallas	TX	75240	
The Real Estate Council Foundation	Attn Stephanie Keller Hudberg	3100 McKinnon Street	Suite 1150		Dallas	TX	75201	
The Reeds Public Relations Corporation		3232 McKinney Avenue	Suite 855		Dallas	TX	75204	
The Renaissance Consulting Group		870 San Jacinto Twr 2121 San Jacinto St			Dallas	TX	75201	
The Rhythm Room	Attn Elaine Hewlett	4734 Tremont Street			Dallas	TX	75246	
The Rise School		4220 Monterey Oaks Blvd.			Austin	TX	78749	
The Riz-Carlton		455 Grand Bay Drive			Key Biscayne	FL	33149	
The RitZ-Carlton		2121 McKinney Avenue			Dallas	TX	75201	
THE RITZ-CARLTON, LAKE LAS VEGAS	ATTN A/R Ronald L. Rowland, Authorized Agent	1610 LAKE LAS VEGAS PKWY			Henderson	NV	89011	
The Rowland Law Firm		2453 Vineyard Lane			Crofton	MD	21114	
The Ryan Anthony Foundation		2512 Boll Street			Dallas	TX	75204	
The Search Group		222. W Las Colinas Blvd	Ste 844E		Irving	TX	75039	

001-8035

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
THE SIGN COMPANY		575 MADISON AVE			New York	NY	10022	
The Spencer Company		2121 North Akard	Suite 100		Dallas	TX	75201	
The Standard		1100 SW Sixth Ave			Portland	OR	97204-0000	
The Standard		PO Box 3358			Portland	OR	97208-3358	
The Standard		PO BOX 5674			Portland	OR	97228-5674	
The Standard Life Insurance Co of NY		PO Box 3358			Portland	OR	97208-3358	
The State of Texas	Deana K. Adams, CSR	Official Court Reporter	600 Commerce, 630 C		Dallas	TX	75202	
The Stewpot Alliance		4516 Lovers Lane	Suite 229		Dallas	TX	75225	
The Strategic Financial Alliance		202 Abbey Court			Alpharetta	GA	30004	
The Strategic Financial Alliance, Inc.		2200 Century Parkway, Ste 500			Atlanta	GA	30345	
The TAARP Group, LLP		8333 Douglas Avenue	Suite 1500		Dallas	TX	75225	
The TAARP Group, LLP		PO Box 797337			Dallas	TX	75379-7337	
The TASA Group, Inc.		1166 DeKalb Pike			Blue Bell	PA	19422-1853	
The Texas Lyceum		3305 Steck Ave Ste 200			Austin	TX	78757-8155	
The Texas Lyceum Association, Inc		7131 Lavendale Ave			Dallas	TX	75230	
The Townwide Fund of Huntington, Inc.		148 East Main Street			Huntington	NY	11743	
The United States Ski & Snowboard Assoc		1 Victory Lane	Box 100		Park City	UT	84060	
The United States Treasury		Internal Revenue Service	PO Box 9941		Ogden	UT	84409	
The University of Texas at Arlington		Grants and Accounting, Box 19136			Arlington	TX	76019-0136	
The VIA Group, Inc		2610 Technology Forest Blvd			The Woodlands	TX	77381	
The Wall Street Journal		Corporate Subscription Program	102 First Ave		Chicopee	MA	01020	
The Wellness Group, LLC		1000 N. Green Valley Pkwy	Suite 440 #401		Henderson	NV	89074	
The Wellness Group, LLC		100 N. Green Valley Pkwy	Suite 440 #401		Henderson	NV	89074	
The Westin Charlotte		601 South College Street			Charlotte	NC	28202	
The YGS Group		3650 West Market Street	Content Division-A/R		York	PA	17404	
The Yield Book, Inc.		PO Box 13755			Newark	NJ	07188-0755	
THEDFORD, LAUREN E.		Address on File						
Theodore N. Dameris		Address on File						
Theodore N. Dameris		Address on File						
Think-Cell		InvalidenstrBe 34			Berlin	GERMANY	10115	
Think-cell Sales GmbH & Co. KG		Chausseestr. 8/E			Berlin	GERMANY	10115	
Thirstystone Resources		860 E 19th St			Tucson	AZ	85719	
THOMAS HENNINGS		Address on File						
Thomas Hoerner		Address on File						
Thomas Printworks		PO Box 740967			Dallas	TX	75374-0967	
Thomas Reprographics		P.O. Box 740967			Dallas	TX	75374-0967	
THOMAS SHARP		Address on File						
Thomas Surgent	c/o David Neier	Winston Strawn LLP	4441 Beverly Drive		Dallas	TX	75205	
Thomas Surgent	c/o David Neier, Winston Strawn LLP	200 Park Avenue			New York	NY	10166	
Thomas Surgent		Address on File						

APP-80426

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Thomas White	c/o KGen Power Corp	9337 Spring Cypress Rd, #214			Spring	TX	77379	
Thompson & Knight	PO Box 660684	PO Box 660684			Dallas	TX	75266-0684	
Thompson & Knight	Dept 70 PO Box 4346	Dept 70 PO Box 4346			Houston	TX	77210-4346	
THOMPSON & KNIGHT LLP		ONE ARTS PLAZA	1722 ROUTH STREET		Dallas	TX	75201-2533	
Thompson Coe Cousins & Irons LLP		700 N. Pearl Street	Twenty Fifth Floor		Dallas	TX	75201	
Thompson Reuters		610 Opperman Drive	PO Box 64833		Eagan	MN	55123-0000	
THOMPSON, DAVISON R.		Address on File						
Thompson, Jordan		Address on File						
THOMPSON, ROBIN		Address on File						
Thomson		PO Box 4634			Chicago	IL	60680-9598	
Thomson Financial		195 Broadway	7th floor		New York	NY	10007	
Thomson Financial		PO Box 360301			Pittsburgh	PA	15251-6301	
Thomson Financial		PO Box 5136			Carol Stream	IL	60197-5136	
Thomson Financial		PO Box 95512			Chicago	IL	60690-5512	
THOMSON REUTERS	Attn Greg Winterton	3 Times Square, 18th Floor			New York	NY	10036	
THOMSON REUTERS		PO BOX 55743	The Tomson Reuters Building		London		E14 10B	United Kingdom
THOMSON REUTERS		PO Box 95512			Chicago	IL	95512	
THOMSON REUTERS		TAX & ACCOUNTING- R&G	PO BOX 71687		Chicago	IL	60694-1687	
Thomson Reuters (Markets) LLC		PO Box 415983			Boston	MA	02241	
Thomson Reuters (Markets) LLC		GPO BOX 10410			Newark	NJ	07193-0410	
Thomson Reuters (Tax & Accounting) Inc.		PO Box 71687			Chicago	IL	60694-1687	
Thomson Reuters Corporation		17400 Medicine Road	Suite 850		Plymouth	MN	55447	
Thomson Reuters Tax & Accounting - Check		PO Box 71687			Chicago	IL	60694-0000	
thomson RIA		PO Box 6159			Carol Stream	IL	60197-6159	
Thomson West		PO Box 64833			Saint Paul	MN	55164-0833	
Thomson West		PO Box 6292			Carol Stream	IL	60197-6292	
Thomton-Tomasetti Group, Inc.		PO Box 826203			Philadelphia	PA	19182-6203	
Throckmorton, Michael		Address on File						
Thuzio, Inc.		267 Fifth Avenue	Seventh Floor		New York	NY	10016	
TIAMPO, SAUKOK		Address on File						
TIBCO Software, Inc.		Lockbox No 7514	PO Box 7247		Philadelphia	PA	19170-7514	
Tiffs Treats		Address on File						
Tim Dalton		Address on File						
TIM LAWLER		Address on File						
Tim Symington		Address on File						
Timber Mart-South	Center for Forest Business	Daniel B. Warnell School of Forestry	The University of Georgia		Athens	GA	30602-2152	
Timberhorn, LLC		127 W Worthington Ave Ste 100			Charlotte	NC	28203-0064	
Time Value Software		22 Mauchly			Irvine	CA	92618	

APP-80427

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TIME WARNER CABLE		PO BOX 9227			Uniondale	NY	11555-9227	
TIME WARNER CABLE		Box 223085			Pittsburgh	PA	15251-2085	
TIME WARNER CABLE		PO BOX 742663			CINCINNATI	OH	45274-2663	
TIME WARNER CABLE		PO Box 742633			Cincinnati	OH	45274-2663	
TIME WARNER CABLE		PO Box 650063			Dallas	TX	75265-0063	
TIME WARNER CABLE		PO BOX 650210			Dallas	TX	75265-0210	
TIME WARNER CABLE		PO Box 60074			City of Industry	CA	91716-0074	
Time, Inc.		PO Box 60001			Tampa	FL	33660-0001	
Times Square Tower Associates LLC		800 Boylston Street	Suite 1900		Boston	MA	02199	
Times Square Tower Associates LLC		PO Box 415917			Boston	MA	02241-5917	
Timothy Brice		Address on File						
Timothy Hotchandani		Address on File						
Timothy Lawler		Address on File						
Timothy Leung		Address on File						
Timothy Spring		Address on File						
TIPS,LLC		Department 34932	PO Box 39000		San Francisco	CA	94139	
TIPS,LLC		File 30578	PO Box 60000		San Francisco	CA	94160	
Title Partners, LLC		5501 LBJ Freeway	Ste 200		Dallas	TX	75240	
TLK Networks		PO Box 202286			Arlington	TX	76006	
TMC Communications, LLC		245 Park Ave, 24th Flr			New York	NY	10167	United Kingdom
TMF Group		400 Capability Green			Luton		LU1 3AE	United Kingdom
TNT INTERNATIONAL		PO BOX 186	RAMSBOTTOM		BURY		BL09GR	United Kingdom
Tobias Lewis		Address on File						
TOBY FELDMAN INC.		ONE PENN PLAZA			New York	NY	10119	
Todd A. Travers		Address on File						
Todd Blatterman		Address on File						
Todd Travers	c/o Jason P. Kathman	Pronske & Kathman, P.C.	2701 Dallas Parkway, Suite 590		Plano	TX	75093	
Todd Travers		Address on File						
Toly Novik		Address on File						
TOM BEACH		Address on File						
TOM LOVELL		Address on File						
Tom Rigatti		Address on File						
Tomasino, Matthew		Address on File						
TOMLIN, WILLIAM		Address on File						
Tony Zaffaro		Address on File						
Total Alternatives		PO Box 5018			Brentwood	TN	37024	
Total Uptime Tech		Post Office Box 2228			Skyland	NC	28776-0000	
Touchstone Securities, Inc		303 Broadway	Suite 1100		Cincinnati	OH	45202-4203	
TOUDOUBE, KENNETH		Address on File						
Towers Watson		PO Box 8500	S-6110		Philadelphia	PA	19178-6110	
TPAC		920 Tyne Blvd			Nashville	TN	37220	
TQ ESI, LLC		400 N. St Paul	STE 1230		Dallas	TX	75201	
Tracey Ivey		Address on File						
TradeStation Securities, Inc.	Attn Account Department	8050 SW 10th St -- Ste 2000			Plantation	FL	33324	
TRAHAN, MICHAEL		Address on File						

001-80428

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 155 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TransPerfect Legal Solutions	Altn Accounts Receivable	1250 Broadway Fl 7			New York	NY	10001-3749	
TRANSWESTERN		5001 SPRING VALLEY RD	STE 600W		Dallas	TX	75244	
TRANHAM, AUSTIN		Address on File						
Travel Search Network		8111 LBJ Freeway # 550			Dallas	TX	75251	
TRAVERS, TODD		Address on File						
Travis Kruger		Address on File						
TRC		PO Box 536282			Pittsburgh	PA	15253-5904	
TRC Consultants, LC		120 Dietert Ave	Suite 100		Boerne	TX	78006	
Treasurer of State of Vermont		Securities Division	89 Main Street, 2nd Floor, Drawer 20		Montpelier	VT	05620	
Treasurer of Virginia		Virginia State Corporation Commission	1300 East Main Street, 9th Floor		Richmond	VA	23219	
Treasurer, State of Connecticut		Securities & Business Investment Div	260 Constitution Plaza		Hartford	CT	06103	
Treasurer, State of Maine		Office of Securities	76 Northern Avenue		Gardiner	ME	04345	
TREASURY OF THE UNITED STATES	Austin Campus Disclosure Office	Stop 7000-AUSC	PO Box 2986		Austin	TX	78768	
TREASURY OF THE UNITED STATES	INTERNAL REVENUE SERVICE	3651 SOUTH IH-35, MS 7000AUSC	DISCLOSURE OFFICE		Austin	TX	78741	
TREMOR, LAUREN E.		Address on File			Chicago	IL	60611	
Trend Macrolitics LLC		680 N. Lake Shore Drive	#1412		New York	NY	10022	
Trenkner, Jamie		Address on File			Union	NJ	07083	
Trepp, LLC		477 Madison Ave 18th Flr			Dallas	TX	75207	
Triad Security Systems		971 Lehigh Avenue						
Trial Arts Professional Copy Service		1500 Dragon St, Ste C						
Tricor Evatthouse Corporate Services		8 Cross Street	#11-00 PWC Building		Singapore		048424	SINGAPORE
Tricor Singapore Pte Ltd		8 Cross Street	#11-00 PWC Building		Singapore		048424	SINGAPORE
Trinity River Mission		2060 Singleton Blvd, Ste 104			Dallas	TX	75212	
Triple Threat Cowboy		1430 Regal Row	Suite 320		Dallas	TX	75247	
TRI-RIVER CAPITAL	C/O BEUTEL & JOYCE, LP	ATTN MILTON WALTERS	555 FIFTH AVE - 15TH FLR		New York	NY	10017	
Tritech Communications, Inc.		625 Locust St.			Garden City	NY	11530	
Troutman Sanders LLP		P.O. Box 933652			Atlanta	GA	31193-3652	
TROY BARNETTE		Address on File						
Trump International Hotel & Tower CH		401 North Wabash Ave			Chicago	IL	60611	
Trusway Holdings, Inc.	Kendall Hoyd	9411 Alcorn			Houston	TX	77093-6753	
Trusway Holdings, LLC		7001 Enterprise Ave			Fort Worth	TX	76118	
Trustees of Boston University		1 Silber Way			Boston	MA	02215	
Trustwave		70 W Madison St	Ste. 1050		Chicago	IL	60602	
TSCM AMERICA		PO Box 6743			McKinney	TX	75071	
TSCPA		PO Box 797488			Dallas	TX	75379	
TSG Reporting, Inc		747 Third Ave, Suite 10A			New York	NY	10017	
TSX INC		The Exchange Tower	PO Box 421, 130 King Street West		Toronto	ON	M5X 1E1	CANADA
TTA Research & Guidance		PO Box 71687			Chicago	IL	60694	
Tuan Olona, LLP		One Rockefeller Plaza	Eleventh Floor		New York	NY	10020	
Turf Scapes		368 National Drive			Rockwall	TX	75032-6531	

APP-80429



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Turing Experts		Birchin Court	20 Birchin Lane		London		EC3V 9DU	United Kingdom
Turtle Bay Resort	Attn Finance Department	57-091 Kamehameha Highway PO Box 910182			Kahuku	HI	96731	
TW Telecom Holdings, llc					Denver	CO	80291-0182	
Twenty-First Securities Corporation		780 Third Avenue	24th Floor		New York	NY	10017	
TXU ENERGY		PO BOX 650638			Dallas	TX	75265-0638	
TXU ENERGY		PO BOX 660409			Dallas	TX	75266-0409	
Tyco Integrated Security		PO Box 371967			Pittsburg	PA	15250-7967	
Tyler Kemp		Address on File						
TYRA GILB TRUST		325M SHARON PARK DR #207			Menlo Park	CA	94025-6804	
U.D.S.TX., LLC		1401 Elm, Suite 4567			Dallas	TX	75202	
U.S. - Japan Council	Attn Dana Fager, Develop. Coordinator	1819 L Street, NW, Suite 800			Washington	DC	20036	
U.S. Bancorp Equipment Finance, Inc.		PO Box 790448			Saint Louis	MO	63179-0448	
U.S. Bank		CM-9690	PO Box 70870		Saint Paul	MN	55170-9690	
U.S. Bank National Association	Attn CDO Unit	One Federal Street	3rd Floor	Mail Code EX-MA-FED	Boston	MA	02110	
U.S. Fund for UNICEF		520 Post Oak Blvd	Suite 280		Houston	TX	77027	
U.S. Securities and Exchange Commission	Fort Worth Regional Office	Burnett Plaza, 19th Floor	801 Cherry Street, Unit 18		Fort Worth	TX	76102	
UBS AG, London Branch	Attn Suzanne Forster, John Lantz	UBS Securities LLC, Jeffrey E. Bjork, Kimberly A. Posin	1285 Avenue of the Americas		New York	NY	10019	
UBS AG, London Branch	Latham & Watkins LLP	355 South Grand Avenue, Ste. 100	355 South Grand Avenue, Ste. 100		Los Angeles	CA	90071	
UBS AG, London Branch	Latham and Watkins LLP	Asif Attarwala	330 North Wabash Ave. Suite 2800		Chicago	IL	60611	
UBS AG, London Branch	Latham and Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000		Washington	DC	20004-1304	
UBS AG, London Branch	UBS Securities LLC	Attn Suzanne Forster, John Lantz	1285 Avenue of the Americas		New York	NY	10019	
UBS AG, London Branch	c/o Andrew Clubock, Esq.	Latham & Watkins LLP	555 Eleventh Street NW Suite 1000		Washington	DC	20004	
UBS Securities LLC	Attn Suzanne Forster, John Lantz	1285 Avenue of the Americas			New York	NY	10019	
UBS Securities LLC	c/o Andrew Clubock	Latham & Watkins LLP	555 11th Street NW #1000		Washington	DC	20004	
UBS Securities LLC	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100		Los Angeles	CA	90071	
UBS Securities LLC	Latham and Watkins LLP	Asif Attarwala	330 North Wabash Ave. Suite 2800		Chicago	IL	60611	
UCG		11300 Rockville Pike	Ste 1100		Rockville	MD	20852-3030	
Uchi Dallas, LLC		701 S. Lamar Blvd	Suite C		Austin	TX	78704	
UDAI DHAWAN		28 SPRAIN VALLEY RD			Scarsdale	NY	10583	
UERMMMC-MAAAI	Dr. Audrey Coo, Treasurer	PO Box 2153			Bedford Park	IL	60499-2153	
Ulf Nofelt		Address on File						
Ulitny, Inc.		92 Amity Drive			Wayne	PA	19087	

APP-80430

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Umari Zugaro, PLLC	Basil A. Umari	1403 Eberhard			Houston	TX	77019	
UMB Bank, N.A.	Attn Trust Fees Dept	PO Box 414589			Kansas City	MO	64114-4589	
UNICOM TECHNOLOGIES, INC		1011 HWY 6 S	STE 200		Houston	TX	77077	
Unimerica Insurance Company	Administrative Office	6300 Olson Memorial Highway			Golden Valley	MN	55427	
Unishippers		800 W Airport Fwy Ste 611 LB 6065			Irving	TX	75062	
Unishippers		800 W Airport Fwy Ste 611 LB 6065			Irving	TX	75062-6294	
United American Reporting Services		1201 Elm Street	Suite 5220		Dallas	TX	75270	
United Capital		5655 S. Yosemite St.	Suite 450		Greenwood Village	CO	80111	
United Carpet Cleaning Systems, Inc.		PO Box 1625			Hurst	TX	76053	
UNITED HEALTHCARE INSURANCE COMPANY	ATTN LISA CARRILLO	5800 GRANITE PKWY, STE 700			Plano	TX	75024	
UNITED HEALTHCARE INSURANCE COMPANY		22561 NETWORK PLACE			Chicago	IL	60673-1225	
United Mechanical		11540 Plano Road	PO Box 551206		Dallas	TX	75355-1206	
United Parcel Service, Inc		55 Glenlake Parkway			Atlanta	GA	30328-0000	
United States Treasury		INTERNAL REVENUE SVC	PO BOX 69		Memphis	TN	38101-0069	
United States Treasury		INTERNAL REVENUE SERVICE			Cincinnati	OH	45999-0039	
United States Treasury		INTERNAL REVENUE SERVICE			Kansas City	MO	64999-0202	
United States Treasury		STOP 5107 NWSAT	4050 ALPHA RD		Farmers Branch	TX	75244-4201	
United States Treasury		PO Box 660443			Dallas	TX	75266-0443	
United States Treasury		INTERNAL REVENUE SERVICE			Ogden	UT	84201-0039	
UNITED VAN LINES		ONE UNITED DRIVE			Fenton	MO	63026-1350	
United Way of Mass. Bay & Merrimack Vily	Attn A/R- Barbara Alexander	PO Box 51381			Boston	MA	02205-1381	
Universal Printing Solutions, Inc.		10573 West Pico Blvd. #610			Los Angeles	CA	90064-2438	
University of Michigan		3003 S. State Street, Suite 8000			Ann Arbor	MI	48109-1288	
University of Pennsylvania		433 Franklin Building	3451 Walnut Street		Philadelphia	PA	19104-6285	
University Pk Sch		3505 Amherst			Dallas	TX	75225	
ParentTeacher Assoc		PO BOX 406834			Atlanta	GA	30384-6834	
Unum Life Insurance Company of America		PO Box 409548			Atlanta	GA	30384-9548	
Unum Life Insurance Company of America		1140 Avenue of the Americas			New York	NY	10036	
Update Legal		1825 Market Center Blvd, Ste 500			Dallas	TX	75207	
Uplift Education		c/o David Jackson			Dallas	TX	75207	
UPMC HEALTH SYSTEM PENSION TRUST		1 MELLON BANK CTR			Pittsburgh	PA	15258	

APP-80431

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
UPS Freight		PO Box 730900			Dallas	TX	75373-0900	
UPS Supply Chain Solutions		PO BOX 7247-0244			Philadelphia	PA	19170-0001	
UPS Supply Chain Solutions		28013 Network Place			Chicago	IL	60673-1280	
UPS Supply Chain Solutions		PO Box 730900			Dallas	TX	75373-0900	
UpSwing Performance Improvement, Inc.		PO Box 738			Manchester	MO	63011	
Uptown Energy Partners		2602 McKinney Ave	Suite 330		Dallas	TX	75204	
Urano, Cameron		Address on File						
URBAN, ASHLEY		Address on File						
URBAN, JOHN		Address on File						
URBANIC, MATTHEW		Address on File						
URECH, DANIELLE		Address on File						
URS CORPORATION		PO BOX 121028	DEPT 1028		Dallas	TX	75312-1028	
US Attorneys Office for the Northern District of Texas	Erin Nearly Cox, Donna K. Webb	1100 Commerce St. Suite 300			Dallas	TX	75242	
US Bank		1555 N Rivercenter Dr, Ste 302			Milwaukee	WI	53212	
US BANK NA	ATTN THOMAS BELCHER	ONE FEDERAL STREET	THIRD FLOOR		Boston	MA	02110	
US Foods, Inc.		Box 843202			Dallas	TX	75284-3202	
US Legal Support		Texas Records & Reporting	PO BOX 952172		Dallas	TX	75395-2172	
US Legal Support		Chicago, IL Reporting	PO Box 4772-11		Houston	TX	77210-4772	
US Markets		10 W. 37th St	7th FL		New York	NY	10018	
US Policy Metrics LLC		2001 K St NW Fl 8-11			Washington	DC	20006-1042	
US Postage Meter Center		PO Box 800848			Santa Clarita	CA	91380	
US Securities & Exchange Commission	FOIA Officer & Privacy Act Officer	100 F Street, NE	Mail Stop 2736		WASHINGTON	DC	20549-2000	
US Ski and Snowboard Team Foundation		1 Victory Lane	Box 100		Park City	UT	84060	
USA Shooting	Attn Rob Weekes	1 Olympic Plaza			Colorado Springs	CO	80909	
usfi marketing communications		12100 Ford Rd Ste 100			Dallas	TX	75234	
USTMAAM		104 BIG OAKS RD			STREAMWOOD	IL	60107-1320	
USW LOCAL 870	C/O MARC VILLAFANIA	94 WASHINGTON PLACE			Totwa	NJ	07512	
Utah Division of Securities		Securities Division	160 East 300 South, 2nd Floor		Salt Lake City	UT	84111	
UTAH STATE TAX COMMISSION		210 N 1950 W			Salt Lake City	UT	84134	
Valhalla CLO, Ltd.	c/o Intertrust SPV (Cayman) Limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Valhalla CLO, Ltd. JPMorgan Chase Bank		390 Greenwich Street, 4th Floor	Institutional Trust Services					
Valhalla CLO, Ltd. JPMorgan Chase Bank	JPMorgan Chase Bank	Walker House, PO Box 908GT, Mary Street	George Town, Grand Cayman	Valhalla CLO, Ltd.	New York	NY	10013	
VALIANT MEDIA	SPY Limited	3116-D COMMERCE ST	The Directors		Grand Cayman			Cayman Islands
Validity, Inc.		200 Clarendon St	22nd Floor		Dallas	TX	75226	
Value Line Publishing	ATTN Matt Jamison	Value Line Publishing, Inc	220 East 42nd Street 6th floor		Boston	MA	02116	
ValueScope, Inc.		1400 Theford Ct.			New York	NY	10017	
VAN HOEF, ASHLEY		Address on File			Southlake	TX	76092	
VANACCOUR, JASON		Address on File						

APP-80132

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1 Address on File	Address2	Address3	City	State	Zip	Country
Vanessa Sea								
Vanguard Brokerage Services	Attn Securities Receipt & Transfer	PO Box 1170			Valley Forge	PA	19482-1170	
Vector One Management		113 E 55th St			New York	NY	10022	
Vela Wood PC	Attention Kevin Vela	5307 E. Mockingbird Lane, Suite 802			Dallas	TX	75206	
Venable LLP		PO Box 630798			Baltimore	MD	21263-0798	
Venable LLP		PO Box 62727			Baltimore	MD	21264-2727	
Vengroff Williams, Inc c/o American Arbitration Association	Vengroff Williams, Inc c/s American Arbitration	2211 Fruitville Rd			Sarasota	FL	34237	
Venture Mechanical, Inc.		1644 W Crosby Rd			Carrollton	TX	75006-6628	
Veritas Backup Exec		2625 Augustine Drive			Santa Clara	CA	95054-0000	
Veritas Enterprise Vault		2625 Augustine Drive			Santa Clara	CA	95054-0000	
Veritas Software Global LLC		PO Box 60000			San Francisco	CA	94160-3667	
Veritext Corp.		3090 Bristol Street	Suite 190		Costa Mesa	CA	92626	
Veritext Los Angeles Reporting Co		3090 Bristol St	Suite 190		Costa Mesa	CA	92626	
Veritext Mid-Atlantic		1801 Market Street	Suite 1800		Philadelphia	PA	19103	
Veritext New York Reporting Co		330 Old Country Rd	Suite 300		Mineola	NY	11501	
Veritext New York Reporting Co		PO Box 71303			Chicago	IL	60694-1303	
Verity Group		885 E Collins Blvd	Ste. 102		Richardson	TX	75081-0000	
Verity Group		PO Box 940361			Plano	TX	75094-0361	
VERIZON		PO BOX 15124			Albany	NY	12212-5124	
VERIZON		PO BOX 1100			Albany	NY	12250-0001	
Verizon Wireless		PO Box 489			Newark	NJ	07101-0489	
Verizon Wireless		PO Box 790406			Saint Louis	MO	63179-0406	
Verizon Wireless		PO Box 660108			Dallas	TX	75266-0108	
Verizon Wireless		PO Box 4001			Inglewood	CA	90313-4001	
Vermont Department of Taxes		PO Box 588			Montpelier	VT	05601	
Vermont Dept of Financial Regulation		Dept of Banking, Insurance & Securities	89 Main Street, 2nd Floor, Drawer 20		Montpelier	VT	05620	
Verrill Dana LLP		One Portland Square	P.O. Box 586		Portland	ME	04112	
VFG Securities, Inc.	Attn Jana Oledzki	100 Corporate Pointe	Suite 382		Culver City	CA	90230-7612	
ViaWest, Inc.	Attn John Greenwood	1200 17th Street, Suite 1150			Denver	CO	80202	
ViaWest, Inc.		PO Box 732368			Dallas	TX	75373-2368	
ViaWest, Inc.		PO Box 912362			Denver	CO	80291-2362	
Vibrancy21		1133 South Clinton Street			Baltimore	MD	21224	
Vickery Meadow Learning Center		6329 Ridgecrest			Dallas	TX	75231	
Victor Chang		Address on File						
Victor Chong		Address on File						
Vigilant Resources		45 Rockefeller Plaza, 20th Floor			New York	NY	10111	
VILLA VERONA, LTD		13330 NOEL RD			Dallas	TX	75240	
Village on the Green		5301 Alpha Road, Suite 44			Dallas	TX	75240	
Vin Thompson		Address on File						

APP-80439

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Vincent Lopez Serafino & Jenevein, PC		2001 Bryan St	Suite 2000		Dallas	TX	75201	
VINSON & ELKINS, LLP		A1001 FANNIN ST., STE 2300	FIRST CITY TOWER		Houston	TX	77002-6760	
Vintage Filings		350 Hudson Street, Suite 300			New York	NY	10014	
Vintage Filings		350 Hudson Street	Suite 300		New York	NY	10014	
Vintage Filings		PO Box 30719			New York	NY	10087-0719	
Vira, Sagar		Address on File						
VIRGINIA DEPARTMENT OF TAXATION		PO BOX 1500			Richmond	VA	23218-1500	
VIRGINIA DEPARTMENT OF TAXATION		PO BOX 1777			Richmond	VA	23218-1777	
Virginia Retirement System	Attn Control	PO Box 361			Richmond	VA	23218	
Virginia Retirement Systems	Attn Control	PO Box 361			Richmond	VA	23218	
Vishnu Gogineni		Address on File						
Visix, Inc.		230 Scientific Drive	Suite 800		Norcross	GA	30092	
Vitae Search Group, LLC		6009 Mariposa Drive			McKinney	TX	75070	
Vitello, Stephanie		Address on File						
Vlahakis, Eleni		Address on File						
VODAFONE		PO BOX 549			London		OX17 3ZJ	United Kingdom
Vogel Alcove		200 Crescent Court	Ste 300		Dallas	TX	75201	
Voice of Hope	Attn Ruth Hardesty	PO Box 224845			Dallas	TX	75222-4845	
Volunteers for Youth, Inc.		205 Lloyd Street	Suite 103		Carrboro	NC	27510	
Voya Financial Advisors	Attn Adriana Mardarie Gagov	909 Locust Street			Des Moines	IA	50309	
Voya Financial Advisors		5780 Powers Ferry Road, NW			Atlanta	GA	30327	
VSI Solutions		203 Dumont ct			Fairview	TX	75069	
VTB Capital plc		14 Cornhill			London		EC3V3ND	United Kingdom
W San Diego		421 West B St			San Deigo	CA	92101	
W. Andrew Hodge Consulting, PA		PO Box 11417			Glendale	AZ	85318	
W.B. Mason Co., Inc.		59 Centre St			Brockton	MA	02301	
Wachovia Insurance Services		5956 Sherry Lane	Suite 2000		Dallas	TX	75225-6531	
Wachovia Secuties LLC		Relationship Management Group-MO1400						
Wachtell, Lipton, Rosen & Katz		1 North Jefferson St			Saint Louis	MO	63103	
Wagner, Grace		51 West 52nd Street			New York	NY	10019	
Wagner, Grace		Address on File						
Wake2O		Rue du Mont Blanc 3			Geneva		01201	SWITZERLAN D
Wakefield Quin		Victoria Place	31 Victoria St		Hamilton		0HM10	Bermuda
Wakefield Quinn		PO BOX HM 809			Hamilton		0HMCX	BERMUJDA
Walek & Associates, Inc.		317 Madison Avenue Suite 2300			New York	NY	10017	
WALIA, AMIT		Address on File						
Walker Dumlop		Address on File						
Walker Kobelan		Address on File						

001813

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Walkers		PO Box 265GT, Walker House	87 Mry Street		George Town		KY1-9001	Cayman Islands
Walkers - Ireland		The Exchange, Georges Dock, IFSC			Dublin		1	Ireland
Walkers Fund Services Limited	c/o Intertrust Cayman c/o OConnor Davies Munns & Dobbins LLP	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Wall Street Tax Association		60 East 42nd Street			New York	NY	10165	
WALLS, DAVID		Address on File						
WALTER JARMAN		Address on File						
WAN, QIAN		Address on File						
WANG, ALICE		Address on File						
WANG, CHEN-HAN		Address on File						
Wang, Ruozhou		Address on File						
Warehouse Store Fixture Co.		84 Progress Lane			Watebury	CT	06705	
Warner Stevens LLP		1700 City Center Tower II	301 Commerce Street		Fort Worth	TX	76102	
Warren Posner		Address on File						
Washington Speakers Bureau Inc.		1663 Prince Street			Alexandria	VA	22314	
Washington State Treasurer		WA Dept of Finan Inst. Securities Div	150 Israel Road SW		Tumwater	WA	98501	
Waterhouse, Frank	Ross & Smith, PC	Plaza of the Americas	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
WATERHOUSE, FRANK		Address on File						
WaterView Advisors		14800 Quorum Dr Ste 450			Dallas	TX	75254-7531	
Watson Wyatt & Co		PO Box 277665			Atlanta	GA	30384	
WATSON, ERIN		Address on File						
Watts, Andrew		Address on File						
WATTS, KEITH R		Address on File						
Wayne Bell		Address on File						
WC-4641 Production, LLC	C/o Great Value Storage Attn Sharon Popham, Reservations Chair	4641 Production Drive			Dallas	TX	75235	
WCDABG		3 Carmarthen Court			Dallas	TX	75225	
Wealthforge Securities, LLC		6800 Paragon Place	Ste 200		Richmond	VA	23230	
Wealthmaster Group, LLC		18881 Von Karman Ave	Suite 720		Irvine	CA	92612	
Weatherly, Brian		Address on File						
Weaver and Tidwell, LLP		2821 West 7th Street	Suite 700		Fort Worth	TX	76107	
Webb, Justin		Address on File						
WebsiteBackup Company		2375 E. Camelback Rd	Suite 600		Phoenix	AZ	85016	
WEBSTER, GREGORY W		Address on File						
WEIJUN ZANG		Address on File						
Weinstein, Clower & Associates		PO Box 795001			Dallas	TX	75379	
Weich Consulting Ltd		1716 Briarcrest Drive #700			Bryan	TX	77802-2760	
Wells Fargo Advisors FBO Bezilla	Attn Alan Kinney	200 Stephenson Ave, Suite 301			Savannah	GA	31405	
Wells Fargo Advisors, LLC	Attn Andrew Black	280 Park Avenue, FL 29W			New York	NY	10017	
Wells Fargo Advisors, LLC	Attn April Johnson	10900 Wilshire Blvd, 11th Floor			Los Angeles	CA	90024	

001-8135

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Wells Fargo Advisors, LLC	Attn Dan Racicot WF - Finet	4275 Executive Square, Ste 910			Lajolla	CA	92037	
Wells Fargo Advisors, LLC	Attn Denise Bare	9665 Wilshire Blvd, Ste 100			Beverly Hills	CA	90212	
Wells Fargo Advisors, LLC	Attn Greg Shumaker	700 Ackerman Rd, Ste 400			Columbus	OH	43202	
Wells Fargo Advisors, LLC	Attn Kathy Buckley	6060 South American Plaza St East			Tulsa	OK	74135	
Wells Fargo Advisors, LLC	Attn Kevin Dailey	100 East Wisconsin Ave, 12th Floor			Milwaukee	WI	53202	
Wells Fargo Advisors, LLC	Attn Mike McChesney	2500 Legacy Dr, Ste 200			Frisco	TX	75034	
Wells Fargo Advisors, LLC	Attn Nicole Stenquist	450 Post Road East			Westport	CT	06880	
Wells Fargo Advisors, LLC	Attn Operations Manager	20 William Street, Ste 300			Wellesley	MA	02481	
Wells Fargo Advisors, LLC	Attn Operations Manager	331 Newman Springs Rd, Ste 230			Red Bank	NJ	07701	
Wells Fargo Advisors, LLC	Attn Operations Manager	222 East Main St, Ste 106			Smithtown	NY	11787	
Wells Fargo Advisors, LLC	Attn Operations Manager	13621 University Ave			Clive	IA	50325	
Wells Fargo Advisors, LLC	Attn Operations Manager	909 Fannin St, Suite 1200			Houston	TX	77010	
Wells Fargo Advisors, LLC	Attn Operations Manager	1200 17th St, Ste 2000			Denver	CO	80202	
Wells Fargo Advisors, LLC	Attn Operations Mgr Gamer Mabry	6400 South Fiddlers Green Cir, Ste 1840			Greenwood Village	CO	80111	
Wells Fargo Advisors, LLC	Attn Paula Curry, Control Specialist	2 International Place, 20th Fl			Boston	MA	02110	
Wells Fargo Advisors, LLC	Attn Rita Borchers	7400 West 130th St, Ste 200			Overland Park	KS	66213	
Wells Fargo Advisors, LLC	Attn Tracy Lusk	8115 Preston Rd, Suite 300			Dallas	TX	75225	
Wells Fargo Advisors, LLC	Attn Web Wang	5820 Canoga Ave, #100			Woodland Hills	CA	91367	
Wells Fargo Advisors, LLC	c/o David Elfenbein	1211 Avenue of the Americas, 27th Flr			New York	NY	10036	
Wells Fargo Advisors, LLC	c/o Heiter Leshem Margolis	500 Lake Cook Rd, Ste 100			Deerfield	IL	60015	
Wells Fargo Advisors, LLC	c/o Shannon Walker	695 E. Arlington Blvd., Ste 201			Greenville	NC	27858	
Wells Fargo Advisors, LLC		180 Glastonbury Blvd			Glastonbury	CT	06033	
Wells Fargo Advisors, LLC		1 North Jefferson Ave.	Suite 301		Saint Louis	MO	63103	
Wells Fargo Advisors, LLC		3501 W Rosemont Ave			Chicago	IL	60659-2207	
Wells Fargo Advisors, Westwood		10900 Wilshire Blvd	11th Floor		Los Angeles	CA	90024	
WELLS FARGO BANK		WF 8113	PO BOX 1450		Minneapolis	MN	55485-8113	
Wemple, Stefanie		Address on File						
WEN, JING		Address on File						
WENDELL, MORTON		Address on File						
Wendy Harper		Address on File						
WENTWORTH, KEVIN J.		Address on File						
Wesley Golie		Address on File						
West Court Reporting Services		West Payment Center	P.O. Box 6292		Carol Stream	IL	60197-6292	
West Payment Center		PO Box 6292			Carol Stream	IL	60197-6292	
West Publishing Corporation		P.O. Box 12421			Newark	NJ	07101	
West Virginia State Auditor Office		1900 Kanawha Blvd. E	State Capital Building 1, Room W-100		Charleston	WV	25305-0230	Cayman Islands
Westchester CLO, Ltd.	The Directors	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman		KY1-1108	

APP-8236



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Westchester CLO, Ltd.		P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town			Cayman Islands
Westchester CLO Ltd.			COO Services Group					
Investors Bank & Trust Company	Investors Bank & Trust Company	200 Claredon Street	Ref Westchester CLO, Ltd.		Boston	MA	02116	
Western International Securities, Inc.		70 S. Lake Ave	Ste 700		Pasadena	CA	91101	
Westley McGeoghegan		49 Chetwynd Road			Somerville	MA	02144	
WESTMINSTER CITY COUNCIL		PO BOX 397			London		WA55 1GG	United Kingdom
WestPark Capital, Inc.		1900 Avenue of the Stars	Suite 310		Los Angeles	CA	90067	
Westwood Professional Services, Inc.		7699 Anagram Drive			Eden Prairie	MN	55334	
WHARF, PAUL		Address on File						
WHARF, PAUL C.		Address on File						
Whalley, David		Address on File						
WHERRY, SHANNON M.		Address on File						
Wheatstone, Laurie		Address on File						
Whitaker, Chalk, Swindler, & Sawyer		301 Commerce St. Suite 3500			Ft. Worth	TX	76102	
White & Case LLP		1155 Avenue of the Americas			New York	NY	10036-2787	
White & Williams LLP		1800 One Liberty Place			Philadelphia	PA	19103-7395	
White, Jeremy		Address on File						
White, Kelly		Address on File						
WhiteGlove House Call Health, Inc.		5300 Bee Cave Rd, Bldg One	Ste 100		Austin	TX	78746	
WhiteGlove House Call Health, Inc.		PO Box 845720			Dallas	TX	75284-5720	
Whitehall-Parker Securities, Inc.		477 Pacific Ave, 2nd Floor			San Francisco	CA	94133	
Whitney Smith Co		301 Commerce St	Suite 1950		Fort Worth	TX	76102	
WhitneySmith Company		301 Commerce Street, Suite 1950			Fort Worth	TX	76102	
WICK PHILIPS LLP		500 North Akward Street	Suite 2100		Dallas	TX	75201	
Wick Phillips Gould & Martin, LLP	Jason M. Rudd. Lauren K. Drawhorn	3131 McKinney Avenue, Suite 500			Dallas	TX	75204	
Wicks Business Information		1375 Kings Highway East Ste 450			Fairfield	CT	06824	
Wild Rose Floral Design Studio		PO Box 541			Rockwall	TX	75087	
Wild Rose Floral Design Studio		720 E Lamar St			Royse City	TX	75189	
Wilentz Goldman & Spitzer		90 Woodbridge Center Dr.			Woodbridge	NJ	07095	
Wiley, Grant		Address on File						
Wilkinson Center	Attn Andrea Jones	PO Box 720248			Dallas	TX	75372	
Wilkinson Center	Attn Cathy Rosson	PO Box 720248			Dallas	TX	75372	
Wilks, Lukoff & Bracegirdle, LLC		4250 Lancaster Pike, Suite 200			Wilmington	DE	19805	
Will Pryor Mediation & Arbitration		5420 LBJ Frwy Ste 626			Dallas	TX	75240	

001-8237

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
WILLIAM CORNELIUS		Address on File						
William Gosserand	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
William Ikard		Address on File						
William Keeney		Address on File						
William M. Cobb & Associates, Inc.		12770 Coit Rd, Ste 907			Dallas	TX	75251	
William Mabry	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
William Oliveira		Address on File						
William R. Welch		Address on File						
William Todd Westenburg		Address on File						
Williams, Andrew		Address on File						
WILLIAMS, MEREDITH		Address on File						
Willis of New York, Inc.		PO Box 4557			New York	NY	10249-4557	
Willis of Texas, Inc.		Dallas/Ft. Worth Division	PO Box 730310		Dallas	TX	75373-0310	
Willis of Texas, Inc.		PO Box 731739			Dallas	TX	75373-1739	
Willkie Farr & Gallagher LLP		787 Seventh Ave			New York	NY	10019-6099	
WILLMORE, DAVID		Address on File						
Willoughby McCabe Agents Co		3409 Rosedale Avenue			Dallas	TX	75205	
WILLOUGHBY-MCCABE, PATRICK		Address on File						
Wilmer Cutler Pickering Hale and Dorr LLP	Timothy F. Silva	60 State Street			Boston	MA	02109	
Wilmer Cutler Pickering Hale Dorr LLP		1875 Pennsylvania Avenue NW			Washington	DC	20006	
Wilmer Cutler Pickering Hale Dorr LLP		PO Box 7247-8760			Philadelphia	PA	19170-8760	
Wilmington Trust Company		Rodney Square North	1100 North Market St		Wilmington	DE	19890-0001	
Wilshire Associates Incorporated	Attn Accounts Receivable	1299 Ocean Avenue, Suite 700			Santa Monica	CA	90401-1085	
WILSON SMITH		Address on File						
WILSON, ANDREW		Address on File						
WILSON, ANTHONY		Address on File						
Wilson, Owen		Address on File						
WILSON, SCOTT		Address on File						
Wilson, Sonsini, Goodrich, & Rosati		PO Box 742866			Los Angeles	CA	90074-2866	
Wilson, Sonsini, Goodrich, & Rosati		File # 73672	PO Box 60000		San Francisco	CA	94160-3672	
WILSON, STEVE L.		Address on File						
Wilson, William		Address on File						
WINGS Ventures LLC		172304 Preston Rd	Ste 800		Dallas	TX	75252	
Winn Media		Address on File						
WINSTEAD P.C.		5400 RENAISSANCE TOWER	1201 ELM ST		Dallas	TX	75270	
WINSTEAD P.C.		2728 N Harwood Street	Suite 500		Dallas	TX	75201-1743	
Winston & Strawn LLP		2121 North Pearl Street	Suite 900		Dallas	TX	75201	
Wired		PO Box 37704			Boone	IA	50037-0704	

001822

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Wisconsin Office of Comm of Securities	Division of Securities	201 West Washington Avenue, Suite 300			Madison	WI	53703	
WISE, CHRIS		Address on File						
Wiseman & Hoffman		460 Park Ave South, 4th Flr			New York	NY	10016	
WISER, JASON		Address on File						
Withers Bergman LLP		157 Church Street, 12th Floor	PO Box 426		New Haven	CT	06502	
Withers Bergman LLP		PO Box 1685			New Haven	CT	06507	
WM Fund Associates Co., Ltd.		Kakimi Kojimachi Annex Bldg 6F	3-2 Kojimachi, Chiyoda-ku		Tokyo		102-0083	JAPAN
Wolters Kluwer		1999 Bryan Street	Ste 900		Dallas	TX	75201-0000	
Wolters Kluwer Legal & Regulatory US		PO Box 71882			Chicago	IL	60694-1882	
Wombat Security Technologies		3030 Penn Avenue	Suite 200		Pittsburgh	PA	15201	
Womens Auxiliary Childrens-Six Flags	Attn Jenny Garberding	7315 Centenary Ave			Dallas	TX	75225	
Womens Auxiliary Childrens-Six Flags	Attn Robin Wilson, Treasurer	7506 Greenbrier			Dallas	TX	75225	
Wonderlic		1795 N. Butterfield Rd			Libertyville	IL	60048-1212	
WOOD, HANNAH		Address on File						
Woodall Rodgers Park Foundation	Attn Erika White	1909 Woodall Rodgers Fwy	Suite 403		Dallas	TX	75201	
Woodbury Financial Services, Inc.	ATTN Reimb Processing	PO Box 64284			Saint Paul	MN	55164	
Woodruff-Sawyer & Co.		PO Box 45057			San Francisco	CA	94145-9950	
WOOTTON, JENNIFER		Address on File						
World Affairs Council		325 N. St. Paul St.	Suite 4200		Dallas	TX	75201	
World Data Products		M & I 196 PO Box 1414			Minneapolis	MN	55480-1414	
Worldwide Financial Solutions		16140 Northcross Drive			Huntersville	NC	28078	
Worldwide Insurance Services	ATTN INDIVIDUAL UNDERWRITING DEPT	100 MATSONFORD RD	STE 100		Radnor	PA	19087	
WP Engine		504 Lavaca Street	Suite 1000		Austin	TX	78701-0000	
WQ International Ltd.		Victoria Place, 31 Victoria Street			Hamilton		0HM10	BERMUDA
Wright Wealth Management		3181 Clearwater Dr.	Ste A		Prescott	AZ	86305	
Wrights Media		2407 Timberloch Place	Suite B		The Woodlands	TX	77380-1039	
Wuiz, Brandon		Address on File						
Wyoming Secretary of State		Securities Division, State Capitol Bldg	2020 Carey Avenue, Suite 700		Cheyenne	WY	82001	
Xact Data Discovery -DATX		5800 Foxridge Dr	Suite 406		Mission	KS	66202	
Xerox		45 Glover Ave			Norwalk	CT	06856-0000	
Xerox Corporation		2553 Collections Center Dr.			Chicago	IL	60693	
Xerox Corporation		PO Box 650361			Dallas	TX	75265	
Xerox Corporation		PO Box 827598			Philadelphia	PA	19182-7598	
Xerox Corporation		PO Box 802555			Chicago	IL	60680-2555	
Xerox Corporation		PO Box 7405			Pasadena	CA	91109-7405	
Xignite, Inc		1825 South Grant St	Suite 100		San Mateo	CA	94404	
Xignite, Inc		Dept 3344	PO Box 123344		Dallas	TX	75312-3344	

001-8239

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
XIOTECH CORPORATION		DEPT CH 17326			Palentine	IL	60055-7326	
XO Communications		PO Box 530471			Atlanta	GA	30353-0471	
XPISTI LLC		2807 Allen Street # 382			Dallas	TX	75204	
Xtract Research		330 Hudson Street	4th Floor		New York	NY	10013	
YAGNISIS, AIRLIA		Address on File						
YANG, JOHN		Address on File						
YAROSLAV JERRY LVOVICH		Address on File						
Yehia, Josef		Address on File						
Yelibelly, Inc.		2364 Northwest Pkwy			Southlake	TX	76092	
YINGHUI HE		Address on File						
YMCA of Metropolitan Dallas		5101 Tennyson Pkwy.			Plano	TX	75024	
YOON, CHRISTOPHER K.		Address on File						
York & Chapel, Corp.		2 Trap Falls Road	Suite 410		Shelton	CT	06484	
YOUNG CONAWAY								
STARGATT & TAYLOR, LLP	Bruce L. Silverstein	Elena C. Norman	1000 North King Street		Wilmington	DE	19801	
Young Life	C/O Lee Anne Bingham	3304 Beckham Ct			Plano	TX	75075	
YOUNG LIFE ALBUQUERQUE		PO BOX 91894			Albuquerque	NM	87199-1894	
YOUNG LIFE, NORTH CENTRAL TEXAS		11300 N CENTRAL EXPWY	STE 600		Dallas	TX	75243	
Young Womens Preparatory Network		1722 Routh Street	Suite 720		Dallas	TX	75201	
Young, Priya		Address on File						
YTAC-Dallas		2807 Allen St., Box 347			Dallas	TX	75204	
Zacks Investment Research, Inc.		111 North Canal Street	Suite 1101		Chicago	IL	60606	
ZANG, WEIJUN		Address on File						
ZANG, WEIJUN		Address on File						
ZARIN, GREGORY		Address on File						
Zayo Group		1821 30th Street	Unit A		Boulder	CO	80301-0000	
Zayo Group, LLC		PO Box 952136			Dallas	TX	75395-2136	
Zendes		1019 Market St			San Francisco	CA	94103-0000	
Zenprise Inc		6120 Stevenson Blvd			Fremont	CA	94538	
ZEPHYR ASSOCIATES		4 Westchester Park Dr	2nd Floor		White Plains	NY	10604	
ZEPHYR ASSOCIATES		Dept 2215	PO Box 2121		Memphis	TN	38159	
ZEPHYR ASSOCIATES		PO Box 12368	312 Dorla Court		Zephyr Cove	NV	89448	
ZEPHYR ASSOCIATES		PO Box 416014			Boston	MA	02241-6014	
ZEPHYR ASSOCIATES		P.O. Box 2153	Dept. 1899		Birmingham	AL	35287-1899	
ZIEGENHAGEN, RANDALL		Address on File						
ZIEGLER, JASON		Address on File						
ZIMMERMANN, JOHN		Address on File						
ZOHO Corporation		File No #31469	PO Box 60000		San Francisco	CA	94160	
ZOHO Corporation		PO Box 742760			Los Angeles	CA	90074-2760	
ZOHO Corporation		4900 Hopyard Road	Suite 310		Pleasanton	CA	94588-7100	
Zosel, August		Address on File						
Zscaler		110 Rose Orchard Way			San Jose	CA	95134-0000	
Zuckerman Spaeder LLP		1800 M Street NW			Washington	DC	20036-5802	
Zuluaga, Juan Camilo		Address on File						
Zurich North America	ATTN HOWARD BULGATZ	8745 PAYSOPHERE CIRCLE			Chicago	IL	60674	

001-8244

**Exhibit C**

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Zurich North America		8712 Innovation Way			Chicago	IL	60682-0087	
Zyrka		1408 N. Riverfront Blvd. #106			Dallas	TX	75207	

APPX-00341  
001825

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 168 of  
175

## **EXHIBIT D**

**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Advisors Equity Group, LLC		300 Crescent Court, Ste. 700		Dallas	TX	75201
Canis Major Trust		300 Crescent Ct	Ste 700	Dallas	TX	75201
DONDERO, JAMES		300 Crescent Ct, Suite 700		DALLAS	TX	75201
Eagle Equity Advisors, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
ELLINGTON, SCOTT		300 Crescent Ct, Suite 700		DALLAS	TX	75201
Fanshaw Bay, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Four Rivers Co-Invest, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
Gunwale, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
HCRE Partner, LLC		300 Crescent Court Ste 700		Dallas	TX	75201
HFP GP, LLC	Attn Highland Capital Management, L.P. as sole member	300 Crescent Court Ste 700		Dallas	TX	75201
Highland HCF Advisor, Ltd.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Acquisition Corporation		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Funds Distributor, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Insurance Solutions, L.P.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Management (Singapore)		300 Crescent Ct.	Suite 700	Dallas	TX	75201
Highland Capital Management Fund Advisors, L.P.	Attn General Counsel	300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Management Fund Advisors, L.P.		300 Crescent Court Suite 700		Dallas	TX	75201
Highland Capital Management Services, Inc.		300 Crescent Court, Suite 700		Dallas	TX	75201
HIGHLAND CAPITAL MANAGEMENT, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Mgmt Fund Advisors		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland CLO Funding, Ltd.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland CLO Management, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Energy MLP Fund		300 Crescent Court, Ste 700		Dallas	TX	75201
Highland First Foundation Income Fund		300 Crescent Court	Suite 700	Dallas	TX	75201

APPX-00343  
 001827



**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Highland Fixed Income Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Floating Rate Fund		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Funds I		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Funds II		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Global Allocation Fund		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Healthcare Opportunities Fund						
Highland Income Fund HFRO		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Latin America Consulting, LTD		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Long/Short Equity Fund						
Highland Merger Arbitrage Fund		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Opportunistic Credit Fund		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Prometheus		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland RCP Offshore, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland RCP, LP		300 Crescent Ct.	Suite 700	Dallas	TX	75201
Highland Small-Cap Equity Fund		300 Crescent Ct.	Suite 700	Dallas	TX	75201
Highland Socially Responsible Equity Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Tax-Exempt Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Tax-Exempt Fund	Highland Energy MLP Fund	300 Crescent Court Suite 700		Dallas	TX	75201
Highland Total Return Fund	Highland Energy MLP Fund	300 Crescent Court	Suite 700	Dallas	TX	75201
Highland/iBoxx Senior Loan ETF		300 Crescent Court Ste 700		Dallas	TX	75201
Honis, Trevor		300 Crescent Court	Suite 700	Dallas	TX	75201
James D. Dondero		300 Crescent Ct.	Ste. 700	Dallas	TX	75201
James D. Dondero		300 Crescent Court Ste 700		Dallas	TX	75201
James Dondero, as the successor-in-interest to the Canis Major Trust		300 Crescent Court Ste 700		Dallas	TX	75201
LEE BLACKWELL PARKER, III		300 Crescent Court Ste 700		Dallas	TX	75201
Mark K. Okada	Attn Melissa Schroth	300 Crescent Court	Suite 700	Dallas	TX	75201
Mark K. Okada		300 Crescent Court	Suite 700	Dallas	TX	75201
NexBank Advisors, L.P		300 Crescent Ct, Suite 700		Dallas	TX	75201

APPX 001828

**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
NexBank Capital, Inc		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank Securities, Inc		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank SSB		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank Title, Inc.		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexPoint Advisors, L.P.		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Cap Escrow		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Capital, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Discount Strategies Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Energy and Material Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Event-Driven Fund	Highland Energy MLP Fund	300 Crescent Court Ste 700		Dallas	TX	75201
NexPoint Healthcare Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Healthcare Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Latin America Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Real Estate Strategies Fund	Highland Energy MLP Fund	300 Crescent Court Ste 700		Dallas	TX	75201
NexPoint Strategic Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
OKADA, MARK		300 Crescent Ct. Suite 700		DALLAS	TX	75201
PARKER, LEE		300 Crescent Ct. Suite 700		DALLAS	TX	75201
Penant Management GP, LLC	c/o Highland Capital Management, L.P.	300 Crescent Court Ste 700		Dallas	TX	75201
PetroCap Operating, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
PetroCap Partners II, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
PRILICK, GUSTAVO		300 Crescent Court	STE 700	Dallas	TX	75201
Ragen, Spencer		300 Crescent Ct.	Ste. 700	Dallas	TX	75201
SE Multifamily Holdings, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Strand Advisors Inc.		300 Crescent Court		Dallas	TX	75201
Strand Advisors, Inc.	Attn Isaac Leventon	300 Crescent Court, Suite 700		Dallas	TX	75201
Strand Advisors, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
The Dugaboy Investment Trust		300 Crescent Court Suite 700		Dallas	TX	75201

APPX-80145  
 001829

**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
The Dugaboy Investment Trust, as successor-in-interest to the Canis Major Trust		300 Crescent Court Ste 700		Dallas	TX	75201
The Get Good Non-Exempt Trust No. 1		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Get Good Non-Exempt Trust No. 1, Individually and as Successor-In-Interest of the Canis Minor Trust		300 Crescent Court, Ste. 700		Dallas	TX	75201
The Get Good Non-Exempt Trust No. 2		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Get Good Non-Exempt Trust No. 2, Individually and as Successor-In-Interest of the Canis Minor Trust		300 Crescent Court, Ste. 700		Dallas	TX	75201
The Get Good Trust		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Mark and Pamela Okada Family Exempt Trust #1	Attn Melissa Schroth	300 Crescent Court Suite 700		Dallas	TX	75201
The Mark and Pamela Okada Family Exempt Trust #2	Attn Melissa Schroth	300 Crescent Court Suite 700		Dallas	TX	75201
The Mark and Pamela Okada Family Trust	Exempt Trust #1	300 Crescent Court	Suite 700	Dallas	TX	75201
The Mark and Pamela Okada Family Trust	Exempt Trust #2	300 Crescent Court	Suite 700	Dallas	TX	75201
The Mark and Pamela Okada Family Trust - Exempt Descendants Trust #1		300 Crescent Court		Dallas	TX	75201
The Mark and Pamela Okada Family Trust - Exempt Descendants Trust #2		300 Crescent Court		Dallas	TX	75201

APP-00146  
 001830

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 173 of  
175

## **EXHIBIT E**

**Exhibit E**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	Address1	Address2	City	State	Zip
AMY JENKINS	13455 NOEL RD	STE 800	Dallas	TX	75240
Amy Mitts	13455 Noel Rd	Suite 800	Dallas	TX	75240
BENTLEY CALLAN	13455 NOEL RD	STE 800	Dallas	TX	75240
BILL CORNELIUS	13455 NOEL RD	STE 800	Dallas	TX	75240
BOYD GOSSERAND	13455 NOEL RD	STE 800	Dallas	TX	75240
CLINT GILCHRIST	13455 NOEL RD	STE 800	Dallas	TX	75240
COURTNEY ORENT	13455 NOEL RD	STE 800	Dallas	TX	75240
Cummings Bay Capital Management, LP	13455 Noel Rd, Ste 800		Dallas	TX	75240
DAVID CRULL	13455 NOEL RD	STE 800	Dallas	TX	75240
DAVID SMITH	13455 Noel Rd	Ste 800	Dallas	TX	75240
EMERALD ORCHARD	13455 NOEL RD	STE 800	Dallas	TX	75240
GUSTAVO PRILICK	13455 Noel Rd, Ste 800		Dalals	TX	75240
HCM ACQUISITION COMPANY	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND ALL CAP EQUITY VALUE FUND	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CAPITAL REAL ESTATE ADVISORS	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CDO HOLDING COMPANY	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND CDO OPPORTUNITY FUND	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND CREDIT OPPORTUNITIES FUND	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CREDIT STRATEGIES FUND RIC	13455 NOEL RD STE 800		Dallas	TX	75240
HIGHLAND CRUSADER FUND	13455 NOEL RD	STE 800	Dallas	TX	75240
Highland Employee Retention Assets LLC	13455 Noel Rd	Ste 800	Dallas	TX	75240
HIGHLAND FINANCIAL CORP	13455 NOEL RD		Dallas	TX	75240
HIGHLAND FINANCIAL REAL ESTATE CORP	13455 NOEL RD		Dallas	TX	75240
HIGHLAND FINANCIAL TRUST	13455 NOEL RD		Dallas	TX	75240
Highland Funds Asset Management	13455 Noel Rd	Ste 800	Dallas	TX	75240
HIGHLAND LOAN FUNDING V	13455 NOEL RD	STE 800	Dallas	TX	75240

**Exhibit E**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	Address1	Address2	City	State	Zip
HIGHLAND SELECT EQUITY FUND	13455 NOEL RD		Dallas	TX	75240
Highland Special Situations Fund	13455 Noel Rd		Dallas	TX	75204
JASON GREEN	13455 NOEL RD	STE 800	Dallas	TX	75240
JENNIFER JURRIUS	13455 NOEL RD	STE 800	Dallas	TX	75240
KEN KAPADIA	13455 NOEL RD	STE 800	Dallas	TX	75240
LARRY LINDSEY	13455 NOEL RD	STE 800	Dallas	TX	75240
LAURA KNIPP	13455 NOEL RD	STE 800	Dallas	TX	75240
Lauren Okada	13455 Noel Rd	suite 800	Dallas	TX	75240
LESLIE HARRIS	13455 NOEL RD	STE 800	Dallas	TX	75240
LINDY HEATHERINGTON	13455 NOELRD	STE 800	Dallas	TX	75240
Lisa Miller	13455 Noel Rd		Dallas	TX	75240
Luke Okada	13455 Noel St	Suite 800	Dallas	TX	75240
Michael Hasenauer	13455 Noel Rd	Suite 800	Dallas	TX	75240
Michael McLochlin	13455 Noel Rd. Ste 800		Dallas	TX	75240
MICKEY MINCES	13455 NOEL RD	STE 800	Dallas	TX	75240
MULTI-STRATEGY SUB FUND	13455 NOEL RD		Dallas	TX	75240
NATALIE HARALSON	13455 NOEL RD	STE 800	Dallas	TX	75240
NGUYEN, TIFFANY	13455 NOEL RD #800		DALLAS	TX	75240
REAL ESTATE FUND 2002-A	13455 NOEL RD	STE 800	Dallas	TX	75240
SCOTT BASHRUM	13455 NOEL RD	STE 800	Dallas	TX	75240
Scott Groff	13455 Noel Rd Suite 800		Dallas	TX	75240
SCOTT WILSON	13455 NOEL RD		Dallas	TX	75240
SHELBY NOBLE	13455 NOEL RD		Dallas	TX	75240
TAMRA APPELEGATE	13455 NOEL RD		Dallas	TX	75240
WILLIAM SMITH	13455 NOEL RD	STE 800	Dallas	TX	75240

APPX-00349  
 001833

## **EXHIBIT 9**



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

<b>THE CHARITABLE DAF FUND, LP.,</b>	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	<b>Cause No. 3:21-cv-01710-N</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<i>Defendant.</i>	§	

**PLAINTIFF’S MOTION TO STAY ALL PROCEEDINGS**

**I.**

**NECESSITY OF MOTION**

Plaintiff submits this Motion as a result of the effective date, August 11, 2021, of Defendant Highland Capital Management L.P.’s Chapter 11 plan of reorganization (the “Plan”). The Plan purports to exculpate Defendant from liability and enjoin Plaintiff from pursuing actions against them. It also contains an assertion of exclusive jurisdiction by the bankruptcy court.

An appeal of the Plan, which the Fifth Circuit certified for direct appeal under 28 U.S.C. § 158(d), is now before the Court of Appeals and captioned *In re Highland Capital Management, L.P.*, No. 21-10449 (the “Fifth Circuit Appeal”). Each of the issues noted above is raised in the appeal. If successful, the appeal will overturn the exculpation, injunction, and assertion of exclusive jurisdiction in the Plan, allowing Plaintiff to proceed with this action in this Court.

In the meantime, however, Plaintiff is enjoined from participating further in this pending case and therefore asks that it be stayed pending the outcome of the Fifth Circuit Appeal.

## II.

### **BACKGROUND**

On August 9, 2021, Plaintiff received notice that the Plan was now effective. *In re Highland Capital Management, L.P.*, No. 19-34054, Doc. 2700. Although one condition precedent to the effectiveness of the Plan is finality of the confirmation order, which can only happen once all appeals are resolved, that and all other conditions are waivable by the Debtor. *Id.*, Doc. 1943 at pdf 142-43 (Art. VIII at pp. 45-46). The Debtor's notice, which waived finality and any other unsatisfied conditions, makes the Plan's exculpation provisions and injunctions immediately effective.

As to exculpation, the Plan states,

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

*Id.* at pdf 144-45 (Art. IX.C at pp. 47-48 (emphasis added)). “Exculpated Parties” is a defined term in the Plan that includes the Defendant in this action. *Id.* at pdf 106 (Art. I at p. 9).

As to the injunction, the Plan states,

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation SubTrust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; provided, however, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the

date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

*Id.* at pdf 147-48 (Art. IX.F at pp. 50-51 (emphasis added)). “Enjoined Parties” is a defined term in the Plan that includes Plaintiff. *Id.* at pdf 105 (Art. I; ¶ 56 at p.8).

Because these provisions are currently in force and prohibits Plaintiff from continuing this action, and because the Fifth Circuit Appeal includes direct challenges to the validity of these very provisions, Plaintiff respectfully submits that the most efficient course of action is for this Court to stay this action until the Fifth Circuit Appeal is resolved. Plaintiff expects that any resolution of the Fifth Circuit Appeal will necessarily determine that the Plan’s exculpation and injunction provisions absolves Defendant of any liability or, alternatively, that this action can proceed.

### III.

#### ARGUMENT

This Court should exercise its inherent powers to stay all proceedings in the case until the Fifth Circuit Appeal is decided.

The Fifth Circuit has long held that “[t]he district court possesses the inherent power to control its docket.” *Marine Chance Shipping v. Sebastian*, 143 F.3d 216, 218 (5th Cir. 1998). The exercise of that power is a discretionary one. *E.g.*, *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) (“A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.”)

Here, Plaintiff asks this Court to exercise discretion in favor of efficiency and to stay all proceedings. Plaintiff respectfully submits that, until the appeal is resolved, many complex legal questions exist that may affect the viability of this action or the forum in which it should be

litigated. Those questions—including the validity of the exculpation and injunction provisions quoted above—will likely be resolved by the Fifth Circuit Appeal. And therefore, Plaintiff submits, judicial economy may be gained by staying all proceedings in this action pending that appeal.

#### IV.

#### CONCLUSION

Plaintiff appears to be wholly prohibited from participating further in this action by the now-effective terms of the Plan that purport to enjoin Plaintiff and exculpates Defendant. In light of its inability to conduct the litigation and the pending Fifth Circuit Appeal, which that court has certified for direct appeal, Plaintiff respectfully submits that the most appropriate course for this Court is to stay all proceedings until the appeal is decided. Plaintiff therefore respectfully requests a stay and all further relief to which it may be entitled.

Dated: August 26, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Jonathan Bridges*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Plaintiffs**

**CERTIFICATE OF CONFERENCE**

I hereby certify that, in a series of communications between August 13 and 26, 2021, I conferred with Defendant's counsel regarding this Motion, and counsel indicated that they are opposed to the relief sought in this Motion.

*/s/ Jonathan Bridges*

\_\_\_\_\_  
Jonathan Bridges

## **EXHIBIT 10**



DOCKET TEXT:7 ELECTRONIC ORDER granting 6 Motion to Stay. (Ordered by Judge David C Godbey on 9/7/2021) (chmb) [ORIGINALLY FILED IN 21-CV-1710 AS #7 ON 09/7/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)

## **EXHIBIT 11**

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

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

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

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

THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**HIGHLAND CAPITAL MANAGEMENT, L.P.’S MOTION FOR  
RECONSIDERATION OF STAY ORDER**

Highland Capital Management, L.P., a defendant in the above-captioned case (the “Debtor” or “Highland”), by and through its undersigned counsel, files this motion (the “Motion”) seeking reconsideration of the Stay Order (as defined below) that was recently entered by the Court without notice to, or opposition by, Highland. In support of its Motion, Highland states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), and Rule 59(a) of the Federal Rules of Civil Procedure.

**RELIEF REQUESTED**

4. Through this Motion, Highland requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Motion for Reconsideration of Stay Order* (the “Memorandum of Law”) filed contemporaneously with this Motion, Highland requests that the Court: (a) re-open the Stay Order, amend the findings and conclusions, and issue a new order denying the Stay Motion, and (b) grant such other and further relief as the Court deems just and proper.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of the Motion Highland is filing: (a) its Memorandum of Law, and (b) the *Appendix in*

*Support of Motion for Reconsideration of Stay Order* (the “Appendix”), together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Appendix and the arguments contained in the Memorandum of Law, Highland is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. Highland submits that no other or further notice need be provided.

WHEREFORE, Highland respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Highland such other and further relief as the Court may deem proper.

*[Remainder of Page Intentionally Blank]*

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Motion was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*  
\_\_\_\_\_  
Zachery Z. Annable



**EXHIBIT A**

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

THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**ORDER GRANTING MOTION FOR  
RECONSIDERATION OF STAY ORDER**

Before the Court is *Highland Capital Management L.P.’s Motion for Reconsideration of Stay Order* [Docket No. \_\_\_] (the “Motion”)<sup>1</sup> Having considered: (a) the Motion; (b) *Highland Capital Management, L.P.’s Memorandum of Law in Support of Motion for Reconsideration of Order to Enforce the Order of Reference* [Docket No. \_\_\_] (the “Memorandum of Law”); and (c) the *Appendix in Support of Motion for Reconsideration of Stay Order* [Docket No. \_\_\_] (the “Appendix”), and the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that (a) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; (b) Highland was not served with the Stay Motion and had no opportunity to contest it; (c) the Court was presented with new facts and arguments in the Motion, the Memorandum of Law, and the Appendix of which it was unaware when it entered the Stay Order; (d) based on those new facts,

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Memorandum of Law.

the Court finds and determines that Plaintiff has not met its burden of proving that a stay of the Action is warranted; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. Pursuant to Rule 59, the Court re-opens and vacates the Stay Order and enters this new Order **DENYING** the Stay Motion.

**It is so ordered** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

The Honorable David C. Godbey  
United States District Judge

## **EXHIBIT 12**

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

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

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

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

-----  
THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.  
-----

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**HIGHLAND CAPITAL MANAGEMENT, L.P.’S MOTION TO DISMISS**

Highland Capital Management, L.P. (“Highland”), the putative defendant in the above-captioned case (the “Action”), by and through its undersigned counsel, files this motion (the “Motion”) to dismiss the Action. In support of its Motion, Highland states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), and Rules 12(b)(1), (3), (4), and (6) of the Federal Rules of Civil Procedure, made applicable in this Action pursuant to Bankruptcy Rule 7012.

### **RELIEF REQUESTED**

4. Through this Motion, Highland requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Motion to Dismiss* (the “Memorandum of Law”) filed contemporaneously with this Motion, Highland requests that the Court: (a) dismiss the Action with prejudice, and (b) grant such other and further relief as the Court deems just and proper.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of the Motion Highland is filing: (a) its Memorandum of Law, and (b) the *Appendix in Support of Motion to Dismiss* (the “Appendix”), together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Appendix and the arguments contained in the Memorandum of Law, Highland is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. Highland submits that no other or further notice need be provided.

WHEREFORE, Highland respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Highland such other and further relief as the Court may deem proper.

*[Remainder of Page Intentionally Blank]*



Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Motion was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*  
\_\_\_\_\_  
Zachery Z. Annable

**EXHIBIT A**

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

---

THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

---

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**ORDER GRANTING MOTION TO DISMISS**

Before the Court is *Highland Capital Management L.P.’s Motion to Dismiss* [Docket No. \_\_\_] (the “Motion”).<sup>1</sup> Having considered: (a) the Motion; (b) *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Motion to Dismiss* [Docket No. \_\_\_] (the “Memorandum of Law”); and (c) the *Appendix in Support of Motion to Dismiss* [Docket No. \_\_\_] (the “Appendix”), and the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that (a) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; (b) the Effective Date has occurred; (c) the Confirmation Order and Plan enjoin Plaintiff from continuing any action or suit against Highland and mandate that claims against Highland be brought in the Bankruptcy Court following the Effective Date pursuant to the Injunction Provision; (d) the purported claims asserted against Highland arise from transactions that took place post-petition and, to the extent

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Memorandum of Law.

valid, would constitute post-petition administrative claims; (e) the Plan provides a specific procedure through which holders of purported administrative claims, such as Plaintiff, can file an application with the Bankruptcy Court for allowance of its administrative expense claims; and (f) based on the foregoing, under the Confirmation Order and Plan, this Court is not the appropriate venue for this Action; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. The Action is **DISMISSED** with prejudice.

**It is so ordered** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

The Honorable David C. Godbey  
United States District Judge

## **EXHIBIT 13**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION


CHARITABLE DAF FUND, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:21-CV-1710-N
	§	
HIGHLAND CAPITAL	§	
MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	

**ORDER**

This Order addresses Defendant Highland Capital Management, L.P.’s (“HCM”) motion for reconsideration of this Court’s earlier order staying this case [8]. This case challenges a transaction consummated in the course of a consolidated bankruptcy proceeding and names as the sole defendant the debtor in that bankruptcy. The Court therefore concludes that this case constitutes a matter “related to” a case in the bankruptcy court under the meaning of this District’s Miscellaneous Order No. 33. Accordingly, the Court grants Defendant’s motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 19-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case.



Signed May 19, 2022.

  
David C. Godbey  
United States District Judge

## **EXHIBIT 14**

# **Highland Multi Strategy Credit Fund, L.P.**

A Delaware Limited Partnership

## **Fourth Amended and Restated Limited Partnership Agreement**

November 1, 2014

---

## TABLE OF CONTENTS

	Page
Article I DEFINITIONS .....	1
Article II ORGANIZATION.....	10
2.1 Continuation of Limited Partnership .....	10
2.2 Name of Partnership .....	11
2.3 Principal Office; Registered Office.....	11
2.4 Term of Partnership.....	11
2.5 Object and Powers of Partnership.....	11
2.6 Liability of Partners .....	12
2.7 Actions by Partnership.....	12
2.8 Reliance by Third Parties.....	12
2.9 UCC Status of Limited Partner Interests .....	12
2.10 Series of Interests.....	12
Article III CAPITAL.....	13
3.1 Contributions to Capital.....	13
3.2 Rights of Partners in Capital.....	14
3.3 Capital Accounts .....	14
3.4 Allocations of Net Profit and Net Loss.....	15
3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures .....	15
3.6 Reserves; Adjustments for Certain Future Events .....	16
3.7 Performance Allocation .....	17
3.8 Limited Participation Investments and New Issues .....	17
3.9 Allocation to Avoid Capital Account Deficits .....	18
3.10 Regulatory Allocations.....	18
3.11 Allocations for Income Tax Purposes .....	19
3.12 Individual Partner’s Tax Treatment.....	21
3.13 Distributions.....	21
Article IV MANAGEMENT .....	22
4.1 Duties and Powers of the General Partner .....	22
4.2 Expenses .....	23
4.3 Rights of Limited Partners.....	25
4.4 Other Activities of Partners.....	25
4.5 Exculpation; Indemnification.....	26
4.6 Advisory Committee.....	28
4.7 Alternative Investment Vehicles .....	29
Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS .....	29
5.1 Admission of Limited Partners .....	29
5.2 Admission of Additional General Partners .....	29
5.3 Transfer of Interests of Limited Partners .....	30
5.4 Transfer of Interest of the General Partner .....	30
5.5 Withdrawal of Interests of Partners .....	31

Article VI SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION.....	35
6.1 Soft Wind Down .....	35
6.2 Dissolution of Partnership.....	36
6.3 Liquidation of Assets .....	36
Article VII ACCOUNTING AND VALUATION; BOOKS AND RECORDS .....	37
7.1 Accounting and Reports.....	37
7.2 Valuation of Partnership Assets and Interests .....	38
7.3 Determinations by the General Partner .....	38
7.4 Books and Records .....	39
7.5 Confidentiality .....	39
Article VIII GENERAL PROVISIONS.....	41
8.1 Amendment of Partnership Agreement.....	41
8.2 Special Power-of-Attorney .....	43
8.3 Notices .....	44
8.4 Agreement Binding Upon Successors and Assigns; Delegation .....	44
8.5 Governing Law .....	44
8.6 Not for Benefit of Creditors .....	45
8.7 Dispute Resolution.....	45
8.8 Consents and Voting.....	47
8.9 Merger and Consolidation.....	48
8.10 Miscellaneous .....	48
8.11 BHCA Subject Persons .....	48
8.12 RIC Limited Partners .....	49
8.13 Bad Actor Limited Partners .....	50
8.14 Entire Agreement .....	50

THIS FOURTH AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of Highland Multi Strategy Credit Fund, L.P., dated effective as of November 1, 2014, is by and among Highland Multi Strategy Credit Fund GP, L.P., as General Partner, and certain Persons who were admitted as Limited Partners in accordance with the Prior Agreement and those Persons who are hereafter admitted as additional Limited Partners in accordance with this Agreement. Capitalized terms have the meanings set forth in Article I below.

#### PRELIMINARY STATEMENTS

- (A) The General Partner and certain of the Limited Partners have heretofore formed a limited partnership pursuant to the Act (as defined herein) by filing a Certificate of Limited Partnership with the office of the Secretary of State of the State of Delaware on December 1, 2005, and previously entered into a Limited Partnership Agreement, dated effective as of December 1, 2005, as last amended and restated by the Third Amended and Restated Limited Partnership Agreement dated as of December 31, 2007 (the “*Prior Agreement*”).
- (B) The General Partner filed an amendment to the Certificate of Limited Partnership of the Fund on August 26, 2014, changing the name of the Fund to “Highland Multi Strategy Credit Fund, L.P.”
- (C) The parties hereto desire to continue the Partnership as a limited partnership under the Act and to make certain modifications to the Prior Agreement, as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Prior Agreement is amended and restated in its entirety to read as follows:

#### Article I DEFINITIONS

For purposes of this Agreement:

“*Act*” means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17-101, et seq., as in effect on the date hereof and as amended from time to time, or any successor law.

“*Accounting Period*” means each period that starts on the day immediately following the last day of the preceding Accounting Period, and that ends on the earliest of the following dates:

- (a) the last day of a calendar month;
- (b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;

(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

“*Advisers Act*” means the U.S. Investment Advisers Act of 1940, as amended, and the rules promulgated thereunder.

“*Advisory Committee*” has the meaning set forth in Section 4.6.

“*Affiliate*” means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, “control” (including “controlled by” and “under common control”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“*Affiliated Investor*” means any Limited Partner that is an Affiliate of the General Partner or the Investment Manager, including their respective employees, members or partners and their respective immediate family members.

“*Agreement*” means this Fourth Amended and Restated Limited Partnership Agreement of the Partnership, as amended from time to time.

“*Alternative Investment Vehicle*” has the meaning set forth in Section 4.7.

“*Arbitration Rules*” has the meaning set forth in Section 8.7(b)(i).

“*Authorized Representative*” has the meaning set forth in Section 7.5(a).

“*Bad Actor Limited Partner*” means a Limited Partner that (i) would cause the disqualification of the Partnership from using Rule 506 under the Securities Act due to the operation of paragraph (d) thereof (or its successor) if such Limited Partner were to beneficially own 20% or more of the outstanding voting interest of all of the Partners (excluding any other Interests that are Non-Voting Interests) or (ii) the General Partner determines is likely to become subject to a conviction, order, judgment, finding or that would be likely to cause the disqualification described in clause (i).

“*BHCA*” means the U.S. Bank Holding Company Act of 1956, as amended.

“*BHCA Subject Person*” means any Limited Partner that is subject, directly or indirectly, to the provisions of Section 4 of the BHCA and the regulations of the Board of Governors of the Federal Reserve System promulgated thereunder.

“*Business Day*” means any day other than (a) Saturday and Sunday and (b) any other day on which banks located in New York, New York are required or authorized by law to be closed.

“*Calculation Period*” means, with respect to each Capital Account, the period commencing as of the date of the establishment of the Capital Account (in the case of the initial Calculation



Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period with respect to such Capital Account, and ending as of the close of business on the first to occur of the following:

- (a) the last day of a calendar year;
- (b) the withdrawal of all or a portion of the Interest attributable to such Capital Account (but only with respect to such withdrawn amount);
- (c) the permitted Transfer of all or any portion of such Limited Partner's Interest; or
- (d) the final distribution to such Limited Partner following the dissolution of the Partnership.

**“Capital Account”** means, with respect to each Partner, the capital account established and maintained on behalf of such Partner as described in Section 3.3.

**“Carryforward Account”** means a memorandum account to be recorded in the books and records of the Partnership with respect to each Capital Account that has an initial balance of zero and that is adjusted as follows:

- (a) As of the first day after the close of each Calculation Period for such Capital Account, the balance of the Carryforward Account is (i) increased by the amount, if any, of such the Negative Performance Change with respect to such Capital Account for such Calculation Period and (ii) reduced (but not below zero) by the amount, if any, of the Positive Performance Change with respect to such Capital Account for such Calculation Period.
- (b) As of the close of the Calculation Period, any positive balance of the Carryforward Account is further adjusted if such Capital Account has been reduced during such Calculation Period as a result of a distribution or withdrawal, by reducing such positive balance (but not below zero) by an amount determined by multiplying (i) such positive balance by (ii) a fraction, of which (A) the numerator is equal to the amount so distributed or withdrawn, and (B) the denominator is equal to the balance of such Capital Account immediately before giving effect to such distribution or withdrawal.

The Carryforward Account attributable to each Series A Capital Account shall be reset to zero on the Effective Date. For the avoidance of doubt, any gains or losses allocated by the Partnership to any Capital Account of a Limited Partner prior to the Effective Date will be inapplicable in the calculation of the Carryforward Account following the Effective Date.

**“Certificate”** means the Certificate of Limited Partnership of the Partnership referred to in Section 2.1(b).

**“Code”** means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

“**Dispute**” has the meaning set forth in Section 8.7.

“**Effective Date**” means the date set forth above as the effective date of this Agreement.

“**Election Notice**” has the meaning set forth in Section 8.11(c).

“**FAA**” has the meaning set forth in Section 8.7(b)(ii)

“**FATCA**” means Sections 1471 through 1474 of the Code, as amended, and any Regulations thereunder or official interpretations thereof, including any successor Regulations or interpretations, and any intergovernmental agreement implementing the foregoing.

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

“**Fiscal Year**” means each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner elects another fiscal year; provided that any such other fiscal year is permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, “**Fiscal Year**” means the portion of the calendar year ending on the date on which the Partnership is terminated.

“**GAAP**” means generally accepted accounting principles in the United States, as amended.

“**General Partner**” means Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership, any successor thereto, and any Person hereafter admitted as an additional general partner, in its capacity as general partner of the Partnership.

“**Indemnified Person**” has the meaning set forth in Section 4.5(a).

“**Interest**” means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

“**Investment Company Act**” means the U.S. Investment Company Act of 1940, as amended, and the regulations promulgated thereunder.

“**Investment Management Agreement**” means the investment management agreement between the Investment Manager, the General Partner, the Offshore Fund and the Partnership.

“**Investment Manager**” means Highland Capital Management, L.P., a Delaware limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership in accordance with the Investment Management Agreement.

“**Investments**” means investment in securities, assets and other financial or intangible investment instruments, contracts or products made as described in the Partnership’s offering memorandum.

“**Limited Partners**” means any Person who is a limited partner of the Partnership (which, except as otherwise indicated, will include a substituted Limited Partner) at the time of reference thereto, in such Person’s capacity as a limited partner of the Partnership. For all purposes of the Act, the Limited Partners of the Partnership will constitute a single class or group of limited partners.

“**Majority-in-Interest of Limited Partners**” means Limited Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all Limited Partners.

“**Management Fee**” means, with respect to each Capital Account, an amount equal to one fourth of (i) 1.5% of each Series A Capital Account balance; (ii) 1.5% of each Series B Capital Account balance; (iii) 1.0% of each Series C Capital Account balance; and (iv) 2.0% of each Series D Capital Account balance, which amounts are calculated on the first Business Day of each calendar quarter. Management Fees shall be appropriately adjusted for contributions during any partial quarter.

“**Negative Basis**” means, with respect to any Partner and as of any time of calculation, the excess of such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest) over the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership.

“**Negative Basis Partner**” means any Partner who withdraws from the Partnership and who has a Negative Basis as of the Withdrawal Date, but such Partner shall cease to be a Negative Basis Partner at such time as it has received allocations pursuant to Section 3.11(d) equal to such Partner’s Negative Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

“**Net Assets**” means the total value, as determined by the General Partner or its delegate(s) in accordance with Section 7.2, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6.). Except as otherwise expressly provided herein, Net Assets as of the first day of any Accounting Period are determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Accounting Period, but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Accounting Period, and after giving effect to Management Fee charges, and Net Assets as of the last day of any Accounting Period are determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

- (a) any Performance Allocation as of the date on which such determination is made;

(b) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(c) withholding or other taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves, holdbacks or other amounts recorded pursuant to Section 3.6 and any increases or decreases in the value of any Restricted New Issues pursuant to Section 3.8(b) and other amounts specially allocated pursuant to Section 3.8 during the Accounting Period ending as of the date on which such determination is made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Accounting Period.

“**Net Loss**” means any amount by which the Net Assets as of the first day of an Accounting Period exceed the Net Assets as of the last day of the same Accounting Period.

“**Net Profit**” means any amount by which the Net Assets as of the last day of an Accounting Period exceed the Net Assets as of the first day of the same Accounting Period.

“**New Issue Rules**” has the meaning set forth in Section 3.8(b).

“**Nonrecourse Deductions**” has the meaning set forth in Regulations Section 1.704-2(b)(1) and (c).

“**Non-Voting Interest**” means an Interest, the holder of which is not entitled to vote, consent or withhold consent with respect to any Partnership matter (including but not limited to mergers, sales of substantially all assets or consolidations of the Partnership), except as otherwise expressly provided in this Agreement.

“**Offshore Fund**” means Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company and a Limited Partner of the Partnership.

“**Orderly Realization**” has the meaning set forth in Section 6.1.

“**Other Account**” means any assets or investments of the General Partner, or any assets managed by the General Partner or any Affiliate of the General Partner for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

“**Partner**” means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and “**Partners**” means the General Partner and all of the Limited Partners.

“**Partnership**” means the limited partnership governed by this Agreement.

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

“**Partnership Percentage**” means a percentage established for each Capital Account on the Partnership’s books as of the first day of each Accounting Period. The Partnership Percentage of a Capital Account for an Accounting Period is determined by dividing the amount of such Capital Account as of the beginning of the Accounting Period by the sum of the Capital Accounts of all of the Partners as of the beginning of the Accounting Period. The numerator and denominator of the above shall be calculated after crediting all capital contributions to the Capital Account or Partnership, as appropriate, which are effective as of such date, net of all deductions, including Management Fees. The sum of the Partnership Percentages of all Capital Accounts for each Accounting Period shall equal 100%.

“**Performance Allocation**” means, for each Capital Account of a Limited Partner, 20% of the amount by which (a) the Positive Performance Change for such Calculation Period for such Capital Account, if any, exceeds (b) any positive balance in the Carryforward Account for such Capital Account as of the most recent prior date as of which any adjustment has been made thereto.

“**Performance Change**” means, with respect to each Capital Account of a Limited Partner for each Calculation Period, the difference between:

(a) the sum of (i) the balance of such Capital Account as of the close of the Calculation Period (after giving effect to Management Fees and all allocations to be made to such Capital Account as of such date, including such Capital Account’s allocable share of any profits or losses pursuant to Section 3.8 and any credits or debits of any applicable carrying charge associated therewith other than any Performance Allocation to be debited against such Capital Account), plus (ii) any debits to such Capital Account during the Calculation Period to reflect any actual or deemed distributions or withdrawals with respect to such Capital Account, plus (iii) any debits to such Capital Account during the Calculation Period to reflect any items allocable to such Capital Account pursuant to Section 3.5(b) or (c); and

(b) the balance of such Capital Account as of the commencement of the Calculation Period.

If the amount specified in clause (a) exceeds the amount specified in clause (b) such difference is a “**Positive Performance Change**,” and if the amount specified in clause (b) exceeds the amount specified in clause (a), such difference is a “**Negative Performance Change**.”

The Performance Change will be computed separately for each Capital Account (and thus each separately maintained capital sub-account created to reflect an additional contribution to a Capital Account). Thus, if a Limited Partner has multiple Capital Accounts, the Performance Change will be calculated separately for each Capital Account and the resulting “Positive Performance Change” and “Negative Performance Change” shall be separately allocated to each such Capital Account and shall not be netted against each other.

“**Person**” means any individual, partnership, corporation, limited liability company, trust or other entity or any government (including a governmental agency or political subdivision thereof).

“**Positive Basis**” means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership over such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest).

“**Positive Basis Partner**” means any Partner who withdraws from the Partnership and who has a Positive Basis as of the Withdrawal Date, but such Partner ceases to be a Positive Basis Partner at such time as it has received allocations pursuant to Section 3.11(c) equal to such Partner’s Positive Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

“**Prior Agreement**” has the meaning set forth in the Preliminary Statements to this Agreement.

“**Realization Period**” has the meaning set forth in Section 6.1.

“**Recent Amendments**” means the changes to the terms of an investment in the Partnership as contemplated in this Agreement and the constituent documents related thereto, including, but not limited to, the re-designation of all Interests held by Limited Partners on the Effective Date as Series A Interests.

“**Regulations**” means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

“**Regulatory Allocations**” has the meaning set forth in Section 3.10(d).

“**Restricted Capital Accounts**” has the meaning set forth in Section 3.8(b).

“**Restricted Issues**” has the meaning set forth in Section 3.8(b).

“**Revocation Notice**” has the meaning set forth in Section 8.11(c).

“**RIC Limited Partner**” means a Limited Partner that is registered as an investment company under the Investment Company Act.

“**Schedule of Partners**” means a schedule to be maintained by the General Partner containing the following information with respect to each Partner: (a) name; (b) address; (c) date of admission; (d) amount and date of all capital contributions and withdrawals; and (e) the amount and date of any permitted Transfers.

“**Series**” means a designated series of Interests established in accordance with this Agreement and having such terms as the General Partner determines.

“**Series A Capital Account**” means the Capital Account attributable to a Limited Partner’s Series A Interest.



“**Series A Interests**” means a Series of Interests having the rights and obligations applicable to Series A Interests as set forth in this Agreement.

“**Series A Lock-Up**” has the meaning set forth in Section 5.5(c)(i).

“**Series A Withdrawal Date**” has the meaning set forth in Section 5.5(c)(i).

“**Series B Capital Account**” means the Capital Account attributable to a Limited Partner’s Series B Interest.

“**Series B Interests**” means a Series of Interests having the rights and obligations applicable to Series B Interests as set forth in this Agreement.

“**Series B Withdrawal Date**” has the meaning set forth in Section 5.5(c)(ii).

“**Series C Capital Account**” means the Capital Account attributable to a Limited Partner’s Series C Interest.

“**Series C Interests**” means a Series of Interests having the rights and obligations applicable to Series C Interests as set forth in this Agreement.

“**Series C Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iii).

“**Series D Capital Account**” means the Capital Account attributable to a Limited Partner’s Series D Interest.

“**Series D Interests**” means a Series of Interests having the rights and obligations applicable to Series D Interests as set forth in this Agreement.

“**Series D Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iv).

“**Sub-Series of Shares**” refers to sub-series of the shares of the Offshore Fund, as created from time to time, for purposes of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received from shareholders at different times.

“**Suspension**” has the meaning set forth in Section 5.5(l).

“**Super-Majority-in-Interest of Limited Partners**” means Limited Partners whose Partnership Percentages represent more than 75% of the aggregate Partnership Percentages of all Limited Partners.

“**Transfer**” means any direct, indirect or synthetic sale, exchange, transfer, assignment, pledge, encumbrance, charge, exchange, hypothecation, placing of a lien or a security interest on an Interest or any other disposition by a Partner of its Interest to or in favor of another party, whether voluntary or involuntary (including, but not limited to, being offered or listed on or through any placement agent, intermediary, online service, site, agent or similar Person).



“**Withdrawal Date**” means, as applicable, the Series A Withdrawal Date, the Series B Withdrawal Date, the Series C Withdrawal Date, and the Series D Withdrawal Date or any other effective date of withdrawal pursuant to Section 5.5.

## Article II ORGANIZATION

### 2.1 Continuation of Limited Partnership

- (a) The General Partner and the Limited Partners hereby agree to continue the Partnership as a limited partnership under and pursuant to the Act and this Agreement.
- (b) The General Partner has executed and filed with the Secretary of State of the State of Delaware a Certificate, and shall execute, acknowledge and file with the Secretary any amendments thereto as may be required by the Act, and any other instruments, documents and certificates which, in the opinion of the Partnership’s legal counsel, may from time to time be required by the laws of the United States of America, the State of Delaware or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership. The General Partner shall cause any required amendment to the Certificate to be filed promptly following the event requiring such amendment. All amendments may be signed by the General Partner (as required by the Act) and may be signed either personally or by an attorney-in-fact.
- (c) The parties hereto agree to operate the Partnership as a limited partnership pursuant to the provisions of the Act and of this Agreement and agree that the rights and liabilities of the Limited Partners and the General Partner are as provided in the Act, for limited partners and the general partner except as provided herein.
- (d) The parties hereto acknowledge and agree that the Partnership shall be classified as a “partnership” and not as an association taxable as a corporation for U.S. federal income tax purposes. No election may be made by the Partners or the Partnership to treat the Partnership as other than a “partnership” for U.S. federal, state and/or local income tax purposes and, to the extent necessary, the Partners or Partnership shall make any election to treat the Partnership as a “partnership.” The Partners shall treat the Partnership consistently with its status as a “partnership” for U.S. federal income tax purposes and agree to undertake any further action which is necessary to treat the Partnership as such, and shall not undertake any action that is inconsistent with the Partnership’s status as a “partnership” for U.S. federal, state and/or local income tax purposes.
- (e) The General Partner may change the domicile of the Partnership to another state, country or other jurisdiction where advisable due to legal, tax or other

considerations; provided that no such change of domicile would reasonably be expected to have a material adverse effect on the Limited Partners.

## **2.2 Name of Partnership**

- (a) The name of the Partnership is Highland Multi Strategy Credit Fund, L.P. or such other name as the General Partner may hereafter adopt, subject to causing an amendment to the Certificate to be filed with the Secretary of State of the State of Delaware in accordance with the Act. The General Partner shall send a notice of any change of name to the Limited Partners. All business of the Partnership shall be conducted under such name or under such other name as the General Partner deems appropriate.
- (b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's termination or at such time as there ceases to be a general partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner without payment by the assignee(s) of any consideration therefor.

## **2.3 Principal Office; Registered Office**

- (a) The Partnership's principal office shall be at such location as the General Partner may designate from time to time.
- (b) The Partnership's registered office in the State of Delaware is at 1209 Orange Street, County of New Castle, Wilmington, Delaware 19801, and the registered agent of the Partnership in the State of Delaware is The Corporation Trust Company, unless a different registered office or agent is designated from time to time by the General Partner.

## **2.4 Term of Partnership**

The term of the Partnership commenced on the date on which the Certificate was filed with the Secretary of State of the State of Delaware and continues until the Partnership is dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1). The legal existence of the Partnership as a separate legal entity continues until the cancellation of the Certificate.

## **2.5 Object and Powers of Partnership**

- (a) The object and business of the Partnership is (i) to purchase, sell (including short sales), invest and trade in Investments, (ii) to engage in financial transactions, including borrowing, financing, pledging, hedging and other derivative transactions relating thereto for the benefit of the Partnership, (iii) to engage in any lawful act or activity of which limited partnerships may be formed under the Act and (iv) to engage in any and all activities necessary or incidental to the foregoing.

- (b) The Partnership possesses and may exercise all such powers and privileges as the General Partner considers necessary, convenient or incidental to the conduct, promotion or attainment of the object of the Partnership.

## **2.6 Liability of Partners**

In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any liability for the repayment or discharge of the debts and obligations of the Partnership except to the extent provided herein or as required by the Act.

## **2.7 Actions by Partnership**

The Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out its objects.

## **2.8 Reliance by Third Parties**

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

## **2.9 UCC Status of Limited Partner Interests**

- (a) For purposes of the grant, pledge, attachment or perfection of a security interest in an Interest or otherwise, the Interests are deemed to be “securities” within the meaning of Section 8-102(a)(15) and as provided by Section 8-103(c) of the Uniform Commercial Code as in effect from time to time in the State of Delaware or analogous provisions in the Uniform Commercial Code in effect in any other jurisdiction.
- (b) Any Interest may be evidenced by a certificate of partnership interest issued by the Partnership in such form as the General Partner may approve. Every certificate representing an Interest shall bear a legend substantially in the following form:

“For the purposes of Section 8-103 of the Uniform Commercial Code of the United States of America in effect in any relevant jurisdiction, the certificates representing an interest in the Limited Partnership constitute “securities” within the meaning of Section 8-102 and Section 8-103 of the Uniform Commercial Code.”

## **2.10 Series of Interests**

- (a) The General Partner, at any time, may without notification to or consent of the other Limited Partners, create and offer different Series of Interests in the Partnership with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, Management Fees, Performance Allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other

differences) as the General Partner may determine upon the issuance of such Series; provided that such Series would not reasonably be expected to have a material adverse effect on the existing Limited Partners. The terms and rights of such Series may be set forth in a supplement to the Partnership's offering memorandum or a "side letter" or other agreement, which the General Partner may incorporate by reference.

- (b) All Interests in the Partnership held by Limited Partners (including Affiliated Investors) as of the Effective Date are hereby designated as Series A Interests.

### **Article III CAPITAL**

#### **3.1 Contributions to Capital**

- (a) The minimum required initial capital contribution of each Limited Partner is the amount determined by the General Partner. The General Partner may change the required minimum initial contribution amount at any time with respect to any, all or less than all Limited Partners.
- (b) The Partnership may accept additional contributions at such times as the General Partner may permit, but no Limited Partner shall be obligated to make any additional capital contribution to the Partnership, subject to the provisions of Section 3.5(b) and any contrary provision of the Act. The minimum required additional capital contribution of any existing Limited Partner to the Partnership shall be the amount the General Partner may determine. The General Partner may change the required minimum additional contribution amount at any time with respect to any, all or less than all Limited Partners.
- (c) The General Partner or an Affiliate has made a capital contribution to the Partnership as set forth in the Schedule of Partners. Except as required by the Act, the General Partner is not required to make any additional capital contributions to the Partnership. The General Partner may, however, make capital contributions to the Partnership in such amounts and at such times as it may determine. The General Partner or any of its Affiliates have the right at any time to make additional capital contributions as a Limited Partner or General Partner. If the General Partner or any of its Affiliates (including their associated Persons, such as officers, directors, partners, members or employees or any of their family members) makes a capital contribution as a Limited Partner, the General Partner or the Investment Manager shall have authority to waive the Management Fee and/or Performance Allocation with respect to such Limited Partner.
- (d) Except as otherwise permitted by the General Partner (i) initial or additional capital contributions by each Partner shall be paid in one installment with cash and/or Investments having an aggregate value as set forth in the Partnership's books and records, and (ii) initial contributions are due as of the date of admission of such Person as a Limited Partner of the Partnership. Whether Investments may be

accepted as a contribution to the capital of the Partnership is determined by the General Partner.

### **3.2 Rights of Partners in Capital**

- (a) No Partner shall be entitled to interest on its capital contributions to the Partnership. For the avoidance of doubt, interest income, if any, earned on subscription amounts remitted to the Partnership prior to the date that an Interest is issued to a Partner shall be payable to the Partnership and not applied toward the purchase of an Interest.
- (b) No Partner shall have the right to the return of any capital contribution to the Partnership except (i) upon withdrawal of such Partner pursuant to Section 5.5 or (ii) upon the dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return is limited to the value of the Capital Account(s) of the Partner. The General Partner shall not be liable for the return of any such amounts.

### **3.3 Capital Accounts**

- (a) The Partnership shall maintain a separate Capital Account for each Partner. In the event a Limited Partner invests in more than one Series of Interests, the Partnership will maintain a separate Capital Account with respect to each Series of Interests held by such Limited Partner, with each such Capital Account being treated as if it were the Capital Account of a separate Partner for purposes of computing the Performance Allocation, the Management Fee and the withdrawal rights attributable to the Series.
- (b) The General Partner may, in its discretion, maintain a separate sub-account for such purposes as the General Partner may determine appropriate, including for recordkeeping, accounting or reporting or to otherwise give effect to the provisions of this Agreement. Each Capital Account shall reflect the aggregate sum of the balances in such Partner's Capital Account.
- (c) If a Partner makes an additional capital contribution to an existing Capital Account, the Capital Account will be sub-divided into separate capital sub-accounts attributable to each separate capital contribution, with each capital sub-account treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights and restrictions applicable to each capital sub-account. References herein to a Partner's "Capital Account" include any such separately maintained capital sub-accounts.
- (d) The Partnership will issue to the Offshore Fund an Interest and maintain capital sub-accounts that correspond to each Sub-Series of Shares and each capital sub-account is treated separately for determining Management Fees, the Performance Allocations and withdrawal rights.

- (e) Each Capital Account has an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to such Capital Account.
- (f) Each Capital Account shall be increased by such Capital Account's allocable share of the Net Profits allocated by the Partnership to such Capital Account pursuant to Section 3.4.
- (g) Each Capital Account shall be reduced by (i) the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 5.5 or 6.3, including any amount deducted from any such withdrawal or distribution pursuant to Section 5.5(h), (ii) such Capital Account's allocable share of the Net Losses allocated by the Partnership to such Capital Account pursuant to Section 3.4, (iii) such Capital Account's *pro rata* portion of the expenses allocable (or specially allocable) by the Partnership pursuant to Section 3.5, (iv) such Capital Account's allocable share of the Performance Allocation allocable pursuant to Section 3.7, and (v) such Capital Account's *pro rata* portion of the expenses payable by the Partnership pursuant to Section 4.2(b).
- (h) The Capital Account of the Investment Manager, as a special Limited Partner of the Partnership, shall be increased by the amount of the Performance Allocation allocated to such Capital Account and the investment gains therein.
- (i) Each Capital Account shall also be adjusted to reflect all other allocations and other changes in the value of such Capital Account not otherwise described in this Section 3.3 in the manner specified in the remaining provisions of this Article III.

### **3.4 Allocations of Net Profit and Net Loss**

Subject to Sections 3.5 through 3.10, as of the last day of each Accounting Period, any Net Profit or Net Loss of such Accounting Period shall be separately allocated among and credited to or debited against the Capital Accounts of the Partners in proportion to their respective Partnership Percentages for such Accounting Period.

### **3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures**

- (a) As of the first Business Day of each calendar quarter, each Capital Account's Management Fee for such calendar quarter shall be debited against such Capital Account and paid by the Partnership to the Investment Manager. Capital contributions accepted after the commencement of the calendar quarter shall be subject to a prorated Management Fee reflecting the time remaining during that quarter. The Investment Manager may reduce or eliminate the Management Fee with respect to any Partner (or Capital Account) in its sole discretion; provided that such reduction or elimination shall not increase the Management Fee payable by any other Partner (or Capital Account).
- (b) To the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely



conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments on behalf of or with respect to any Partner or Partners (including backup withholding or withholding under FATCA), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership pays or incurs any withholding tax or other tax obligation (including under FATCA) with respect to the income allocable or distributable to one or more Partners, then the amount of such withholding tax or tax obligation shall be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount shall be debited against the Capital Account(s) of such Partner or Partners as of the close of the Accounting Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors shall make a contribution to the capital of the Partnership, within 10 days following request by the General Partner, the amount of such excess. The General Partner is not obligated to apply for or obtain a reduction of or exemption from withholding tax on behalf of any Partner that may be eligible for such reduction or exemption, or be otherwise obligated to structure Investments so as to reduce or avoid any such withholding tax.

- (c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership, to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be specially allocated only to the Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such allocations shall be debited from the relevant Capital Accounts of such Partners as of the close of the Accounting Period during which any such items were accrued by the Partnership.

### **3.6 Reserves; Adjustments for Certain Future Events**

- (a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets and proportionately against the Capital Accounts for contingent liabilities or probable losses, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be debited or credited, as the General Partner deems appropriate, to the Capital Accounts of current Partners that (i) are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or (ii) were Partners, or are transferees from Persons who were Partners, at the time of the act or omission giving rise to the contingent liability for which the reserve has been established by the General Partner.



- (b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately debited or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period.

### 3.7 Performance Allocation

- (a) The Performance Allocation shall be debited against each Capital Account of each Limited Partner as of the last day of each Calculation Period with respect to such Capital Account, and the amount so debited shall simultaneously be credited to the Capital Account of the Investment Manager, as a special Limited Partner of the Partnership.
- (b) The Investment Manager may waive or alter the Performance Allocation with respect to any Limited Partner.

### 3.8 Limited Participation Investments and New Issues

- (a) If the General Partner determines that for legal, tax, regulatory or bona fide other reasons as to which the General Partner and any Partner may agree such Partner should not participate (or should receive a reduced participation) in the Net Profit or Net Loss with respect to any Investment, the General Partner may allocate Net Profit or Net Loss, if any, with respect to such Investment only to Partners to whom the restrictions on participating in that Investment do not apply. In order to allocate Net Profit or Net Loss accordingly, the General Partner may establish and maintain a memorandum account in the accounting records of the Partnership on a Partner-by-Partner basis with respect to each such Investment. The Net Profit and Net Loss and expenses relating to such Investment will be separately calculated and allocated based on each participating Partner's balance in such memorandum account for such Investment divided by the sum of the balances of all memorandum accounts for all participating Partners. In order to compensate a Limited Partner who is not participating in an Investment pursuant to this Section 3.8 for the use of such Partner's share of Partnership capital to purchase the Investment, the General Partner may credit the non-participating Partner's Capital Account (and correspondingly debit the Capital Account of the participating Partners with a carrying charge). Any distributions from the memorandum account will be based on the participating Partner's respective percentage interest in such Investment.
- (b) Pursuant to certain rules of FINRA ("*New Issue Rules*"), members of FINRA are permitted to sell to the Partnership certain publicly-offered securities ("*Restricted Issues*") only if the Capital Accounts of Partners connected with the securities industry or executive officers or directors of investment banking clients of underwriters ("*Restricted Capital Accounts*") are not restricted from sharing a beneficial interest in such Restricted Issues in accordance with the provisions of the New Issue Rules. Notwithstanding the provisions of Section 3.4, if the Partnership chooses to invest in Restricted Issues, the Partnership shall not allocate any items

of income, gain, loss, deduction and credit that relate to investments in Restricted Issues to Restricted Capital Accounts except to the extent permitted by the New Issue Rules, and shall instead allocate such items among the other Capital Accounts on a *pro rata* basis. To the extent the New Issue Rules permit certain Persons with Restricted Capital Accounts to participate in profits and losses from Restricted Issues, the General Partner shall allocate such profits and losses from Restricted Issues among such Restricted Capital Accounts on a *pro rata* basis or on such other basis that the General Partner reasonably determines ensures compliance with the New Issue Rules. To the extent consistent with the New Issue Rules, the General Partner shall determine when all Capital Accounts may participate in the Net Profit and Net Loss from any Restricted Issue. The General Partner shall value any Restricted Issue at such time at the then-current price of the security in the secondary market.

### 3.9 Allocation to Avoid Capital Account Deficits

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Accounting Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.9 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.9 not previously recovered.

### 3.10 Regulatory Allocations

Notwithstanding anything to the contrary in this Agreement:

- (a) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; provided that an allocation pursuant to this Section 3.10(a) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.10(a) were not in this Agreement. This Section 3.10(a) is intended to constitute a “qualified income offset” within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations and is to be interpreted consistently therewith.
- (b) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 3.10, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, the Partners shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an

amount equal to the portion of any such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Sections 1.704-2(f) and (g). This Section 3.10(b) is intended to comply with the minimum gain chargeback requirement in such Sections of the Regulations and shall be interpreted consistently therewith.

- (c) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner shall be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 3.10(c) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.10(a) and this Section 3.10(c) were not in this Agreement.
- (d) Curative Allocations. The allocations set forth this Section 3.10 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.10. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Partnership Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).
- (e) Nonrecourse Deductions. Any Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Partners in accordance with their Partnership Percentages.
- (f) Section 704(b) Compliance. The allocations provided in this Section 3.10 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith.

### 3.11 Allocations for Income Tax Purposes

- (a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for U.S. federal

income tax purposes in each Fiscal Year shall be allocated among the Partners in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Account, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership shall establish and maintain records which shall show the extent to which the Capital Account of each Partner comprises amounts that have not been reflected in the taxable income of such Partner as of the last day of each Fiscal Year. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Foreign tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement shall be determined by the General Partner.

- (b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations; provided that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, shall be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.
- (c) Positive Basis Allocations. If the Partnership recognized gains or items of gross income (including short-term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, *pro rata* in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the

liquidating share of any Positive Basis Partner, that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), then such Positive Basis Partner may be allocated an amount of such gains or items of gross income equal to the amount, if any, by which its or its Positive Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(c).

- (d) Negative Basis Allocations. If the Partnership recognizes net losses or items of gross loss or deduction (including short-term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Negative Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, *pro rata* in proportion to the respective Negative Basis of each such Negative Basis Partner, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner has been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its or its Negative Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(d).

### 3.12 Individual Partner's Tax Treatment

Each Partner agrees not to treat, on any U.S. federal, state, local and/or non-U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership or which would result in inconsistent treatment, and each Partner further agrees to treat, on any U.S. federal, state, local and/or non-U.S. income tax return in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner consistent with the treatment of such item by the Partnership.

### 3.13 Distributions

- (a) The Partnership shall make distributions in respect of withdrawals in accordance with Section 5.5 and liquidation in accordance with Section 6.3. In addition, the General Partner may make other distributions at the times and in the amounts the

General Partner determines. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

- (b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner on any account of its Interest if such distribution would violate Section 17-607 of the Act or other applicable law.

#### **Article IV MANAGEMENT**

##### **4.1 Duties and Powers of the General Partner**

- (a) Subject to the terms and conditions of this Agreement, the General Partner has complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for (i) all investment and investment management decisions to be undertaken on behalf of the Partnership and (ii) managing and administering the affairs of the Partnership, and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership, whether or not such action or authority is expressly provided for in this Agreement. Without limiting the foregoing generality, the General Partner's powers include the power to borrow, obtain leverage or otherwise incur indebtedness with respect to the Partnership's capital.
- (b) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner has full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1.
- (c) The General Partner may delegate to any other Person, including the Investment Manager, any power and authority vested in the General Partner pursuant to this Agreement.
- (d) The General Partner is the "tax matters partner" for purposes of Section 6231(a)(7) of the Code. The General Partner has the exclusive authority in its determination to make any elections required or permitted to be made by the Partnership under any provisions of the Code or any other revenue laws. The General Partner shall be entitled to be reimbursed by the Partnership for all costs and expenses incurred by it in connection with any administrative or judicial proceeding affecting tax matters of the Partnership and/or the Partners in their capacity as such and to be indemnified by the Partnership (solely out of Partnership assets) with respect to any



action brought against it in connection with any judgment in or settlement of any such proceeding.

- (e) Every power vested in the General Partner pursuant to this Agreement and any decision or determination that it is permitted to make is to be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein, and the General Partner shall be entitled to consider in making such decisions or determinations only such interests and factors as it desires, including its own interests. No provision of this Agreement is to be construed to require the General Partner to violate the Act, the Advisers Act, or any other law, regulation or rule of any self-regulatory organization. Notwithstanding any other provision of this Agreement, whenever in this Agreement, the General Partner is permitted or required to make a decision in its “good faith” or under another expressed standard, the General Partner must act under such express standard and will not be subject to any other or different standards.
- (f) Each Limited Partner shall deliver to the General Partner, upon a reasonable request, (i) an affidavit or certificate in form satisfactory to the General Partner that is sufficient to establish that the applicable Partner (and its partners, members, and/or beneficial owners, as the case may be) is not subject to withholding under the provisions of any U.S. federal, state, local, non-U.S. or other tax laws, or with respect to such Partner’s tax status under such laws, and (ii) any information or documentation prescribed under FATCA or as may be necessary, as reasonably determined by the General Partner, for the Partnership to comply with its obligations under FATCA (including, but not limited to, information with respect to citizenship, residency, ownership or control of such Partner). Each Limited Partner shall reasonably cooperate with the General Partner in connection with any tax audit of the Partnership, or any existing or former Investment.

#### 4.2 Expenses

- (a) Except as otherwise provided herein, and in consideration of the Management Fee, the General Partner and the Investment Manager shall each pay all of its own operating and overhead costs, without reimbursement by the Partnership.
- (b) The Partnership shall pay, or reimburse the General Partner and the Investment Manager for, all other reasonable costs, fees and expenses arising in connection with the Partnership’s operations. Such expenses payable by the Partnership include the following:
  - (i) all costs, fees and expenses directly related to Investments or prospective Investments (whether or not consummated) of the Partnership, including research and due diligence costs related to an Investment; brokerage commissions and other execution and transaction costs, interest on, and commitment fees and expenses arising out of, debit balances or borrowings; exchange, clearing and settlement charges; fees and expenses of any third-party providers of “back office” and “middle office” services relating to



trade settlement; travel expenses; appraisal fees; investment banking fees and expenses; borrowing charges on Investments sold short; custody fees; and fees of consultants and finders relating to Investments or prospective Investments of the Partnership; the costs, fees and expenses of any appraisers, accountants or other experts engaged by the General Partner or the Investment Manager as well as other expenses directly related to the Partnership's Investments;

- (ii) any withholding, transfer or other taxes imposed on the Partnership;
- (iii) the reasonable, out-of-pocket fees, costs and expenses (including legal fees and expenses) incurred to comply with any applicable law, rule or regulation (including regulatory filings or other expenses of the Partnership and the pro rata portion of any regulatory and other expenses of the General Partner or the Investment Manager, which benefit or are attributable to the Partnership);
- (iv) the reasonable, out-of-pocket costs, fees and expenses for financial and tax accounting, bookkeeping and reporting services, and administrative services performed by any Person on behalf of the Partnership (e.g., the administrator of the Partnership), including the cost of any audit of the Partnership's financial statements and the preparation of its tax returns (including with respect to FATCA compliance);
- (v) Management Fees;
- (vi) the reasonable, out-of-pocket costs, fees and expenses of legal counsel and any other litigation or investigation involving Partnership activities;
- (vii) specific expenses incurred in obtaining, maintaining or performing systems, research and other information, including information service subscriptions, utilized with respect to the Partnership's Investments including without limitation for portfolio management, valuations and accounting purposes, including the costs of statistics and pricing services, service contracts for quotation equipment and related hardware, software, phone and internet charges;
- (viii) the reasonable, out-of-pocket costs, fees and expenses associated with the Recent Amendments, including legal and accounting fees, printing costs, reporting and providing information to existing and prospective Partners, obtaining requisite consent from Limited Partners, travel fees and expenses related to the Partnership's offering, filing fees (including any "blue sky" filing fees) and other out-of-pocket expenses and compliance with any applicable federal and state laws;
- (ix) the costs and expenses associated with meetings of Partners;

- (x) the expenses of the Advisory Committee and the members thereof, including any indemnification expenses;
  - (xi) the costs associated with maintaining “directors and officers” or similar liability insurance for the benefit of the Partnership, the General Partner, the Investment Manager, or any other Indemnified Person; and
  - (xii) any costs or expenses of winding up and liquidating the Partnership and
  - (xiii) all costs, fees and expenses associated with the ongoing offering of Limited Partner Interests.
- (c) Expenses with respect to Section 4.2(b)(viii) above will be amortized by the Partnership over a period of 36 months from the Effective Date; however, the General Partner may limit the amount of expenses amortized so that the Partnership’s audited financial statements do not contain qualification.
- (d) Except as otherwise provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6, 3.8 and 5.5(i), expenses are generally borne *pro rata* by the Partners in accordance with their respective Partnership Percentages.
- (e) If the General Partner or the Investment Manager, as appropriate, incurs any Partnership expenses for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Partnership and any Other Account, the General Partner or the Investment Manager, as appropriate, shall allocate such expense among the Partnership and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.
- (f) The General Partner and the Investment Manager may, to the extent disclosed in the Partnership’s offering memorandum or otherwise disclosed to the Limited Partners, use “soft dollars” generated by the Partnership. Use of “soft dollars” by the General Partner or the Investment Manager as disclosed herein shall not constitute a breach by either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

#### **4.3 Rights of Limited Partners**

The Limited Partners may not take any part in the management, control or operation of the Partnership’s business, and have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law.

#### **4.4 Other Activities of Partners**

- (a) The General Partner is not required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs

of the Partnership as it may determine to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

- (b) Each Partner acknowledges and agrees that the General Partner, its Affiliates and their respective partners, managers, directors, officers, shareholders, members or employees may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, Investments, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other issuers, partners of any partnership, or trustee of any trust, or entering into any other commercial arrangements, whether or not any such activities may conflict with any interest of the parties with respect to the Partnership. Without in any way limiting the foregoing, each Partner hereby acknowledges that none of the General Partner, its Affiliates or their respective partners, managers, directors, officers, shareholders, members or employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the Partnership, but may refer the same to any other party or keep such opportunities for their own benefit.
- (c) The General Partner and its Affiliates shall act in a manner that each considers fair, reasonable and equitable on an overall basis in allocating investment opportunities to the Partnership and any Other Account. The General Partner and its Affiliates shall allocate investment opportunities as set forth in their policies and procedures, as may be amended from time to time, and as communicated to Limited Partners through the Partnership's private offering memorandum for Interests or otherwise.
- (d) Each of the Partners hereby waives and covenants not to sue on the basis of any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners *inter se* which is or may be inconsistent with this Section 4.4.

#### 4.5 Exculpation; Indemnification

- (a) The General Partner, the Investment Manager, any of their Affiliates, each direct or indirect member, manager, partner, director, officer, shareholder and employee of any of the foregoing and, with the approval of the General Partner, any agent of any of the foregoing (including their respective executors, heirs, assigns, successors or other legal representatives) (each an "***Indemnified Person***") shall not be liable to the Partnership or to any of the Limited Partners for any loss or damage occasioned by any acts or omissions in the performance of services under this Agreement or the Investment Management Agreement, or otherwise in connection with the Partnership, its Investments or operations, unless such loss or damage has occurred by reason of the willful misconduct, fraud or gross negligence of such Indemnified Person or as otherwise required by law; provided that nothing in this Agreement is to be construed as waiving any legal rights or remedies which the Partnership may have under state or federal securities laws.

- (b) The Partnership (but not the Partners individually) shall indemnify each Indemnified Person to the fullest extent permitted by law against any cost, expense (including reasonable attorneys' fees), judgment or liability incurred by or imposed upon it in connection with any action, suit or proceeding (including any proceeding before any judicial, administrative or legislative body or agency) to which it may be made a party or otherwise be involved or with which it shall be threatened by reason of being or having been General Partner, having been the Investment Manager pursuant to the Investment Management Agreement or its having provided services to the Partnership; provided that the Indemnified Person is not so indemnified to the extent such cost, expense, judgment or liability has been finally determined (i) in a non-appealable decision on the merits in any such action, suit or proceeding, or (ii) on a plea of *nolo contendere*, to have been incurred or suffered by the Indemnified Person solely by reason of willful misconduct, fraud or gross negligence by the Indemnified Person.
- (i) The right to indemnification granted by this Section 4.5 shall be in addition to any rights to which the Indemnified Person may otherwise be entitled and shall inure to the benefit of the successors or assigns of such Indemnified Person. The Partnership shall pay the expenses incurred by the Indemnified Person in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by the Indemnified Person to repay such payment if there is an adjudication or determination that it is not entitled to indemnification as provided herein; provided that no such advance shall be made in connection with any action brought by a Majority-in-Interest of the Limited Partners.
- (ii) In any suit in the name of the Partnership to recover expenses advanced pursuant to the terms of an undertaking, the Partnership shall be entitled to recover such expenses upon a final adjudication that the Indemnified Person or other Person claiming a right to indemnification hereunder has not met the applicable standard of conduct set forth in Section 4.5(a). In any such suit brought to enforce a right to indemnification or to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnified Person or other Person claiming a right to indemnification shall not be entitled to be indemnified, or to an advancement of expenses, hereunder shall be on the Partnership (or any Limited Partner acting derivatively or otherwise on behalf of the Partnership or the Limited Partners) unless otherwise required by applicable law.
- (iii) Each Indemnified Person may not satisfy any right of indemnity or reimbursement granted in this Section 4.5 or to which it may be otherwise entitled except out of the assets of the Partnership, and no Partner shall be personally liable with respect to any such claim for indemnity or reimbursement. The General Partner may obtain appropriate insurance on behalf, and at the expense, of the Partnership to secure the Partnership's obligations hereunder.

- (iv) Nothing in this Agreement is to be construed as to provide for the indemnification of an Indemnified Person for any liability (including liability under U.S. federal securities laws) to the extent that such indemnification would be in violation of applicable law but is to be construed so as to effectuate this Section 4.5 to the fullest extent permitted by law.
- (v) Each Indemnified Person shall be deemed a third-party beneficiary (to the extent not a direct party hereto) of this Agreement and, in particular, the provisions of this Section 4.5. The General Partner and/or the Investment Manager may enter into agreements on behalf of the Partnership with an Indemnified Person to provide an indemnity to the same extent provided in this Section 4.5.

#### 4.6 Advisory Committee

- (a) The General Partner and/or the Investment Manager may appoint a committee (the “**Advisory Committee**”) composed of one or more individuals selected from time to time by the General Partner. No member of the Advisory Committee may be an Affiliate of the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in an Affiliate of the Partnership).
- (b) If established, the Advisory Committee will meet with the General Partner and/or the Investment Manager from time to time as requested by and deemed appropriate by the General Partner and/or the Investment Manager to consult with and advise the General Partner and/or the Investment Manager on any matter deemed appropriate by the General Partner and/or the Investment Manager, including any circumstances involving conflicts of interest between the General Partner and/or the Investment Manager (and their Affiliates), on the one hand, and the Limited Partners and the Partnership, on the other.
- (c) The General Partner and/or the Investment Manager may in its discretion seek the approval of the Advisory Committee or establish any other reasonable mechanism in connection with (i) approvals that are or would be required under the Investment Advisers Act (including Section 206(3)) or (ii) any other matter deemed appropriate by the General Partner and/or the Investment Manager. Each Limited Partner agrees that, except as otherwise specifically provided herein and to the extent permitted by applicable law, the approval of a majority of the members of the Advisory Committee at such time is binding upon the Partnership and each Partner with respect to any approval sought under this Section 4.6(c).
- (d) As determined by the General Partner and/or the Investment Manager, meetings of the Advisory Committee may be held in person or by telephone. Approval of the Advisory Committee is deemed to have been given if given by a majority of those members present at a meeting or by a majority of all members of the Advisory Committee if given pursuant to a written consent without a meeting.

- (e) The Partnership agrees to reimburse members of the Advisory Committee for their out-of-pocket expenses relating to their services as Advisory Committee members and to indemnify each Advisory Committee member to the maximum extent permitted by law
- (f) In the event an Advisory Committee is not appointed, the General Partner and/or the Investment Manager may obtain the approval of an unaffiliated third party, as is determined advisable by the General Partner and/or the Investment Manager, and any such approval by such third party shall, to the extent permitted under applicable law, serve as the approval of the Advisory Committee and shall be binding on the Partnership and the Limited Partners.

#### **4.7 Alternative Investment Vehicles**

The General Partner shall have the right in connection with any Investment to direct the capital contributions of some or all of the Partners to be made through one or more alternative investment vehicles (“*Alternative Investment Vehicles*”) and to exchange a portion of the Interests of one or more Limited Partners for similar equity interests in one or more Alternative Investment Vehicles if, in the judgment of the General Partner, the use of such vehicle or vehicles would allow the Partnership to overcome legal or regulatory constraints or invest in a more tax efficient manner and/or would facilitate participation in certain types of Investments; provided that the General Partner shall not employ the use of an Alternative Investment Vehicle in any manner that would reasonably be expected to have a material adverse effect on the participating Limited Partners. Any Alternative Investment Vehicle shall contain terms and conditions substantially similar to those of the Partnership and shall be managed by the General Partner or an Affiliate thereof, and such controlling Person is required to comply with the provisions of this Agreement applicable to Alternative Investment Vehicles. Expenses related to an Alternative Investment Vehicle on behalf of less than all of the Partners shall not be borne by the Partners that do not participate in such Alternative Investment Vehicle.

### **Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS**

#### **5.1 Admission of Limited Partners**

The General Partner may, at such times as the General Partner may determine, without advance notice to or consent from the Limited Partners, admit to the Partnership any Person who executes this Agreement or any other writing evidencing the intent of such Person to become a Limited Partner. Such admission shall be effective when the General Partner enters the name of such Person on the books and records of the Partnership as a Partner and does not require the consent or approval of any other Partner. The General Partner has the authority to reject subscriptions for Interests in whole or in part.

#### **5.2 Admission of Additional General Partners**

- (a) Except as provided in Section 5.2(b), the General Partner may admit one or more Persons as additional general partners to the Partnership. No additional general



partner shall be added unless such additional general partner agrees to be bound by all of the terms of this Agreement.

- (b) Any Person to whom the General Partner has transferred its general partner interest in accordance with Section 5.4 shall be admitted to the Partnership as a substitute General Partner without the consent of the Limited Partners unless otherwise provided for in Section 5.4.

### **5.3 Transfer of Interests of Limited Partners**

- (a) No Transfer of any Limited Partner's Interest, whether voluntary or involuntary, shall be valid or effective, and no transferee may become a substituted Limited Partner, unless the prior written consent of the General Partner has been obtained, which consent may be granted, withheld or conditioned for any reason by the General Partner. Any attempted Transfer not made in accordance with this Section 5.3, to the fullest extent permitted by law, shall be void *ab initio*.
- (b) Prior to recognizing any Transfer in accordance with this Section 5.3, the General Partner may require the transferring Limited Partner to execute and acknowledge an instrument of Transfer in form and substance satisfactory to the General Partner, and may require the transferee to make certain representations and warranties to the Partnership and Partners and to accept, adopt and approve in writing all of the terms and provisions of this Agreement.
- (c) In the event of a Transfer of a Partner's Interest or in the event of a distribution of assets of the Partnership to any Partner, the Partnership may, but shall not be required to, file an election under Section 754 of the Code and in accordance with the applicable Regulations, to cause the basis of the Partnership's assets to be adjusted for U.S. federal income tax purposes as provided by Section 734 or 743 of the Code.
- (d) In the event of a Transfer at any time other than the end of a Fiscal Year, items of income, gain, loss, deduction or credit recognized by the Partnership for U.S. federal income tax purposes shall be allocated between the transferring parties, as determined by the General Partner, using any permissible method under Code Section 706(d) and the Regulations thereunder. To the extent the transferring parties have given the General Partner written notice prior to the consent by the General Partner pursuant to Section 5.3(a) of their agreement to apply a particular and reasonable method, then the General Partner may elect to use such method. The transferring parties agree to reimburse the General Partner and the Partnership for any incidental accounting fees and other expenses incurred by the General Partner and the Partnership in making allocations pursuant to this Section 5.3(d).

### **5.4 Transfer of Interest of the General Partner**

The General Partner may Transfer its Interest as a General Partner in the Partnership; provided that if any such proposed Transfer would result in an "assignment" (as such term is



defined under the Advisers Act), the General Partner shall obtain the consent of Limited Partners constituting a Majority-in-Interest of Limited Partners that are not Affiliated Investors.

## 5.5 Withdrawal of Interests of Partners

- (a) The Interest of a Limited Partner may not be withdrawn from the Partnership prior to its dissolution except as provided in this Section 5.5.
- (b) Withdrawal rights are determined separately with respect to each Capital Account (and each capital sub-account, if applicable). Each capital contribution shall be accounted for using a separate capital sub-account, and, in the case of a Limited Partner for which more than one capital sub-account is maintained, the withdrawals from any such capital sub-accounts shall be processed on a “first-in, first-out” basis based upon the date on which each capital contribution was made, unless otherwise agreed between the General Partner and such Partner. Each capital sub-account relating to a contribution of capital from a Limited Partner will be treated as if it were the separate Capital Account of a separate Partner for the purposes of applying the withdrawal provisions of this Section 5.5.
- (c) Subject to a Suspension and the other provisions of this Section 5.5:
  - (i) A Limited Partner may make a complete or partial withdrawal from its Series A Capital Account effective on the last Business Day of each calendar quarter occurring at least 36 calendar months after the contribution of the capital to be withdrawn (each, a “**Series A Withdrawal Date**”) by providing written notice to the General Partner at least 90 days prior to the proposed Series A Withdrawal Date (such restriction, the “**Series A Lock-Up**”). For purposes of calculating the Series A Lock-Up, each Limited Partner holding Series A Interests on of the Effective Date is deemed to have made its initial contribution for Series A Interests as of the Effective Date. Additional contributions for Series A Interests after the Effective Date will also be subject to the Series A Lock-Up, which lock-up period shall commence on the date of each such additional contribution.
  - (ii) A Limited Partner may make a complete or partial withdrawal from its Series B Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series B Withdrawal Date. The “**Series B Withdrawal Date**” means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Withdrawal Date (or the last Business Day of such month).
  - (iii) A Limited Partner may make a complete or partial withdrawal from its Series C Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series C Withdrawal Date. The “**Series C Withdrawal Date**” means: (i) the end of the day on the last Business Day of

the calendar month that immediately precedes the two-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Withdrawal Date (or the last Business Day of such month).

- (iv) A Limited Partner may make a complete or partial withdrawal from its Series D Capital Account effective on the last Business Day of each calendar quarter (each, a “***Series D Withdrawal Date***”) occurring at least 12 calendar months after the contribution of the capital to be withdrawn by providing written notice to the General Partner at least 90 days prior to the proposed Series D Withdrawal Date.
- (d) Any notice of withdrawal shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. For the avoidance of doubt, if a Limited Partner notifies the General Partner of its intent to withdraw and later chooses not to withdraw (with the General Partner’s consent), any transaction costs incurred by the Partnership or the General Partner in connection therewith may be charged to such withdrawing Limited Partner. The General Partner may refuse to honor any Limited Partner’s request for a full or partial withdrawal if such request is not accompanied by such additional information as the General Partner may reasonably require, including any information required to determine the “adjusted basis” for U.S. federal income tax purposes in the Limited Partner’s Interest withdrawn.
- (e) With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Partnership or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable Withdrawal Date, and withdrawn amounts will be fixed as of the applicable Withdrawal Date, except as provided in Section 3.6. For the avoidance of doubt, none of the Partnership, the General Partner or the Investment Manager shall be liable to a Limited Partner for interest on the proceeds of any withdrawal.
- (f) At least 90% of the estimated amount due with respect to the Partnership’s marketable investments is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Partnership, within 30 Business Days after the Withdrawal Date, provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Partnership or the remaining Capital Accounts. The General Partner is entitled to deduct from such settlement payment an amount equal to the pro rata portion of any Performance Allocation (based on the portion of the withdrawal being settled) payable to the Investment Manager with respect to such withdrawn amount. Any balance will be held back and distributed, without interest thereon, promptly following completion of the audit of the Partnership’s financial statements for such Fiscal Year, or sooner in the General Partner’s discretion.
- (g) In the case of a complete withdrawal, or a partial withdrawal that cannot be fully funded out of the Limited Partner’s interest in the Partnership’s marketable

investments, no settlements occur with respect to any of such Limited Partner's interest in the Partnership's non-marketable investments until the occurrence of liquidity events with respect to such non-marketable investments after the scheduled payment date for the withdrawal (without interest thereon). Notwithstanding the foregoing, the General Partner may, however, make settlements in such cases prior to the occurrence of a liquidity event if such settlement would, in the good faith opinion of the General Partner, not have a material adverse effect on the Partnership. Generally, a liquidity event will be a sale of the relevant investment for cash, in which case the settlement will be funded in cash within 90 days after the liquidity event (without interest). If the liquidity event is not a sale for cash, the General Partner may effect the settlement either by making a distribution in kind of the Limited Partner's ratable share of the relevant investment or by distributing the net proceeds derived from a sale of such investment. The General Partner is entitled to withdraw from each such settlement an amount equal to the remaining portion of any Performance Allocation (pro rata based on the portion of such withdrawal being distributed) to be credited to the Investment Manager at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Limited Partner.

- (h) The General Partner may effect withdrawal payments (i) in cash, (ii) in kind, by transfer of marketable or non-marketable Investments to the Limited Partner, the value of which, as determined in accordance with Section 7.2, would satisfy the Limited Partner's request for withdrawal, or (iii) in any combination of the foregoing.
- (i) The General Partner may deduct from any withdrawal proceeds due to any Limited Partner pursuant to this Section 5.5 an amount representing the Partnership's actual or estimated expenses, as determined by the General Partner, associated with processing the withdrawal. Any such withdrawal deduction shall be retained by the Partnership for the benefit of the remaining Limited Partners.
- (j) The right of any Partner to withdraw or receive distributions pursuant to the provisions of this Section 5.5 is subject to all Capital Account allocations and adjustments contemplated by this Agreement and to the provision by the General Partner for all Partnership liabilities and for reserves and holdbacks for contingencies provided in Section 3.6.
- (k) The General Partner may suspend or limit, in whole or in part, (i) the right of the Partners to withdraw or receive distributions from the Partnership and/or (ii) the valuation of the Partnership's Net Assets:
  - (i) during any period when any exchange or over-the-counter market on which the Partnership's Investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended;

- (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of, or withdrawals or redemptions from, Investments by the Partnership, or the determination of the value of the assets of the Partnership, would not be reasonably practicable;
  - (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Partnership's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Partnership cannot reasonably be accurately ascertained within a reasonable time frame;
  - (iv) during any period when the transfer of funds involved in the realization or acquisition of any Investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange;
  - (v) in other circumstances where the General Partner is unable to fairly value the Partnership's assets due to extreme market conditions; or
  - (vi) automatically upon liquidation of the Partnership.
- (l) In the event of any such suspension or limitation described above in Section 5.5(k) (a "**Suspension**"), the General Partner shall promptly notify each Limited Partner. Any Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted is not given any priority with respect to the withdrawal of such Interests or portions thereof after the cause for such Suspension ceases to exist. The General Partner may, however, allow any such Partners to rescind their withdrawal requests to the extent of any portion thereof for which withdrawal proceeds have not yet been remitted. Upon the reasonable determination by the General Partner that conditions leading to Suspension no longer apply, withdrawal rights for all Limited Partners shall be promptly reinstated, and any pending withdrawal requests (or new, timely withdrawal requests) shall be honored as of the last Business Day of the calendar quarter in which withdrawals have recommenced, subject to the application of the withdrawal limitations described herein.
- (m) The General Partner may, notwithstanding any Suspension, upon not less than five days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Partnership may cause the Partnership, the Investment Manager or the General Partner to violate any applicable law), require any Limited Partner's Interest to be withdrawn in part or in its entirety from the Partnership (including, but not limited to, for reasons relating to FATCA) and for the Limited Partner to cease to be a Limited Partner of the Partnership (in the case of a withdrawal of a Limited Partner's Interest in its entirety) pursuant to this Section 5.5(m). Except as otherwise provided herein, settlements of withdrawals pursuant to this Section 5.5(m) are made in the same manner as voluntary withdrawals.

- (n) Notwithstanding the foregoing, the General Partner may waive any restrictions on any Limited Partner's ability to withdraw.

**Article VI**  
**SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION**

**6.1 Soft Wind Down**

- (a) The General Partner may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued (whether or not the General Partner has implemented a Suspension). Having made such determination, the Investment Manager may recommend to the General Partner to cause the Partnership to return the Partnership's assets to Limited Partners in an orderly manner (without proceeding with a liquidation of the Partnership) (an "**Orderly Realization**"). The General Partner may, in such circumstances, resolve to effect an Orderly Realization should it determine that doing so is in the best interests of the Partnership as a whole. Such Orderly Realization shall not constitute a dissolution or winding up of the Partnership for any purposes, but rather only the continued management of the Partnership's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Partnership to the Limited Partners.
- (b) The General Partner will notify the Limited Partners of any decision to proceed with an Orderly Realization of the Partnership. During an Orderly Realization, the Investment Manager may, in consultation with the General Partner, take such steps as are considered appropriate in the best interests of the Partnership as a whole to effect the Orderly Realization. The General Partner, in consultation with the Investment Manager, shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the "**Realization Period**"). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Partnership and may be carried out without recourse to a formal process of liquidation under Delaware law or any other applicable bankruptcy or insolvency regime.
- (c) The General Partner, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued.
- (d) Management Fees, and all other fees and expenses, shall be payable and Performance Allocations shall be made during an Orderly Realization on the same basis as provided herein.

## 6.2 Dissolution of Partnership

- (a) The Partnership shall be dissolved upon the first to occur of the following dates:
  - (i) any date on which the General Partner shall elect in writing to dissolve the Partnership; or
  - (ii) the occurrence of any other event causing (A) the General Partner (or a successor to its business) to cease to be the general partner of the Partnership or (B) the dissolution of the Partnership under the Act.
- (b) In the event an Orderly Realization lasts longer than three years, a Super-Majority-in-Interest of the Limited Partners may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Partnership. The Limited Partners will not have any other right to bring an action in court to dissolve the Partnership. The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein.

## 6.3 Liquidation of Assets

- (a) Upon dissolution of the Partnership, the General Partner shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible, except that if the General Partner is unable to perform this function, a liquidator elected by a Majority-in-Interest of Limited Partners shall liquidate the business and administrative affairs of the Partnership. Net Profit and Net Loss during any Accounting Period, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:
  - (i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith), up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);
  - (ii) such debts as are owing to the Partners as Partners are next paid; and
  - (iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the



Accounting Period ending on the date of the distributions under this Section 6.1(a)(iii).

- (b) Notwithstanding this Section 6.3 and the priorities set forth in the Act, the General Partner or liquidator may distribute ratably in kind rather than in cash, upon dissolution, any assets of the Partnership; provided, however, that if any in kind distribution is to be made, (i) the assets distributed in kind shall be valued pursuant to Section 7.2, and charged as so valued and distributed against amounts to be paid under Section 6.3(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in kind shall be included in the Net Profit or Net Loss for the Accounting Period ending on the date of such distribution.

## **Article VII**

### **ACCOUNTING AND VALUATION; BOOKS AND RECORDS**

#### **7.1 Accounting and Reports**

- (a) The Partnership may adopt for tax accounting purposes any accounting method that the General Partner shall decide is in the best interests of the Partnership and that is permissible for U.S. federal income tax purposes.
- (b) As soon as practicable after the end of each Fiscal Year thereafter, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of each such period to be made by a firm of independent accountants selected by the General Partner. As soon as is practicable thereafter, but subject to Section 7.4, the General Partner shall furnish to each Limited Partner a copy of the set of financial statements prepared in accordance with GAAP, with such adjustments thereto as the General Partner determines appropriate, including the report of such independent accountants.
- (c) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each Limited Partner properly to report for U.S. federal, state and local income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.
- (d) As soon as practicable after the end of each calendar month, but subject to Section 7.5, the General Partner shall arrange for the preparation and delivery to each Limited Partner of an interim report containing such information concerning the affairs of the Partnership (which need not include any financial statements) as the General Partner considers appropriate.



## 7.2 Valuation of Partnership Assets and Interests

- (a) The General Partner (or its delegate, including the Investment Manager or the administrator of the Partnership) shall value the assets of the Partnership as of the close of business on the last day of each Accounting Period. Such valuations will generally be in accordance with GAAP, with such adjustments thereto as the General Partner reasonably determines appropriate. In addition, the General Partner shall value the assets which are being distributed in kind as of the close of the Business Day immediately preceding the distribution date in accordance with Section 5.5(c) or Section 6.3(b). In determining the value of the assets of the Partnership, no value shall be placed on the goodwill or name of the Partnership, or the office records, files, statistical data or any similar intangible assets of the Partnership not normally reflected in the Partnership's accounting records, but there shall be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.
- (b) To the extent readily available, valuations will be based on independent market quotations obtained by the General Partner from recognized pricing services, market participants or other sources. In the case of any Investment for which a quotation from an independent source is not available or is determined by the General Partner to be unreliable or inadequate, the General Partner (i) shall be authorized, to the extent permitted by applicable law, to value such positions at their fair value in such manner as the General Partner determines in good faith, or (ii) may (but shall not be required to) obtain an appraisal, at the expense of the Partnership, by an independent third party selected by the General Partner. Except as otherwise determined by or at the direction of the General Partner, investment and trading transactions shall be accounted for on the trade date.
- (c) Accounts shall be maintained in U.S. dollars, and except as otherwise determined by or at the direction of the General Partner: (i) assets and liabilities denominated in currencies other than U.S. dollars shall be translated at the rates of exchange quoted by an independent pricing service as in effect as of the close of business on the relevant valuation dates (and exchange adjustments shall be recorded in the results of operations); and (ii) investment and trading transactions and income and expenses shall be translated at the rates of exchange in effect at the time of each transaction.

## 7.3 Determinations by the General Partner

- (a) All matters concerning the determination and allocation among the Partners of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final

and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

- (b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss or any other allocations with respect to any Limited Partner, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or sub-account as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

#### 7.4 Books and Records

- (a) The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and all transactions entered into by the Partnership. The General Partner shall afford to the Partnership's independent auditors reasonable access to such documents during customary business hours and shall permit the Partnership's auditors to make copies thereof or extracts therefrom at the expense of the Partnership.
- (b) The General Partner shall establish such standards as it deems appropriate regarding the access of Limited Partners to the books and records of the Partnership and shall not be obliged to permit access by a Limited Partner to the name or address of any other Limited Partner.

#### 7.5 Confidentiality

- (a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Interest or for purposes of filing such Limited Partner's tax returns) or disclose to any Person, any information or matter relating to the Partnership and its affairs and any information or matter related to any Investment (other than disclosure to such Limited Partner's directors, employees, agents, advisors, or representatives responsible for matters relating to the Partnership or to any other Person approved in writing by the General Partner (each such Person being hereinafter referred to as an "***Authorized Representative***")); provided that (i) such Limited Partner and its Authorized Representatives may make such disclosure to the extent that (A) the information to be disclosed is publicly available at the time of proposed disclosure by such Limited Partner or Authorized Representative, (B) the information otherwise is or becomes legally available to such Limited Partner other than through disclosure by the Partnership or the General Partner, or (C) such disclosure is required by law or in

response to any governmental agency request or in connection with an examination by any regulatory authorities; provided that such governmental agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) such Limited Partner and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners; and (iii) each Limited Partner will be permitted, after written notice to the General Partner, to correct any false or misleading information which becomes public concerning such Limited Partner's relationship to the Partnership or the General Partner. Prior to making any disclosure required by law, each Limited Partner shall use its best efforts to notify the General Partner of such disclosure. Prior to any disclosure to any Authorized Representative or beneficial owner, each Limited Partner shall advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 7.5(a) and each such Authorized Representative or beneficial owner shall agree to be bound by such obligations.

- (b) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, any information, including the identity of the Partners or information regarding the Partners or Investments, which the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or agreement with a third party to keep confidential.
- (c) Subject to applicable legal and regulatory considerations, the General Partner shall use reasonable efforts to keep confidential any information relating to a Limited Partner obtained by the General Partner in connection with or arising out of the Partnership which the Limited Partner requests to be kept confidential.
- (d) Notwithstanding the provisions of this Section 7.5, Partners (and their employees, representatives and other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Partnership and its transactions and all materials of any kind (including tax opinions or other tax analyses) that are provided to such Person by, or on behalf of the Partnership. For this purpose, "tax treatment" is the purported or claimed U.S. federal income tax treatment of a transaction and "tax structure" is limited to any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of a transaction. For this purpose, the names of the Partnership, the Partners, their affiliates, the names of their partners, members or equity holders and the representatives, agents and tax advisors of any of the foregoing are not items of tax structure.
- (e) The General Partner may disclose to prospective investors such information relating to the Partnership or the Investments as it believes in good faith will benefit the Partnership and facilitate investment in the Partnership by such prospective investors.

- (f) The Investment Manager and a Person acting as a service provider to the Partnership shall have the right to access all information belonging to the Partnership.

## Article VIII GENERAL PROVISIONS

### 8.1 Amendment of Partnership Agreement

- (a) Except as otherwise provided in this Section 8.1, this Agreement may be amended, in whole or in part, with the written consent of (i) the General Partner and (ii) the consent of a Majority-in-Interest of Limited Partners (which approval may be obtained by negative consent affording the Limited Partners at least 30 calendar days to object).
- (b) Any amendment that would:
  - (i) increase the obligation of a Partner to make any contribution to the capital of the Partnership;
  - (ii) reduce the Capital Account of a Partner other than in accordance with Article III;
  - (iii) adversely alter any Partner's rights with respect to the allocation of Net Profit or Net Loss or with respect to distributions and withdrawals; or
  - (iv) change the respective liabilities of the General Partner and the Limited Partners;

may only be made if the consent of each Partner adversely affected thereby is obtained (which consent may be obtained by negative consent affording the Partner at least 30 calendar days to object).

- (c) Notwithstanding paragraphs (a) and (b) of this Section 8.1, this Agreement may be amended by the General Partner without the consent of the Limited Partners, at any time and without limitation, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Partnership as of a date determined by the General Partner that is not less than 30 calendar days after the General Partner has furnished written notice of such amendment to each affected Limited Partner and that is prior to the effective date of the amendment. The admission and withdrawal of Limited Partners will not require notice or disclosure to, or the approval of, the other Limited Partners.
- (d) The General Partner may at any time without the consent of the other Partners:

- (i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner under this Agreement, for the benefit of the Limited Partners;
  - (ii) cure any ambiguity or correct or supplement any conflicting provisions of this Agreement;
  - (iii) change the name of the Partnership;
  - (iv) make any changes required by a governmental body or agency which is deemed to be for the benefit or protection of the Limited Partners, provided, however, that no such amendment may be made unless such change (A) is for the benefit of, or not adverse to, the interests of Limited Partners, (B) does not affect the right of the General Partner to manage and control the Partnership's business, (C) does not affect the allocation of profits and losses among the Partners and (D) does not affect the limited liability of the Limited Partners;
  - (v) amend this Agreement to reflect a change in the identity of the General Partner which has been made in accordance with this Agreement;
  - (vi) amend this Agreement (other than with respect to the matters set forth in Section 8.1(b)) to effect compliance with any applicable laws, regulations or administrative actions;
  - (vii) subject to Section 8.1(b), amend this Agreement to reflect the creation, and terms, of any new Series of Interests;
  - (viii) effect any other amendment which would not, in the good faith judgment of the General Partner, adversely affect any of the existing Limited Partners; and
  - (ix) restate this Agreement together with any amendments hereto which have been duly adopted in accordance herewith to incorporate such amendments in a single, integrated document.
- (e) Following the adoption of any amendments to this Agreement pursuant to 8.1(d), the General Partner shall promptly deliver a copy of such amendments to this Agreement to the Limited Partners.
- (f) The General Partner may agree with a Limited Partner to waive or modify the application of any provision of this Agreement with respect to such Limited Partner without notifying or obtaining the consent of any other Limited Partner (other than a Limited Partner whose rights as a Limited Partner pursuant to this Agreement would be materially and adversely changed by such waiver or modification). Any such waiver or modification may be evidenced by a "side letter" or other document which will govern with respect to the applicable Limited Partner and be incorporated as part of this Agreement.

## 8.2 Special Power-of-Attorney

- (a) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner (and each of its successors and permitted assigns), with full power of substitution, the true and lawful representative and attorney-in-fact of, and in the name, place and stead of, such Limited Partner with the power from time to time to make, execute, sign, acknowledge, swear to, verify, deliver, record, file or publish:
- (i) an amendment to this Agreement that complies with the provisions of this Agreement (including the provisions of Section 8.1);
  - (ii) the Certificate and any amendment thereof required because this Agreement is amended, including an amendment to effectuate any change in the membership of the Partnership or in the capital contributions of the Partners;
  - (iii) any financing statement or other filing or document required or permitted to perfect the security interests contemplated by any provision hereof; and
  - (iv) all such other instruments, documents and certificates which, in the opinion of legal counsel to the Partnership, may from time to time be required by the laws of the United States of America, the State of Delaware, or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership as a limited partnership, exchange a portion of a Limited Partner's Interest for similar equity interests in an Alternative Investment Vehicle, or to effect the dissolution or termination of the Partnership.
- (b) Each Limited Partner is aware that the terms of this Agreement permit certain amendments to this Agreement to be effected and certain other actions to be taken or omitted by or with respect to the Partnership without that Limited Partner's consent. If an amendment of the Certificate or this Agreement or any action by or with respect to the Partnership is taken by the General Partner in the manner contemplated by this Agreement, each Limited Partner agrees that, notwithstanding any objection which such Limited Partner may assert with respect to such action, the General Partner in its sole discretion is authorized and empowered, with full power of substitution, to exercise the authority granted above in any manner which may be necessary or appropriate to permit such amendment to be made or action to be lawfully taken or omitted. Each Partner is fully aware that each other Partner relies on the effectiveness of this special power-of-attorney with a view to the orderly administration of the affairs of the Partnership. This power-of-attorney is a special power-of-attorney and is coupled with an interest in favor of the General Partner and as such:
- (i) is irrevocable and continues in full force and effect notwithstanding the subsequent death or incapacity of any party granting this power-of-attorney,



regardless of whether the Partnership or the General Partner has had notice thereof; and

- (ii) survives the delivery of an assignment by a Limited Partner of the whole or any portion of such Limited Partner's Interest, except that where the assignee thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, this power-of-attorney given by the assignor survives the delivery of such agreement for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

### **8.3 Notices**

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the register of Partners maintained by the General Partner or to such other addresses, facsimile numbers or electronic addresses as may be designated by any party hereto by notice addressed to (a) the General Partner, in the case of notice given by any Limited Partner, and (b) each of the Limited Partners, in the case of notice given by the General Partner. Notices will be deemed to have been given (i) when delivered by hand, transmitted by facsimile or transmitted electronically or (ii) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service.

### **8.4 Agreement Binding Upon Successors and Assigns; Delegation**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder are not assignable, transferable or delegable except as provided in Sections 4.1(c), 5.3 and 5.4, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections will be null and void *ab initio*.

### **8.5 Governing Law**

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in the courts located in Dallas County, Texas. Each Partner consents to service of process in any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the register of Partners maintained by the General Partner.



## 8.6 Not for Benefit of Creditors

The provisions of this Agreement are intended only for the regulation of relations among Partners and between Partners and former or prospective Partners and the Partnership. Except for the rights of the Indemnified Persons hereunder, this Agreement is not intended for the benefit of non-Partner creditors and no rights are granted to non-Partner creditors under this Agreement.

## 8.7 Dispute Resolution

The following procedures shall be used to resolve any controversy or claim (“*Dispute*”) arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Indemnified Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

### (a) Mediation

- (i) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.
- (ii) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- (iii) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (iv) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

### (b) Arbitration

- (i) If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney’s fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the

mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect (“*Arbitration Rules*”). In the event of a conflict, the provisions of this document will control.

- (ii) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the U.S. Federal Arbitration Act (“*FAA*”), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality, non-competition, non-solicitation or non-recruitment covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this Agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.
- (iii) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party’s actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.
- (iv) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement.
- (v) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes

it. In any event, there shall be no more than (a) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (b) one non-party deposition of six hours; (c) twenty-five interrogatories; (d) twenty-five requests for admission; (e) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; and (f) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

- (vi) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.
- (vii) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

## 8.8 Consents and Voting

- (a) Except as provided in Section 5.4, Limited Partners do not have any right to vote for the admission or removal of any General Partner and, except for the right to vote on certain amendments proposed by the General Partner and as otherwise expressly set out herein, have no other voting rights. Upon the request of any Limited Partner, the General Partner may designate an Interest as a Non-Voting Interest, in which case the Limited Partner shall not have the right to vote on any matter including amendments.
- (b) Any and all consents, agreements or approvals provided for or permitted by this Agreement shall be in writing and a copy thereof shall be filed and kept with the books of the Partnership. For the avoidance of doubt, an amendment made pursuant to Section 8.1(c) or pursuant to negative consent under Section 8.1(a) or Section 8.1(b) shall not require any affirmative written response by any Limited Partner who is not electing to withdraw from the Partnership.
- (c) In the event the Partnership seeks the approval, vote or consent of the Offshore Fund with respect to any matter to which it would be entitled to vote as a Limited

Partner of the Partnership under this Agreement, the Offshore Fund will: (i) submit such matter for the consent of the shareholders and (ii) shall vote its Limited Partner interest proportionally for and against such matter in the same proportion that the shareholders voted for and against such matter.

## **8.9 Merger and Consolidation**

- (a) The Partnership may merge or consolidate with or into one or more limited partnerships formed under the Act or other business entities pursuant to an agreement of merger or consolidation which has been approved in the manner contemplated by Section 17-211(b) of the Act.
- (b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Act may, to the extent permitted by Section 17-211(g) of the Act, (i) effect any amendment to this Agreement, (ii) effect the adoption of a new limited partnership agreement for the Partnership if it is the surviving or resulting limited partnership in the merger or consolidation, or (iii) provide that the limited partnership agreement of any other constituent partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating the merger or consolidation) shall be the limited partnership agreement of the surviving or resulting limited partnership.

## **8.10 Miscellaneous**

- (a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word “including” in this Agreement means in each case “without limitation,” whether or not such term is explicitly stated.
- (b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.
- (c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

## **8.11 BHCA Subject Persons**

Notwithstanding any other provision of this Agreement to the contrary:

- (a) Solely for purposes of any provision of this Agreement that confers voting rights on the Limited Partners and any other provisions hereof regarding consents of or action by the Limited Partners, any BHCA Subject Person that shall have given the General Partner an Election Notice and shall not thereafter have given the General Partner a Revocation Notice, and that at any time has a Partnership Percentage in

excess of 4.9% of the aggregate Partnership Percentages of the Limited Partners entitled to participate in such voting or the giving of any consent or the taking of any action, shall be deemed to hold a Partnership Percentage of only 4.9% of the aggregate Partnership Percentages of the Limited Partners (after giving effect to the limitations imposed by this Section 8.11 on all such Limited Partners), and such Partnership Percentage in excess of said 4.9% shall be deemed held by the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages; provided that this limitation shall not prohibit a Limited Partner from voting or participating in giving or withholding consent or taking any action under any provision of this Agreement up to the full amount of its Partnership Percentage in situations where such Limited Partner's vote or consent or action is of the type customarily provided by statute or stock exchange rules with regard to matters that would significantly and adversely affect the rights or preference of the Limited Partner's Interest. The foregoing voting restriction shall continue to apply with respect to any assignee or other transferee of such BHCA Subject Person's Interest; provided, however, that the foregoing voting restriction shall not continue to apply if the Interest is transferred: (i) to the Partnership; (ii) to the public in an offering registered under the Securities Act; (iii) in a transaction pursuant to Rule 144 or Rule 144A under the Securities Act in which no Person acquires more than 2% of the Partnership's outstanding Interests; or (iv) in a single transaction to a third party who acquires at least a majority of the Partnership's outstanding Interests without regard to the Transfer of such Interests.

- (b) Except as specifically provided otherwise in this Agreement, a Limited Partner that is a BHCA Subject Person that shall have given the General Partner an Election Notice, and shall not thereafter have given the General Partner a Revocation Notice, shall not be entitled to exercise any rights to consent to actions to be taken with respect to the Partnership, including rights conferred by any applicable law. Such right to consent shall be deemed granted to the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages.
- (c) A Limited Partner that is a BHCA Subject Person and that elects to be subject to Section 8.11(a) and (b) shall notify the General Partner thereof (an "***Election Notice***") and, on the General Partner's receipt of such Election Notice, such Limited Partner shall be subject to Section 8.11(a) and (b) until 10 calendar days after such Limited Partner notifies the General Partner that it elects no longer to be subject to Section 8.11(a) and (b) (a "***Revocation Notice***"), which period may be reduced by the General Partner.

## 8.12 RIC Limited Partners

An Interest of a RIC Limited Partner does not entitle the RIC Limited Partner to vote or consent with respect to any Partnership matter unless the RIC Limited Partner's vote or consent with respect to its Interest would not be considered to be "voting securities" as defined under Section 2(a)(42) of the Investment Company Act. Except as provided in this Section 8.12, an Interest held by a RIC Limited Partner as a Non-Voting Interest is identical in all regards to all other Interests held by Limited Partners.

### **8.13 Bad Actor Limited Partners**

Under Rule 506(d) under the Securities Act, the Partnership may be banned from selling Interests under Rule 506 if a Limited Partner beneficially owning 20% or more of the Partnership's voting securities engages in a "bad act" set forth in Rule 506. Accordingly, each Limited Partner agrees that the General Partner may deem the portion of any Bad Actor Limited Partner's Interests to be, or convert any Bad Actor Limited Partner's Interests into, Non-Voting Interests (except for the purposes of voting on any amendment to this Agreement that would materially and adversely change the Bad Actor Limited Partner's rights and preferences as a Limited Partner other than pursuant to an amendment under Section 8.1(c)) to the extent that the General Partner determines that such portion is in excess of 19.99% of the outstanding aggregate voting Interests of all Partners excluding any Interests that are Non-Voting Interests.

### **8.14 Entire Agreement**

The parties acknowledge and agree that, this Agreement, together with any other agreement with a Limited Partner pursuant to Section 8.1(e), constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

[Signature Page Follows]

The parties hereto have executed this Agreement as of the day and year first above written.

**GENERAL PARTNER:**

HIGHLAND MULTI STRATEGY CREDIT FUND GP,  
L.P.

By: HIGHLAND MUTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

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

Name: James Dondero

Title: President

**LIMITED PARTNERS:**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

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

Name: James Dondero

Title: President



## **EXHIBIT 15**

**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES**

**AMENDED AND RESTATED  
MEMORANDUM AND ARTICLES OF ASSOCIATION**

**OF**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**



Uploaded: 03-Nov-2014 14:05 EST  
Filed: 05-Nov-2014 18:02 EST

**001920**

**THE COMPANIES LAW (2013 REVISION)**  
**OF THE CAYMAN ISLANDS**  
**COMPANY LIMITED BY SHARES**  
  
**AMENDED AND RESTATED**  
**MEMORANDUM OF ASSOCIATION**  
**OF**  
**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**  
**(As Adopted by Special Resolution on 1 November 2014)**

- 1 The name of the Company is **Highland Multi Strategy Credit Fund, Ltd.**
- 2 The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, or at such other place within the Cayman Islands as the Directors may decide.
- 3 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the laws of the Cayman Islands.
- 4 The liability of each Member is limited to the amount unpaid on such Member's Shares.
- 5 The share capital of the Company is US\$50,000 divided into 100 Management Shares of US\$0.01 par value each and 49,999,000 Participating Shares of US\$0.001 par value each.
- 6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.
- 7 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.



Uploaded: 03-Nov-2014 14:05 EST  
Filed: 05-Nov-2014 18:02 EST

**APPX-00537**  
**001927**

**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES**

**AMENDED AND RESTATED  
ARTICLES OF ASSOCIATION  
OF**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**

**1 Interpretation**

1.1 In these Articles, Table A in the First Schedule to the Statute does not apply and unless there is something in the subject or context inconsistent therewith:

- "Administrator"** means the person, firm or corporation appointed and from time to time acting as administrator of the Company.
- "Articles"** means these articles of association of the Company.
- "Auditor"** means the person (if any) for the time being performing the duties of auditor of the Company.
- "Business Day"** means any day normally treated as a business day in such places and/or on such markets as the Directors may from time to time determine.
- "Cayman Islands"** means the British Overseas Territory of the Cayman Islands.
- "Class"** means a separate class of Participating Share (and includes any sub-class of any such class).
- "Company"** means the above-named Company.
- "Directors"** means the directors for the time being of the Company.
- "Dollars" or "US\$"** refers to the currency of the United States.
- "Electronic Record"** has the same meaning as in the Electronic Transactions Law.



**"Electronic Transactions Law"** means the Electronic Transactions Law (2003 Revision) of the Cayman Islands.

**"Eligible Investor"** means a person eligible to hold Participating Shares, as determined from time to time by the Directors.

**"FATCA"** means:

- (i) sections 1471 to 1474 of the US Internal Revenue Code of 1986 and any associated legislation, regulations or guidance, or similar legislation, regulations or guidance enacted in any jurisdiction which seeks to implement similar tax reporting and/or withholding tax regimes;
- (ii) any intergovernmental agreement, treaty, regulation, guidance or any other agreement between the Cayman Islands (or any Cayman Islands government body) and the US, the UK or any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement or implement the legislation, regulations or guidance described in paragraph (i); and
- (iii) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding paragraphs.

**"Gross Negligence"** shall have the meaning ascribed thereto under the laws of the State of Delaware, USA.

**"Investment Manager"** means the person, firm or corporation appointed and for the time being acting as the investment manager of the Company.

**"Management Share"** means a voting non participating Share in the capital of the Company of US\$0.01 par value designated as a Management Share and having the rights provided for in these Articles.

**"Master Fund"** means Highland Multi Strategy Credit Fund, L.P., or any other entity in which all, or substantially all, of the assets of the Company are invested.

**"Member"** means each person whose name is, from time to time and for the time being, entered in the Register of Members as the holder of one or more Shares.



**"Memorandum"** means the memorandum of association of the Company.

**"Net Asset Value"** means the value of the assets less the liabilities of the Company, or of a Separate Account (as the context may require), calculated in accordance with these Articles.

**"Net Asset Value per Participating Share"** means the amount determined in accordance with these Articles as being the Net Asset Value per Participating Share of a particular Class and/or Series.

**"New Issue"** has the meaning ascribed thereto by Rule 2790 adopted by the National Association of Securities Dealers, Inc.

**"New Issue Investment"** means any New Issue acquired by the Company.

**"New Issue Shares"** means a class of Participating Shares issued and designated as "New Issue Shares" and which may be issued in any one or more Series having the rights and restrictions set out in these Articles

**"Offering Memorandum"** means an offering memorandum relating to Participating Shares of any Class and/or Series as amended or supplemented from time to time subject to and in accordance with these Articles.

**"Ordinary Resolution"** means a resolution passed by a simple majority of the votes of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution.

**"Participating Share"** means a participating redeemable Share in the capital of the Company of US\$0.001 par value and having the rights provided for in these Articles. Participating Shares may be divided into Classes in the discretion of the Directors in accordance with the provisions of these Articles and each Class may be further divided into different Series of Participating Shares and the term "Participating Share" shall include all such Classes and Series of Participating Share.

**"Prohibited Person"** means any person who is restricted from participating in a New Issue pursuant to the Free-Riding and Withholding Interpretation adopted by the Board of Governors of the National Association of Securities Dealers Inc.

**"Redemption Date"** means, in relation to any Class and/or Series of Participating Shares, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time, upon which a Member is entitled to require the redemption of Participating Shares.



of that Class and/or Series.

- "Redemption Fee"** means such fee (if any) payable by a Member to the Company on a redemption of Participating Shares, as the same may be determined by the Directors and disclosed to the Member at the time of its subscription for such Participating Shares.
- "Redemption Notice"** means a notice in a form approved by the Directors by which a holder of Participating Shares is entitled to require the Company to redeem its Participating Shares.
- "Redemption Price"** means the price determined in accordance with these Articles at which redeemable Participating Shares of the relevant Class and/or Series may be redeemed.
- "Register of Members"** means the register of Members, which shall be maintained in accordance with the Statute and includes (except where otherwise stated) any branch or duplicate Register of Members.
- "Registered Office"** means the registered office for the time being of the Company.
- "Sales Charge"** means such sales charge (if any) determined by the Directors as being payable by a subscriber on a subscription for Participating Shares of any Class and/or Series.
- "Seal"** means the common seal of the Company and includes every duplicate seal.
- "Separate Account"** means a separate internal account of the Company which the Directors may establish and cause to be maintained in accordance with these Articles.
- "Series"** means a separate series of Participating Share (and includes any sub-series of any such series).
- "Share" and "Shares"** means a share or shares of any class or series in the Company, including a Management Share, a Participating Share or a New Issue Share, as well as any fraction of a Share.
- "Share Rights"** means, with respect to the Participating Shares of any Class or Series in issue, the class rights for the time being applicable to such Participating Shares or other terms of offer for the time being applicable to such Participating Shares whether set out in the Offering Memorandum, any subscription agreement or otherwise (including any representations, warranties or other disclosure relating





to the offer or holding of such Participating Shares).

**"Special Resolution"** has the same meaning as in the Statute and includes a unanimous written resolution.

**"Statute"** means the Companies Law (2013 Revision) of the Cayman Islands.

**"Subscriber"** means the subscriber to the Memorandum.

**"Subscription Date"** means, in relation to Participating Shares of any Class and/or Series, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time upon which a person may subscribe for Participating Shares of that Class and/or Series.

**"Subscription Price"** means the price determined in accordance with these Articles at which Participating Shares of the relevant Class and/or Series may be subscribed.

**"Suspension"** means a determination by the Directors to postpone or suspend (i) the calculation of the Net Asset Value of Participating Shares of any one or more Classes and/or Series (and the applicable Valuation Date) (a **"Calculation Suspension"**); (ii) the issue of Participating Shares of any one or more Classes and/or Series (and the applicable Subscription Date) (an **"Issue Suspension"**); (iii) the redemption by Members (in whole or in part) of Participating Shares of any one or more Classes and/or Series (and the applicable Redemption Date) (a **"Redemption Suspension"**); and/or (iv) the payment (in whole or in part) of any redemption proceeds (even if Valuation Dates and Redemption Dates are not postponed) (a **"Payment Suspension"**).

**"Transfer"** means, in respect of any Share, any sale, assignment, exchange, transfer, pledge, encumbrance or other disposition of that Share, and **"Transferred"** shall be construed accordingly.

**"Treasury Share"** means a Share held in the name of the Company as a treasury share in accordance with the Statute.

**"Valuation Date"** means, in relation to each Class and/or Series of Participating Shares, the day or days determined from time to time by the Directors to be the day or days on which the Net Asset Value per Participating Share of that Class and/or Series is calculated.

**"Valuation Point"** means, with respect to any Class and/or Series, the time or times on the Valuation Date of such Class and/or Series at which the Directors



determine that the Net Asset Value per Participating Share of that Class and/or Series shall be calculated.

1.2 In these Articles:

- (a) the singular number includes the plural number and vice versa;
- (b) the masculine gender includes the feminine gender;
- (c) persons includes corporations;
- (d) "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (e) "shall" shall be construed as imperative and "may" shall be construed as permissive;
- (f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;
- (g) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) the term "and/or" is used herein to mean both "and" as well as "or." The use of "and/or" in certain contexts in no respects qualifies or modifies the use of the terms "and" or "or" in others. "Or" shall not be interpreted to be exclusive, and "and" shall not be interpreted to require the conjunctive — in each case, unless the context otherwise requires;
- (i) any reference to the powers of the Directors shall include, when the context admits, the service providers or any other person to whom the Directors may delegate their powers;
- (j) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;
- (k) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Law;
- (l) sections 8 and 19(3) of the Electronic Transactions Law shall not apply; and
- (m) headings are inserted for reference only and shall be ignored in construing these Articles.



## **2 Commencement of Business**

- 2.1 The business of the Company may be commenced as soon after incorporation as the Directors shall see fit.
- 2.2 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and operation of the Company, including the expenses of registration and the initial offering of Participating Shares.

## **3 Service Providers**

- 3.1 The Directors may appoint any person, firm or corporation to act as a service provider to the Company (whether in general or in respect of any Class and/or Series of Shares) and may entrust to and confer upon any such service providers any of the functions, duties, powers and discretions exercisable by them as Directors, upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit. Without limiting the generality of the foregoing, such service providers may include managers, investment advisers, administrators, registrars, transfer agents, custodians and prime brokers.
- 3.2 Without prejudice to the generality of the preceding Article, the Directors may appoint any person, firm or corporation to act as the Investment Manager with respect to the assets of the Company (whether in general or in respect of any Class and/or Series of Shares). The Directors may entrust to and confer upon the Investment Manager any of the functions, duties, powers and discretions exercisable by them as Directors upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit.

## **4 Rights attaching to Shares**

- 4.1 The Management Shares shall have the following rights:
- (a) as to voting: the holder of a Management Share shall (in respect of such Management Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company; and
  - (b) as to capital: a Management Share shall confer upon the holder the right in a winding up to repayment of capital as provided in these Articles but shall confer no other right to participate in the profits or assets of the Company; and
  - (c) as to income: no dividends shall be payable on the Management Shares.
- 4.2 The Participating Shares shall have the following rights:



- (a) as to voting: the holder of a Participating Share shall not (in respect of such Participating Share) have the right to receive notice of, attend at or vote as a Member at any general meeting of the Company, but may vote at a separate Class meeting convened in accordance with these Articles; and
- (b) as to capital: a Participating Share shall confer upon the holder thereof the right in a winding up to participate in the surplus assets of the Company by reference to the Separate Account attributable to the relevant Class or Series of Participating Shares as provided in these Articles; and
- (c) as to income: the Participating Shares shall confer on the holders thereof the right to receive dividends as provided in these Articles.

4.3 Notwithstanding Articles 4.1(a) and 4.2(a), if the Company, in its capacity as a limited partner of the Master Fund, is called upon to approve, vote or consent to any matter to which it would be entitled to vote as a limited partner of the Master Fund and is required to seek the consent of the holders of Participating Shares in connection with any such approval, vote or consent pursuant to the constitutional documents of the Master Fund (a "**Master Fund Consent Transaction**"), each holder of a Participating Share shall have the right (in respect of such Participating Share), to the exclusion of the holders of the Management Shares (in respect of such Management Shares), to receive notice of, and vote on, the Master Fund Consent Transaction (the "**Special Voting Right**"). The voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote. For every Master Fund Consent Transaction, the Directors shall cause the Company to vote its limited partnership interest in the Master Fund proportionally for and against such matter in the same proportion that the Members holding Participating Shares voted for and against such matter pursuant to the Special Voting Right.

4.4 In relation to any Special Voting Right pursuant to Article 4.3, unless otherwise determined by the Directors in their sole discretion, the procedure in this Article 4.4 shall be invoked. The Directors shall provide written notice of the proposed Master Fund Consent Transaction to the Members holding Participating Shares and shall specify a deadline (the "**Consent Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written refusal to consent to the proposed Master Fund Consent Transaction. The holders of Participating Shares in respect of which an express written refusal to consent has not been received by the Consent Date shall be deemed to have consented in writing to the proposed Master Fund Consent Transaction.

## 5 Share Capital

5.1 Subject to these Articles, the Directors may allot, issue, grant options or warrants over, or otherwise dispose of Shares in separate classes and/or series with different terms, preferences, privileges or special rights including, without limitation, with respect to investment strategy and/or policy, participation in assets, profits and losses of the Company, voting, fees charged (including



management, performance and incentive fees), redemption privileges, allocation of costs and expenses (including, without limitation, the costs and expenses incurred in any hedging activities and any profits and losses arising therefrom) as they think proper. Subject to the Statute, these Articles and any applicable subscription agreement, any Share Rights (other than those set out in these Articles or set out in a Special Resolution) may be varied by either the Directors or by Ordinary Resolution. Notwithstanding the foregoing, the Subscriber shall have the power to:

- (a) issue one Share to itself;
- (b) transfer that Share by an instrument of transfer to any person; and
- (c) update the Register of Members in respect of the issue and transfer of that Share.

5.2 On or before the allotment of any Participating Share the Directors shall resolve the Class and/or Series to which such Participating Share shall be classified and may, prior to the issue of any Participating Share, reclassify such Participating Share. Each Class and/or Series shall be specifically identified. Subject to the Statute and these Articles, the Directors may at any time re-name any Participating Share.

5.3 Notwithstanding the currency in which the par value of the Participating Shares is denominated, the Directors may specify any currency as the currency in which the Subscription Price, Redemption Price and Net Asset Value of Participating Shares of a Class and/or Series is calculated.

5.4 The Company shall not issue Shares to bearer.

5.5 Fractional Shares may be issued.

5.6 Shares shall only be issued as fully paid-up.

5.7 No right of pre-emption or first refusal shall attach to any Shares.

5.8 New Issue Shares shall not be issued to a Prohibited Person.

## **6 Allotment and Issue of Participating Shares**

6.1 The Directors may from time to time allot and issue Participating Shares of any Class and/or Series. The Directors may, in their discretion, refuse to allot and issue any Participating Shares, and shall not issue any Participating Shares to or for the account of an investor who is not an Eligible Investor. If the Directors have declared a Calculation Suspension or Issue Suspension, no Participating Shares of that Class or Series (as appropriate) shall be issued until the relevant Suspension has ended.

6.2 The Directors shall determine the Subscription Price at the time of issue of the first issue of Participating Shares of any Class and/or Series. Thereafter, the Directors may allot and issue



Participating Shares of the same Class and/or Series on any Subscription Date provided that such additional Participating Shares are issued at a Subscription Price equal to not less than the Net Asset Value per Participating Share of such Class and/or Series calculated on the relevant Subscription Date (or if the Subscription Date is not also a Valuation Date then on the immediately preceding Valuation Date).

- 6.3 The Directors may add to the Subscription Price per Participating Share (before making any rounding adjustment) an amount which they consider to be an appropriate allowance to reflect fiscal and purchase charges which would be incurred for the account of the Company in investing an amount equal to the Subscription Price. The Directors may also add, in their discretion, a Sales Charge and/or an amount equal to any stamp duty and any other governmental taxes or charges payable by the Company with respect to the issue of such Participating Shares.
- 6.4 An applicant for Participating Shares shall pay for such Participating Shares in such currencies, in such manner, at such time, in such place and to such person acting on behalf of the Company as the Directors may from time to time determine.
- 6.5 Subject to the terms of any subscription agreement, an application for Participating Shares shall be irrevocable by an applicant for Participating Shares once it has been received by the Company. Participating Shares shall be treated as having been issued with effect from the relevant Subscription Date notwithstanding that the subscriber for those Participating Shares may not be entered in the Register of Members until after the Subscription Date.
- 6.6 Participating Shares shall be issued in such minimum numbers as the Directors may specify either generally or in any particular case; likewise the Directors may from time to time prescribe an amount as the minimum subscription amount.
- 6.7 The Directors may resolve to accept non-cash assets in satisfaction (in whole or in part) of the Subscription Price.
- 6.8 The Directors may require an applicant for Participating Shares to pay to the Company for the benefit of any selling agent such selling commissions or such organisational charges as may have been disclosed to such applicant. The Directors may differentiate between applicants as to the amount of such selling commissions or such organisational charges.
- 6.9 The Company may, in so far as the Statute permits, pay a commission to any person in consideration of that person subscribing or agreeing to subscribe whether absolutely or conditionally for any Participating Shares. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Participating Shares. The Company may also on any issue of Participating Shares pay such brokerage as may be lawful.

## **7 Separate Accounts**

- 7.1 The Directors shall have the power to establish and maintain, with respect to Participating Shares of any Class and/or Series, a Separate Account, to record (purely as an internal accounting



matter) the allocation, on a differentiated basis, of the assets and liabilities of the Company to the holders of Participating Shares of any such Class and/or a Series in a manner consistent with the methodology set forth in the Offering Memorandum and the rights otherwise attaching to the Participating Shares.

- 7.2 The proceeds from the issue of Participating Shares of any Class and/or Series shall be applied in the books of the Company to the Separate Account established for Participating Shares of that Class and/or Series. The assets and liabilities and income and expenditure attributable to that Separate Account shall be applied to such Separate Account and, subject to the provisions of these Articles, to no other Separate Account. In the event that the assets of a Separate Account referable to any Class and/or Series are exhausted, any and all unsatisfied claims which any Members or former Members referable to that Class and/or Series have against the Company shall be extinguished. The Members or former Members referable to a Class and/or Series shall have no recourse against the assets of any other Separate Account established by the Company.
- 7.3 Where any asset is derived from another asset (whether cash or otherwise), such derivative asset shall be applied in the books of the Company to the same Separate Account as the asset from which it was derived, and on each revaluation of an asset the increase or diminution in value shall be applied to the same Separate Account and, subject to the provisions of these Articles, to no other Separate Account.
- 7.4 In the case of any asset or liability of the Company which the Directors do not consider is attributable to a particular Separate Account, the Directors shall have discretion to determine the basis upon which any such asset or liability shall be allocated between or among Separate Accounts.
- 7.5 The Directors may, in the books of the Company, allocate assets and liabilities to and from Separate Accounts if, as a result of a creditor proceeding against certain of the assets of the Company or otherwise, a liability would be borne in a different manner from that in which it would have been borne if applied under the foregoing Articles.
- 7.6 The Directors may from time to time transfer, allocate or exchange an asset or liability from one Separate Account to another Separate Account provided that at the time of such transfer, allocation or exchange the Directors form the opinion (in good faith) that the value in money or money's worth of each such asset or liability transferred, allocated or exchanged is not significantly less or more than the value in money or money's worth (referred to in these Articles as "proper value") received by the Separate Account from which such asset or liability is transferred, allocated or exchanged except only as is otherwise provided by these Articles.

## **8 Determination of Net Asset Value**

- 8.1 The Net Asset Value and Net Asset Value per Participating Share of each Class and/or Series shall be determined by or on behalf of the Directors as at the relevant Valuation Point on each relevant Valuation Date.





- 8.2 In calculating the Net Asset Value and the Net Asset Value per Participating Share, the Directors shall apply such generally accepted accounting principles as they may determine.
- 8.3 The assets and liabilities of the Company shall be valued in accordance with such policies as the Directors may determine. Absent bad faith or manifest error, any valuation made pursuant to these Articles shall be binding on all persons.
- 8.4 Unless otherwise determined by the Directors in any resolution creating a Class and/or Series of Participating Shares or as otherwise disclosed in any Offering Memorandum, the Net Asset Value per Participating Share of each Class (or Series) shall be determined by allocating *pro rata* the Net Asset Value, as at the relevant Valuation Point, of the Company and/or of the relevant Separate Account among each Class and/or Series, adjusting the amount so calculated to reflect any fees, costs, foreign exchange items or other assets or liabilities which are properly attributable to a specific Class and/or Series and then by dividing the resultant amount by the number of Participating Shares of such Class and/or Series then in issue.
- 8.5 The Directors may determine that the Net Asset Value of any Class and/or Series shall be definitively determined on the basis of estimates and that such determination shall not be modified to reflect final valuations.
- 8.6 Any expense or liability may be amortised over such period as the Directors may determine.
- 8.7 The Directors may establish such reserves as they deem reasonably necessary for Company expenses and any other contingent Company assets or liabilities, and may, upon the reversal or release of such reserves, apply any monies resulting therefrom in such manner as they may, in their absolute discretion, determine.
- 8.8 Net Asset Value per Participating Share shall be rounded to the nearest cent or such other amount as the Directors may determine and the benefit of any such roundings may be retained by the Company.
- 8.9 The Directors may cause the Company to issue new Participating Shares at par or to compulsorily redeem at par such number of Participating Shares as they consider necessary to address, in such manner as they consider equitable, any prior miscalculation of Net Asset Value or Net Asset Value per Participating Share. The Company shall not be required to pay to the holder the redemption proceeds of any such compulsorily redeemed Participating Shares, which proceeds shall be retained by the Company.

## 9 Suspensions

- 9.1 The Directors may, from time to time, in the circumstances disclosed in the Offering Memorandum, declare a Suspension with respect to any one or more Classes and/or Series of Participating Shares.



9.2 The Directors shall promptly notify all affected Members of any such Suspension and shall promptly notify such Members upon termination of such Suspension.

## 10 Transfer of Shares

10.1 Subject to Article 5.1, Shares may not be Transferred without the prior written approval of the Directors (which may be withheld for any or no reason) provided that the Directors may waive this requirement to the extent that they deem appropriate in connection with the listing of any Class or Series of Share on a stock exchange.

10.2 The Directors shall not register any Transfer of any Share to any person who is, in the opinion of the Directors, not an Eligible Investor.

10.3 Any proposed transferee shall provide to the Directors such information and documents as the Directors may request, including, without limitation, such documents or information as the Directors deem necessary or desirable:

- (a) to enable the Directors to determine that the proposed transferee is an Eligible Investor; and
- (b) to enable the Company to comply with all applicable laws, including anti-money laundering laws.

10.4 The instrument of Transfer of any Share shall be in writing and shall be executed by or on behalf of the transferor (and, if the Directors so require, signed by or on behalf of the transferee). The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

## 11 Transmission of Shares

11.1 If a Member dies, the survivor or survivors (where the Member was a joint holder) or his or her legal personal representatives (where the Member was a sole holder) shall be the only persons recognised by the Company as having any title to the Member's interest in the Company. The death of any Member shall not operate to relieve, waive or reduce any liabilities attaching to the Member's Shares at the time of death and such liabilities shall continue to bind any survivor or survivors, or any personal representative, as the case may be.

11.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is an Eligible Investor may, upon delivery to the Directors of such evidence as may from time to time be required by them of:

- (a) such person's entitlement to such Shares; and/or
- (b) such person's status as an Eligible Investor,



elect, either to become the holder of such Share or to have such Share Transferred to another Eligible Investor nominated by such person. If such person elects to become the holder of such Share, such person shall give notice in writing to the Directors to that effect, but the Directors shall, in either case, have the same right to decline registration of such person as a holder of such Share as they would have had in the case of a Transfer of the Share by that Member before his or her death or bankruptcy, or liquidation or dissolution, as the case may be.

- 11.3 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is not an Eligible Investor shall not be registered as the holder of such Share and shall promptly Transfer such Share to an Eligible Investor in accordance with these Articles.
- 11.4 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by Transfer), and who is an Eligible Investor, shall be entitled to the same dividends and other advantages to which such person would be entitled if such person were the registered holder of such Share. However, the person shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him become the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days the Directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

## 12 Redemption of Shares

- 12.1 Subject to any provisions relating to a specific Class and/or Series as set out in the Offering Memorandum or these Articles or in any resolution constituting a Class and/or Series or otherwise forming part of the special rights of such Participating Shares, a Member may require the redemption of all or any of such Member's Participating Shares by serving a Redemption Notice on the Company. Unless timely receipt is waived by the Directors in a particular case, a Redemption Notice shall be required to be received on or before a Redemption Date with respect to such Participating Shares (or such number of days prior to such Redemption Date as may be determined by the Directors). Any Member redeeming Participating Shares shall submit to the Directors the share certificate (if any) issued in respect of those Participating Shares. The Company shall redeem such Participating Shares at the Redemption Price, being an amount equal to the Net Asset Value per Participating Share of the relevant Class and/or Series prevailing on the relevant Redemption Date (or if the Redemption Date is not a Valuation Date then on the immediately preceding Valuation Date) subject to any deductions, holdbacks or adjustments provided for in these Articles and/or the Offering Memorandum.



- 12.2 The Directors may deduct any Redemption Fee from the Redemption Price. The Directors may also deduct such amount which they consider to be an appropriate allowance to reflect fiscal and sale charges which would be incurred for the account of the Company in realising assets or closing out positions to provide funds to meet any redemption request.
- 12.3 A Member may not withdraw a Redemption Notice once submitted to the Company unless (a) the Directors shall have declared a Calculation Suspension or Redemption Suspension or (b) the Directors determine (in their sole discretion) to permit the withdrawal of such redemption request (which they may do in whole or in part). If a relevant Suspension has been declared by the Directors, the right of a Member to have its Participating Shares redeemed shall be suspended and during the period of Suspension the Member may withdraw its Redemption Notice. Any withdrawal of the Redemption Notice shall be made in writing and shall only be effective if actually received by the Company before the termination of the period of the Redemption Suspension or Calculation Suspension, as applicable. If the Redemption Notice is not withdrawn, any Participating Shares the redemption of which has been suspended shall be redeemed once the relevant Suspension has ended at the Redemption Price for Participating Shares of the relevant Class and/or Series calculated on the next Redemption Date following the end of the relevant Suspension.
- 12.4 The Directors may impose a gate the effect of which is to limit the redemptions of Participating Shares of any Class and/or Series or to limit the redemptions of Participating Shares held by any Member or Members as of any Redemption Date to such extent and in such manner as is disclosed in the Offering Memorandum. If the Directors determine to limit redemptions, the Directors may determine the manner in which such gated redemption requests will be dealt with on any subsequent Redemption Date.
- 12.5 If the Company is required by the laws of any relevant jurisdiction to make a withholding from any redemption monies payable to the holder of Participating Shares the amount of such withholding shall be deducted from the redemption monies otherwise payable to such person.
- 12.6 No redemption of part of a Member's holding of Participating Shares of any one Class and/or Series may be made if, as a result thereof, such Member would hold fewer Participating Shares of such Class and/or Series than such minimum number or value of Participating Shares of such Class and/or Series as may from time to time be specified (either generally or in any particular case or cases) by the Directors. If such partial redemption would reduce such Member's holding of Participating Shares to less than such minimum holding, the Directors may, in their discretion, elect to compulsorily redeem all of such Member's Participating Shares.
- 12.7 The Company may, in the absolute discretion of the Directors, refuse to make a redemption payment to a Member if the Directors suspect or are advised that the payment of any redemption proceeds to such Member may result in a breach or violation of any anti-money laundering law by any person in any relevant jurisdiction, or if such refusal is necessary to ensure the compliance by the Company, its Directors, the Administrator or any other service provider of the Company with any anti-money laundering law in any relevant jurisdiction.



- 12.8 Any amount payable to a Member for the redemption of Participating Shares shall be paid in such currency or currencies as the Directors may determine. Subject to any Payment Suspension, the Company shall remit redemption proceeds (net of the costs of remittance) by cheque or wire transfer within such period or periods as the Directors shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period or periods as the Directors shall determine. In the absence of directions as to payment the Company may remit redemption proceeds by cheque to the address of the Member appearing on the Register of Members or by wire transfer to such account as the Directors deem appropriate in the circumstances. The Company shall not be liable for any loss resulting from this procedure.
- 12.9 On any redemption of Participating Shares the Directors shall have the power to satisfy (in whole or in part) the Redemption Price (and any other sums payable on redemption as provided in these Articles) owing on the redemption of such Participating Shares by dividing *in specie* the whole or any part of the assets of the Company (including, without limitation, shares, debentures, or securities of any other company whether or not held by the Company on the Redemption Date in question) and either (i) distributing such assets directly to the redeeming shareholder, and/or (ii) distributing or allocating such assets to a liquidating account or other similar mechanism to be managed and/or liquidated at the discretion of the Directors.
- 12.10 Participating Shares shall be treated as having been redeemed with effect from the relevant Redemption Date irrespective of whether or not a Member has been removed from the Register of Members or the Redemption Price has been determined or remitted. Accordingly, on and from the relevant Redemption Date, Members in their capacity as such will not be entitled to or be capable of exercising any rights arising under these Articles with respect to Participating Shares being redeemed (including any right to receive notice of, attend or vote at any meeting of the Company) save the right to receive the Redemption Price and any dividend which has been declared prior to the relevant Redemption Date but not yet paid (in each case with respect to the Participating Shares being redeemed). Such Members will be treated as creditors of the Company with respect to the Redemption Price and will rank accordingly in the priority of the Company's creditors.
- 12.11 Once a Participating Share is redeemed it shall be available for re issue and, until re issue, shall form part of the authorised and unissued share capital of the Company.
- 12.12 Upon the written request of a Member or prospective Member in a form acceptable to the Directors, the Company may, in the discretion of the Directors, accept a standing redemption request from such Member or prospective Member pursuant to which the Company shall agree (without assuming any liability for failing to do so) to use its commercially reasonable efforts to redeem such Member's Participating Shares to the extent necessary to ensure that such Member does not own over a specified percentage of the outstanding Participating Shares of the Company or any Class and/or Series thereof; such percentage to be the percentage identified by such Member or prospective Member in such written request as being the percentage which such Member's or prospective Member's ownership cannot exceed without material risk of such



Member or prospective Member being in violation of applicable law or regulation. Any such written request may be revoked by notice in writing to the Company from the affected Member.

- 12.13 No amendment to these Articles made after a Redemption Date shall affect a Member with respect to Participating Shares of that Member which have been redeemed, or are being treated as redeemed, on or prior to that Redemption Date.
- 12.14 Unless otherwise provided in the Offering Memorandum, unremitted redemption proceeds shall not bear interest against the Company and redeemed Participating Shares shall not participate in the profits and losses of the Company with effect from the relevant Redemption Date.

### 13 Compulsory Redemption

- 13.1 The Directors may cause the Company to redeem any or all of the Participating Shares held by any person at the appropriate Redemption Price in the circumstances disclosed in the Offering Memorandum. If the Directors determine compulsorily to redeem any Participating Shares under this Article they shall give the holder of the Participating Shares such notice of the redemption as they shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period as the Directors shall determine.
- 13.2 The Directors may cause a compulsory redemption during any period for which a Redemption Suspension has been declared.
- 13.3 Without prejudice to the generality of the foregoing, the Company may (without notice) compulsorily redeem the Participating Shares of any Member and, on behalf of such Member, apply the proceeds of redemption in paying for new Participating Shares to give effect to any exchange, conversion or roll-up policy disclosed to Members pursuant to which Participating Shares of one Class or Series (the "**Old Shares**") may, at the option of the Company, be exchanged for Participating Shares of another Class or Series (the "**New Shares**") by means of the redemption of the Old Shares and the immediate re-subscription of the redemption proceeds in paying up the New Shares.

### 14 FATCA

- 14.1 Notwithstanding any other Article, in order to comply with FATCA, any Director shall be entitled to release and/or disclose on behalf of the Company to the Cayman Islands Tax Information Authority or equivalent authority (the "**TIA**") and any other foreign government body as required by FATCA, any information in its or its agents' or delegates' possession regarding a Member including, without limitation, financial information concerning the Member's investment in the Company, and any information relating to any shareholders, principals, partners, beneficial owners (direct or indirect) or controlling persons (direct or indirect) of such Member. Any such Director may also authorise any third party agent, including but not limited to, the Investment Manager or Administrator, to release and/or disclose such information on behalf of the Company.





- 14.2 In order to comply with FATCA and, if necessary, to reduce or eliminate any risk that the Company or its Members are subject to withholding taxes pursuant to FATCA or incur any costs or liabilities associated with FATCA, the Directors may cause the Company to undertake any of the following actions:
- (a) compulsorily redeem any or all of the Shares held by a Member either (i) where the Member fails to provide (in a timely manner) to the Company, or any agent or delegate of the Company, including but not limited to, the Investment Manager or the Administrator, any information requested by the Company or such agent or delegate pursuant to FATCA; or (ii) where there has otherwise been non-compliance by the Company with FATCA whether caused, directly or indirectly, by the action or inaction of such Member, or any related person, or otherwise;
  - (b) deduct from, or hold back, redemption or repurchase proceeds, dividend payments or any other distributions, in order to:
    - (i) comply with any requirement to apply and collect withholding tax pursuant to FATCA;
    - (ii) allocate to a Member an amount equal to any withholding tax imposed on the Company as a result of the Member's, or any related person's, action or inaction (direct or indirect), or where there has otherwise been non-compliance by the Company with FATCA;
    - (iii) ensure that any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) are recovered from the Member(s) whose action or inaction (directly or indirectly, including the action or inaction of any person related to such Member) gave rise or contributed to such costs or liabilities;
  - (c) in order to give effect to the requirements imposed upon the Company by FATCA, including the actions contemplated by articles 14.2(a) and 14.2(b), the Directors may:
    - (i) create separate classes and/or series of Shares ("**FATCA Shares**"), with such rights and terms as the Directors may in their sole discretion determine, and following the compulsory redemption of some or all of a Member's Shares may immediately apply such redemption proceeds in subscribing for such number of FATCA Shares as the Directors determine; and/or
    - (ii) may re-name any number of Shares (whether issued or unissued) as FATCA Shares, create a Separate Account with respect to such FATCA Shares and apply any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) to such Separate Account; and/or





- (iii) allocate any FATCA costs, debts, expenses, obligations, liabilities or withholding tax among Separate Accounts on a basis determined solely by the Directors; and/or
- (iv) adjust the Net Asset Value per Share of any relevant Shares (including any FATCA Share).

## 15 Designated Investments

- 15.1 The Directors may, in their discretion, classify certain of the Company's investments which are deemed by the Directors or the Investment Manager to be illiquid or the value of which is not readily or reliably ascertainable or which may have a relatively long-term investment horizon as "**Designated Investments**". Once so classified, Designated Investments may, in the discretion of the Directors, be represented by a separate Class and/or Series of Participating Shares which, unless otherwise determined by the Directors, shall be allotted only to those Members who are holders of Participating Shares at the time of such designation. The gains and losses attributable to Designated Investments may, in the discretion of the Directors, be segregated and separately calculated and attributed amongst Members holding Shares of the relevant Class or Series in such manner as is consistent with the relevant provisions of the Offering Memorandum. Participating Shares of any such separate Class and/or Series may be issued by way of bonus or by way of conversion or exchange of all or part of a Member's holding of Participating Shares of another Class and/or Series. Similarly, Shares of a Designated Investment Class and/or Series may be converted or exchanged back into Participating Shares of the original Class and/or Series upon the Directors making a determination that the relevant investment no longer qualifies as a Designated Investment. The power to convert or exchange Participating Shares of one Class and/or Series into Participating Shares of another Class and/or Series may be effected by the Directors in any manner permitted by the Statute and the Articles, including the compulsory redemption of Participating Shares of one Class and/or Series and the application of the proceeds of redemption in subscribing for Participating Shares of the other Class and/or Series or by redesignating a portion of the Participating Shares of any existing Class and/or Series as thereafter belonging to a new Class and/or Series. Shares of a Class or Series of Shares which represent Designated Investments shall not, unless the Directors otherwise determine, be redeemable at the option of the Members holding such Participating Shares. Where investments are classified as Designated Investments and Participating Shares of a separate Class and/or Series are issued by way of bonus, the requirement of these Articles to ensure proper value is transferred to the Separate Account of the Participating Shares of the original Class and/or Series to which such investments were originally allocated shall not apply.

## 16 Purchase and Surrender of Shares

- 16.1 Subject to the provisions of the Statute and without prejudice to these Articles, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.



16.2 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

16.3 The Directors may accept the surrender for no consideration of any fully paid Share.

## 17 Treasury Shares

17.1 The Directors may, prior to the purchase, redemption or surrender of any Share, determine that such Share shall be held as a Treasury Share.

17.2 The Directors may determine to cancel a Treasury Share or transfer a Treasury Share on such terms as they think proper (including, without limitation, for nil consideration).

## 18 Variation of Share Rights

18.1 Subject to the Statute, these Articles and any applicable subscription agreement, all or any of the Share Rights applicable to any Class or Series of Participating Shares in issue (unless otherwise provided by the terms of issue of those Participating Shares) may (whether or not the Company is being wound up) be varied without the consent of the holders of the issued Participating Shares of that Class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation may be made with the prior consent in writing of the holders of not less than two-thirds by Net Asset Value of such Participating Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Participating Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of such Participating Shares. To any such meeting all the provisions of these Articles as to general meetings shall *mutatis mutandis* apply, but so that any holder of a Participating Share present in person or by proxy may demand a poll, and the quorum for any such meeting shall be Members holding not less than twenty per cent. by Net Asset Value of the issued Participating Shares of the relevant Class or Series. At any Class meeting, the voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote.

18.2 For the purposes of a Class consent, the Directors may treat two or more or all the Classes or Series of Participating Shares as forming one Class or Series if the Directors consider that such Classes or Series would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes or Series.

18.3 Where the Shares of any Class or Series (the "**First Class**") rank, or will on issue rank, *pari passu* with the Shares of another Class or Series (the "**Second Class**") with respect to participation in the same pool of profits or assets of the Company on a winding up, the rights of the First Class shall be deemed to be varied by any variation of or creation of rights in the Second



Class (including on initial issue) which gives the Second Class priority over the First Class on a winding up of the Company.

18.4 Subject to the foregoing Articles, the Share Rights applicable to any Class or Series of Shares in issue shall (unless otherwise expressly provided by the conditions of issue of such Shares) be deemed not to be varied by:

- (a) the creation, allotment or issue of further Shares ranking pari passu therewith and which may be issued with the benefit of the terms referred to below;
- (b) the purchase or redemption of any Shares;
- (c) the exercise of the powers to allocate assets and charge liabilities to the various Separate Accounts or any of them and to transfer the same to and from the various Separate Accounts or any of them, as provided for in these Articles;
- (d) any reduction or waiver of any fees (including early redemption, management or performance fees) chargeable or allocable to any Class or Series of Shares;
- (e) any reduction or waiver of any redemption notice, gate or lock-up period applicable to any Class or Series of Shares; or
- (f) any variation or waiver contemplated by or provided for in the Offering Memorandum applicable to the relevant Class and/or Series.

18.5 In relation to any Class or Series consent required pursuant to Article 18.1, the Directors in their discretion may invoke the following procedure (the "**Negative Consent Procedure**"). The Directors shall provide written notice of the proposed variation (the "**Proposal**") to the Members of the affected Class or Series and shall specify a deadline (the "**Redemption Request Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written request for redemption of some or all of their Participating Shares of the affected Class and/or Series on the Redemption Date (the "**Specified Redemption Date**") specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the "**Effective Date**") shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Participating Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the "**Affected Shares**") shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the "**Negative Consent Shares**"). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under Article 18.1 with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favour of the Proposal on the Effective Date.



## 19 Variation of Terms

The Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a Member to waive or modify the terms applicable to such Member's subscription for Participating Shares (including those relating to management and performance fees and redemption terms) without obtaining the consent of any other Member; provided that such waiver or modification does not amount to a variation of the rights attaching to the Participating Shares of such other Members.

## 20 Certificates for Shares

- 20.1 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or another person authorised by the Directors. The Directors may authorise certificates to be issued with the authorised signature(s) affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and, subject to these Articles, no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.
- 20.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- 20.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) on delivery up of the old certificate.

## 21 Register of Members

- 21.1 The Company shall maintain or cause to be maintained the Register of Members.
- 21.2 The Directors may determine that the Company shall maintain one or more branch registers of Members in accordance with the Statute. The Directors may also determine which register of Members shall constitute the principal register and which shall constitute the branch register or registers, and to vary such determination from time to time.

## 22 Closing Register of Members and Fixing Record Date

- 22.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Directors may provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed thirty days.



- 22.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of, or to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any dividend or in order to make a determination of Members for any other proper purpose.
- 22.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to receive payment of a dividend, the date on which notice of the meeting is sent or the date on which the resolution of the Directors declaring such dividend is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

### **23 Non Recognition of Trusts**

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the registered holder.

- 23.1 if it is not paid all the provisions of these Articles shall apply as if that amount had become due and payable by virtue of a call.
- 23.2 The Directors may issue Shares with different terms as to the amount and times of payment of calls, or the interest to be paid.
- 23.3 The Directors may, if they think fit, receive an amount from any Member willing to advance all or any part of the monies uncalled and unpaid upon any Shares held by it, and may (until the amount would otherwise become payable) pay interest at such rate as may be agreed upon between the Directors and the Member paying such amount in advance.
- 23.4 No such amount paid in advance of calls shall entitle the Member paying such amount to any portion of a dividend declared in respect of any period prior to the date upon which such amount would, but for such payment, become payable.

### **24 Lien on Shares**

- 24.1 The Company shall have a first and paramount lien on all Shares (whether fully paid-up or not) registered in the name of a Member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such Member or such Member's estate, either alone or jointly with any other person, whether a Member or not, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The registration of a Transfer of any such Share shall operate as a waiver of the Company's lien thereon. The Company's lien on a Share shall also extend to any amount payable in respect of that Share.



- 24.2 The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, if a sum in respect of which the lien exists is presently payable, and is not paid within fourteen clear days after notice has been given to the holder of the Shares, or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold.
- 24.3 To give effect to any such sale the Directors may authorise any person to execute an instrument of Transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The purchaser or such purchaser's nominee shall be registered as the holder of the Shares comprised in any such Transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Shares be affected by any irregularity or invalidity in the sale or the exercise of the Company's power of sale under these Articles.
- 24.4 The net proceeds of such sale after payment of costs, shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and any balance shall (subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

## **25 Amendments of Memorandum and Articles and Alteration of Capital**

- 25.1 The Company may, by Ordinary Resolution:
- (a) increase its share capital by such sum and with such rights, priorities and privileges annexed thereto, as the resolution shall prescribe;
  - (b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;
  - (c) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum; and
  - (d) cancel any Shares that at the date of the passing of the resolution have not been taken or agreed to be taken by any person.
- 25.2 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of these Articles with reference to liens, Transfer, transmission and otherwise as the Shares in the original share capital.
- 25.3 Subject to the provisions of the Statute and the provisions of these Articles as regards the matters to be dealt with by Ordinary Resolution the Company may, by Special Resolution:
- (a) change its name;
  - (b) alter or add to these Articles;





- (c) alter or add to the Memorandum with respect to any objects, powers or other matters specified therein; and
- (d) reduce its share capital or any capital redemption reserve fund.

## **26 Registered Office**

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

## **27 General Meetings**

- 27.1 All general meetings other than annual general meetings shall be called extraordinary general meetings. The Directors may call general meetings.
- 27.2 The Company may but shall not be obliged to hold a general meeting in each year as its annual general meeting, and shall specify the meeting as such in the notice calling it. Any annual general meeting shall be held at such time and place as the Directors shall determine.

## **28 Notice of General Meetings**

- 28.1 At least five Business Days' notice shall be given of any general meeting. Every notice shall be exclusive of the day on which it is given or deemed to be given and of the day on which the meeting is to be held and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of these Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:
  - (a) in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and
  - (b) in the case of an extraordinary general meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety five per cent. in par value of the Shares giving that right.
- 28.2 The accidental omission to give notice of a general meeting to, or the non receipt of notice of a meeting by, any person entitled to receive notice thereof shall not invalidate the proceedings of that meeting.

## **29 Proceedings at General Meetings**

- 29.1 No business shall be transacted at any general meeting unless a quorum is present. A quorum shall be one or more Members (present in person, by proxy or authorised corporate





representative, as the case may be) entitled to attend and vote and representing not less than twenty per cent. in par value of all of the Shares in issue and carrying the right to vote at the meeting.

- 29.2 A person may, with the consent of the Directors, participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.
- 29.3 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.
- 29.4 If a quorum is not present within half an hour from the time appointed for the meeting or if during such a meeting a quorum ceases to be present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time or such other place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
- 29.5 The chairman, if any, of the board of Directors shall preside as chairman at every general meeting of the Company, or if there is no such chairman, or if the chairman shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.
- 29.6 If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairman of the meeting.
- 29.7 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice.
- 29.8 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, the chairman or any Member present in person or by proxy (or in the case of a non-natural person, by its duly authorised representative or by proxy) demands a poll.
- 29.9 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority,



an entry to that effect in the minutes of the proceedings of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 29.10 The demand for a poll may be withdrawn.
- 29.11 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.
- 29.12 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.
- 29.13 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a second or casting vote.

### **30 Votes of Members**

- 30.1 Subject to any rights or restrictions attached to any Shares, on a show of hands every Member holding Shares carrying the right to vote on the matter in question who (being an individual) is present in person or by proxy or (if a corporation or other non-natural person) is present by its duly authorised representative or by proxy, shall have one vote and on a poll every such Member shall have one vote for every Share of which he is the holder.
- 30.2 In the case of joint holders of record, the vote of the senior holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. Seniority among joint holders shall be determined by the order in which the names of the holders stand in the Register of Members.
- 30.3 A Member of unsound mind, or in respect of whom an order has been made by any court or authority having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the Member's committee, receiver, curator bonis, or other similar person appointed on such Member's behalf by that court or authority and any such committee, receiver, curator bonis or other similar person may vote by proxy.
- 30.4 No person shall be entitled to vote at any general meeting unless such person is registered as a Member on the record date for such meeting, nor unless all calls or other monies then payable by such person in respect of such Shares have been paid.
- 30.5 No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is purported to be given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.



- 30.6 On a poll or on a show of hands votes may be cast either personally or by proxy. A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall state which proxy is entitled to vote on a show of hands.
- 30.7 A Member holding more than one Share need not cast the votes in respect of its Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain (any such abstentions to count neither for nor against the resolution) from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing it, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which such proxy is appointed either for or against a resolution and/or abstain from voting.

### **31 Proxies**

- 31.1 The instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of such appointor's attorney duly authorised in writing or, if the appointor is a corporation or other non-natural person, under the hand of an officer or other person duly authorised for that purpose. A proxy need not be a Member of the Company.
- 31.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the place and the time (being not later than the time for holding the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting, the instrument appointing a proxy shall be deposited at the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.
- 31.3 The chairman may in any event, at the chairman's discretion, declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted and which has not been declared to have been duly deposited by the chairman, shall be invalid.
- 31.4 The instrument appointing a proxy may be in any usual or common form and may be incorporated within any subscription agreement or other document signed by or on behalf of the Member. An instrument appointing a proxy may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.
- 31.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the Transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or Transfer was received by the



Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

### **32 Corporate Members**

Any corporation or other non-natural person which is a Member of the Company may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as the corporation could exercise if it were an individual Member.

### **33 Shares Beneficially Owned by the Company**

Shares of the Company that are beneficially owned by the Company shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.

### **34 Directors**

There shall be a board of Directors consisting of not less than one person (exclusive of alternate Directors) provided however that the Company may from time to time by Ordinary Resolution increase or reduce the limits in the number of Directors. The first Directors of the Company shall be determined in writing by, or appointed by a resolution of, the Subscriber.

### **35 Powers of Directors**

- 35.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- 35.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.
- 35.3 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. Notwithstanding the foregoing, the Directors shall not exercise the powers specified in this Article in breach of any limits or restrictions specified in the Offering Memorandum.



### **36 Appointment and Removal of Directors**

- 36.1 The Company may, by Ordinary Resolution, appoint any person to be a Director and may, by Ordinary Resolution, remove any Director.
- 36.2 The Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with these Articles as the maximum number of Directors.

### **37 Vacation of Office of Director**

The office of a Director shall be vacated if:

- (a) the Director gives notice in writing to the Company that such Director resigns the office of Director;
- (b) the Director is absent (without being represented by proxy or an alternate Director appointed by such Director) from three consecutive meetings of the board of Directors without special leave of absence from the Directors, and they pass a resolution that such Director has by reason of such absence vacated office;
- (c) the Director dies, becomes bankrupt or makes any arrangement or composition with such Director's creditors generally;
- (d) the Director is or becomes of unsound mind;
- (e) the Director ceases to be a Director by virtue of, or is prohibited from being a Director by, an order made pursuant to any law or regulation binding on the Company; or
- (f) all the other Directors of the Company (being not less than two in number) resolve that such Director should be removed as a Director.

### **38 Proceedings of Directors**

- 38.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be two if there are two or more Directors, and shall be one if there is only one Director. A person who holds office as an alternate Director shall, if such person's appointor is not present, be counted in the quorum. A Director who also acts as an alternate Director shall, if such Director's appointor is not present, count twice towards the quorum.
- 38.2 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall not have a second or casting vote. A Director who is also an alternate Director shall be entitled in the absence of such Director's appointor to a separate vote on behalf of such Director's appointor in addition to such Director's own vote.



- 38.3 A person may participate in a meeting of the Directors or any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors, the meeting shall be deemed to be held at the place where the chairman is located at the start of the meeting.
- 38.4 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of Directors (an alternate Director being entitled to sign such a resolution on behalf of such alternate Director's appointor) shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.
- 38.5 A Director or alternate Director may, or other officer of the Company at the direction of a Director or alternate Director may call a meeting of the Directors by at least two days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held.
- 38.6 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
- 38.7 The Directors may elect a chairman of their board and determine the period for which the chairman is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
- 38.8 All acts done by any meeting of the Directors or of a committee of Directors (including any person acting as an alternate Director) shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or alternate Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director or alternate Director as the case may be.
- 38.9 A Director but not an alternate Director may be represented at any meetings of the board of Directors by a proxy appointed in writing by such Director. The proxy shall count towards the quorum and the vote of the proxy shall for all purposes be deemed to be that of the appointing Director.

### **39 Presumption of Assent**

A Director who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless the Director's dissent shall be entered in the minutes of the meeting or unless the Director shall file such





Director's written dissent from such action with the person acting as the chairman or secretary of the meeting before the close or adjournment thereof or shall forward such dissent by personal delivery, courier or registered post to such person immediately after the close or adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

#### **40 Directors' Interests**

- 40.1 A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with such Director's office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
- 40.2 A Director may act alone or by such Director's firm in a professional capacity for the Company and the Director or such Director's firm shall be entitled to remuneration for professional services as if such Director were not a Director or alternate Director.
- 40.3 A Director or alternate Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by such Director or alternate Director as a director or officer of, or from such Director or alternate Director's interest in, such other company.
- 40.4 No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or transaction by reason of such Director holding office or of the fiduciary relationship thereby established. A Director (or such Director's alternate Director in such Director's absence) shall be at liberty to vote in respect of any contract or transaction in which such Director is interested provided that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by such Director at or prior to such Director's consideration and any vote thereon.
- 40.5 A general notice that a Director or alternate Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or transaction in which such Director has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

#### **41 Minutes**

The Directors shall cause minutes to be made in books kept for the purpose of recording all appointments of officers made by the Directors, all proceedings at meetings of the Company or





the holders of any Class of Shares and of the Directors, and of committees of Directors including the names of the Directors or alternate Directors present at each meeting.

## **42 Delegation of Directors' Powers**

- 42.1 The Directors may delegate any of their powers to any committee consisting of one or more Directors or such other persons as the Directors may designate. They may also delegate to any managing director or any Director holding any other executive office such of their powers as they consider desirable to be exercised by such managing director or any Director provided that an alternate Director may not act as managing director and the appointment of a managing director shall be revoked forthwith if such managing director ceases to be a Director. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers, and may be revoked or altered. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.2 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees or local boards. Any such appointment may be made either collaterally with or to the exclusion of the Directors' powers, shall be subject to any conditions the Directors may impose, and may be revoked or altered. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.3 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised person to delegate all or any of the powers, authorities and discretions vested in such attorney or authorised person.
- 42.4 The Directors may appoint such officers as they consider necessary on such terms, at such remuneration (if any) and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of such officer's appointment an officer may be removed by resolution of the Directors or Members.

## **43 Alternate Directors**

- 43.1 Any Director (other than an alternate Director) may by written notice to the Company appoint any other Director, or any other person willing to act, to be an alternate Director and by written notice to the Company may remove from office an alternate Director so appointed by the Director.



- 43.2 An alternate Director shall be entitled to receive notice of all meetings of Directors and of meetings of committees of Directors of which such alternate Director's appointor is a member, to attend and vote at every such meeting at which the Director appointing such alternate Director is not personally present, and generally to perform all the functions of such alternate Director's appointor as a Director in such Director's absence.
- 43.3 An alternate Director shall cease to be an alternate Director if such alternate Director's appointor ceases to be a Director.
- 43.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.
- 43.5 Subject to the provisions of the Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for such alternate Director's own acts and defaults and shall not be deemed to be the agent of the Director appointing such alternate Director.

#### **44 No Minimum Shareholding for Directors**

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director shall not be required to hold Shares.

#### **45 Remuneration of Directors**

- 45.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any Class of Shares or debentures of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.
- 45.2 The Directors may by resolution approve additional remuneration to any Director for any services other than such Director's ordinary routine work as a Director. Any fees paid to a Director who is also counsel to the Company, or otherwise serves it in a professional capacity, shall be in addition to such Director's remuneration as a Director.

#### **46 Seal**

The Company may, if the Directors so determine, have a Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some officer or other person authorised by the Directors for the purpose.



#### **47 Dividends, Distributions and Reserves**

- 47.1 Subject to the Statute, these Articles, and the special rights attaching to Participating Shares of any Class and/or Series, the Directors may, in their absolute discretion, declare dividends and distributions on Participating Shares of any Class and/or Series in issue and authorise payment of the dividends or distributions out of the relevant Separate Account in respect of such Participating Shares. No dividend or distribution shall be paid except out of the realised or unrealised profits of the Company, or out of the share premium account attributable to Participating Shares of the Class and/or Series in respect of which the dividend or distribution is proposed to be paid, or as otherwise permitted by law.
- 47.2 Except as otherwise provided by the rights attached to Participating Shares, or as otherwise determined by the Directors, all dividends and distributions in respect of Participating Shares of a particular Class and/or Series shall be declared and paid according to Net Asset Value of the Participating Shares of the Class and/or Series that a Member holds. If any Participating Share is issued on terms providing that it shall rank for dividend or distribution as from a particular date, that Participating Share shall rank for dividend or distribution accordingly.
- 47.3 The Directors may deduct and withhold from any dividend or distribution otherwise payable to any Member all sums of money (if any) then payable by it to the Company on account of calls or otherwise or any monies which the Company is obliged by law to pay to any taxing or other authority.
- 47.4 Under no circumstances may the assets (or the income derived from such assets) attributed to a Separate Account in respect of any Class and/or Series be used to pay a dividend in respect of a Separate Account that is attributed to any other Class and/or Series.
- 47.5 The Directors may declare that any dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of shares, debentures or securities of any other company or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.
- 47.6 Any dividend, distribution, interest or other monies payable in cash in respect of Participating Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall (unless the Directors in their sole discretion otherwise determine) be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the Participating Share held by them as joint holders.



- 47.7 Any dividend or distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date of declaration of such dividend or distribution may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the dividend or distribution shall remain as a debt due to the Member. Any dividend or distribution which remains unclaimed after a period of six years from the date of declaration of such dividend or distribution shall be forfeited and shall revert to the Company.
- 47.8 No dividend or distribution shall bear interest against the Company.

#### **48 Capitalisation**

The Directors may capitalise any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members of any Class and/or Series in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and to apply such sum on their behalf in paying up in full unissued Participating Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power to the Directors to make such provisions as they think fit for the case of Participating Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter into an agreement with the Company, on behalf of all of the Members interested, providing for such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

#### **49 Books of Account**

- 49.1 The Directors shall cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account must be retained for a minimum period of five years from the date on which they are prepared. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.
- 49.2 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute, or authorised by the Directors or by the Company in general meeting.



49.3 The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

## **50 Audit**

50.1 The Directors may appoint an Auditor of the Company who shall hold office on such terms as the Directors determine.

50.2 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.

50.3 Any Auditors of the Company shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an ordinary company, and at the next extraordinary general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an exempted company, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

## **51 Notices**

51.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to the Member or to the address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent airmail.

51.2 Where a notice is sent by courier, service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in the Cayman Islands) following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient.



- 51.3 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under these Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 51.4 Notice of every general meeting shall be given in the manner authorised by these Articles to every person shown as holding Shares carrying an entitlement to receive such notice in the Register of Members on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of such person being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for such Member's death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.

## 52 Winding Up

- 52.1 If the Company shall be wound up the liquidator shall apply the assets of the Company in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. The liquidator shall in relation to the assets available for distribution among the Members make in the books of the Company such transfers thereof to and from Separate Accounts as may be necessary in order that the effective burden of such creditors' claims may be shared among the holders of Participating Shares of different Classes and/or Series in such proportions as the liquidator in such liquidator's absolute discretion may think equitable.
- 52.2 Subject to the special rights attaching to Participating Shares of any Class or Series, the balance shall then be applied in the following priority:
- (a) first, to the holders of Management Shares, an amount equal to the par value of such Management Shares; and
  - (b) second, the balance shall be paid to the holders of Participating Shares in proportion to the Net Asset Value of Participating Shares held, subject to a deduction from those Participating Shares in respect of which there are monies due, of all monies due to the Company for unpaid calls, or otherwise.
- 52.3 If the Company shall be wound up (whether the liquidation is voluntary or by or under the supervision of the Court) the liquidator may, with the authority of a resolution or resolutions passed by the holders of Participating Shares (whether as a whole or at separate Class meetings), divide among the Members in specie the whole or any part of the assets of the Company, and whether or not the assets shall consist of property of one kind or shall consist of property of different kinds, and may for such purposes set such value as the liquidator deems fair upon any one or more class or classes of property, and may determine how such division shall be





carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator, with the like authority, shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no Member shall be compelled to accept any shares or other property in respect of which there is a liability.

### **53 Indemnity and Insurance**

- 53.1 Every Director and officer of the Company (which for the avoidance of doubt, shall not include any Auditor), together with every former Director and former officer of the Company (each an "**Indemnified Person**") shall be indemnified out of the assets of the Company against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud, wilful default or Gross Negligence. No Indemnified Person shall be liable to the Company for any loss or damage incurred by the Company as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud, wilful default or Gross Negligence of such Indemnified Person. No person shall be found to have committed actual fraud, wilful default or Gross Negligence under this Article unless or until a court of competent jurisdiction shall have made a finding to that effect.
- 53.2 The Company shall advance to each Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defence of any action, suit, proceeding or investigation involving such Indemnified Person for which indemnity will or could be sought. In connection with any advance of any expenses hereunder, the Indemnified Person shall execute an undertaking to repay the advanced amount to the Company if it shall be determined by final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification pursuant to this Article. If it shall be determined by a final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification with respect to such judgment, costs or expenses, then such party shall not be indemnified with respect to such judgment, costs or expenses and any advancement shall be returned to the Company (without interest) by the Indemnified Person.
- 53.3 The Directors, on behalf of the Company, may purchase and maintain insurance for the benefit of any Director or other officer of the Company against any liability which, by virtue of any rule of law, would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which such person may be guilty in relation to the Company.
- 53.4 Pursuant to the foregoing provisions, the Company may enter into a service or other agreement with any Director (or any entity providing one or more persons to the Company to act as Directors) upon such terms and conditions (including as to indemnification and exculpation) as the Directors shall, in their absolute discretion, determine. Any such indemnification and exculpation provisions may be specified to a standard equal to or more favourable (but not less favourable) to the Company than any standard specified in these Articles.





**54 Disclosure**

If required to do so under the laws of any jurisdiction to which the Company, the Investment Manager, the Administrator or any other service provider is subject, or in compliance with the rules of any stock exchange upon which the Company's Shares are listed, or to ensure the compliance by any person with any anti-money laundering law in any relevant jurisdiction, any Director, Officer, the Investment Manager, the Administrator or Auditor of the Company shall be entitled to release or disclose any information in its possession regarding the affairs of the Company or a Member including, without limitation, any information contained in the Register of Members or subscription documentation of the Company relating to any Member.

**55 Financial Year**

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

**56 Transfer by way of Continuation**

The Company shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

**57 Mergers and Consolidations**

The Company shall, with the approval of a Special Resolution, have the power to merge or consolidate with one or more constituent companies (as defined in the Statute), upon such terms as the Directors may determine.



## **EXHIBIT 16**

**THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT**

**by and among**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**

**and**

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

**November 1, 2013**

**THIS THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT** (this “*Agreement*”), is dated effective as of November 1, 2014, by and among:

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**, a Cayman Islands exempted company (the “*Offshore Fund*”);

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**, a Delaware limited partnership (the “*Domestic Fund*,” and together with the Offshore Fund, the “*Clients*”) acting through its general partner, Highland Multi Strategy Credit Fund GP, L.P. a Delaware limited partnership (the “*General Partner*”); and

**HIGHLAND CAPITAL MANAGEMENT, L.P.**, a Delaware limited partnership (the “*Investment Manager*”).

### PRELIMINARY STATEMENTS

A. The Domestic Fund previously retained the Investment Manager as its investment manager pursuant to an investment management agreement dated as of December 1, 2005, as amended and restated as of December 29, 2005 and as further amended and restated as of September 1, 2006 (the “*Original Agreement*”).

B. The Offshore Fund will invest all of its investable assets in the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and will serve merely as a steward thereof. The Investment Manager will conduct its investment activities at the Domestic Fund level as the investment manager to the Domestic Fund.

C. The Domestic Fund desires to continue to retain the Investment Manager and the Offshore Fund desires to retain the Investment Manager to provide certain discretionary advisory services relating to the assets and liabilities of the Domestic Fund and the Investment Manager desires to accept such appointment, all subject to the terms and conditions hereinafter set forth.

### AGREEMENT

This Agreement amends and restates in its entirety the Original Agreement as set forth below. For good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

#### 1. Appointment.

The Clients hereby appoint the Investment Manager as investment manager with respect to the assets and liabilities of the Domestic Fund and the Investment Manager hereby accepts such appointment and agrees to perform its obligations in accordance with the terms hereof and of the Fourth Amended and Restated Limited Partnership Agreement of the Domestic Fund, dated effective as of November 1, 2014, as amended from time to time (the “*Domestic Fund Partnership Agreement*”), and the investment objectives, policies,

guidelines and restrictions that from time to time are set forth in the Governing Documents of the Clients as applicable. “**Governing Documents**” mean, with respect to:

- (a) the Offshore Fund: the Memorandum and Articles of Association of the Offshore Fund, as amended from time to time, and the Confidential Private Offering Memorandum dated November 2014, as may be supplemented from time to time (the “**POM**”);
- (b) the Domestic Fund: the Domestic Fund Partnership Agreement and the Private Placement Memorandum dated November 2014, as may be supplemented from time to time (the “**PPM**”).

## 2. **Authority and Duties of the Investment Manager.**

- (a) All of the investable assets of the Offshore Fund must be invested in, and the investment program of the Offshore Fund is to be conducted by the Investment Manager through, the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and the investment activities of the Investment Manager will be conducted at the Domestic Fund level as the investment manager to the Domestic Fund.
- (b) The Domestic Fund’s investment program will be conducted by the Investment Manager in accordance with the PPM.
- (c) The Investment Manager serves as the investment manager to the Domestic Fund and in that capacity has full discretion and authority, without obtaining the prior approval of any officer or other agent of the Domestic Fund:
  - (i) to continuously supervise the investment program of the Domestic Fund and the composition of its investment portfolio including, without limitation, determining from time to time what investments will be purchased, retained or sold, what contracts will be entered into by the Domestic Fund and what portion of its assets will be retained as cash, and to engage consultants and analysts in connection therewith; to cause the Domestic Fund to purchase or sell any asset, enter into any other investment-related transaction, including (directly or through subsidiaries or affiliates of the Domestic Fund) borrowing money, entering into swap transactions, lending securities, exercising control over a company, exercising voting or approval rights and selecting brokers and dealers for execution of portfolio transactions; and to undertake to do anything incidental to the foregoing to facilitate the performance of its obligations hereunder;
  - (ii) to invest within or outside the United States of America in “Investments” (as defined in, and subject to the provisions of, the Domestic Fund Limited Partnership Agreement);
  - (iii) to effect any and all transactions in Investments, including collateralized loan obligations, asset-backed securities, commodities, total return swaps,

credit default swaps, synthetic securities and other financial instruments and assets (and options and other contracts thereon), and everything connected therewith in the broadest sense, including, without limitation, the full discretion and authority to make short sales, to purchase or write options (including uncovered options) and to trade on margin;

- (iv) to, on behalf of the Clients, exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the Investments and other property and funds held or owned by the Domestic Fund, including without limitation the right to possess, lend, transfer, mortgage, pledge or otherwise deal in, and to secure the payment of obligations of the Domestic Fund by mortgage upon, or hypothecation or pledge of, all or part of the property of the Domestic Fund, whether at the time owned or thereafter acquired, and to vote Investments, participate in arrangements with creditors, institute and settle or compromise suits and administrative proceedings and other similar matters;
- (v) to select brokers, dealers, banks and other intermediaries by or through whom such transactions will be executed or carried out and to open, maintain and close accounts with brokers, which power shall include the authority to issue all instructions and authorizations to brokers regarding securities and money therein and to cause the Domestic Fund to pay, or authorize the payment and reimbursement of, brokerage commissions;
- (vi) to open, maintain and close bank accounts and authorize the drawing of checks or other orders for the payment of monies;
- (vii) to borrow or raise monies or utilize any other forms of leverage and to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness and otherwise to utilize any lines of credit, credit balances or overdraft privileges available to the Domestic Fund;
- (viii) to value the Client's assets as of the close of each fiscal period and any other date selected by the respective Client;
- (ix) to direct any administrator of the Clients, banks, brokers or other custodians to effect deliveries of funds or assets, but only in the course of effecting portfolio transactions for the account of the Clients;
- (x) to remove or replace any administrator of the Clients and/or any accountant of the Clients at any time; and
- (xi) to make and execute all such documents and to take all such other actions as the Investment Manager considers necessary or appropriate to carry out its investment management duties hereunder.

- (d) In furtherance of the foregoing, the Board of Directors, on behalf of the Offshore Fund, and the General Partner, on behalf of the Domestic Fund, has delegated certain rights and responsibilities with respect to the operation of their respective partnerships and funds to the Investment Manager, as more fully set forth in the Governing Documents.
- (e) Each Client hereby designates the Investment Manager as the commodity pool operator (the “*CPO*”) for such Client with complete authority and responsibility for compliance with the U.S. Commodity Exchange Act and the regulations promulgated thereunder, including to perform any and all duties required of a CPO (i) that is exempt from registration under the regulations of the U.S. Commodity Futures Trading Commission (the “*CFTC*”) and (ii) that is in compliance with CFTC Rule 4.13(a)(3), including the filing of a notice of exemption under said Rule 4.13(a)(3) with the CFTC.
- (f) Additionally, each of the Clients hereby designates and appoints the Investment Manager as its agent and attorney-in-fact, with full power and authority and without the need for further approval of the Clients (except as may be required by law) to complete and execute all such documents and to take any and all actions that the Investment Manager, in its discretion, may deem advisable to carry out the foregoing with respect to the assets of the Clients; provided, however, that the Investment Manager is not intended to have actual or constructive custody of any assets of the Clients. In connection with any of the foregoing, the Investment Manager is further authorized to transfer or tender for cash or exchange such assets. In all such purchases, sales or trades the Clients authorize the Investment Manager to act for the Clients, and at their risk, and in their name and on their behalf, in the same manner and with the same force and effect as the Clients might or could do with respect to such purchases, sales or trades without prior consultation with the Clients. The Clients also appoint the Investment Manager as their agent and attorney-in-fact to vote, and to execute proxies, waivers, consents and other instruments with respect to, the assets of the Clients.
- (g) At the request of a Client, in any wind down of such Client, the Investment Manager will manage the realization of the Client’s assets and the distribution thereof to investors.
- (h) In connection with the execution of transactions on behalf of the Domestic Fund, the Domestic Fund hereby acknowledges and agrees that in the course of selecting brokers, dealers, futures commission merchants, banks and financial intermediaries to effect transactions for the Domestic Fund’s account, the Investment Manager may agree to such commissions, fees and other charges on behalf of the Domestic Fund’s account as it may deem reasonable in the circumstances, taking into consideration all such factors as the Investment Manager deems relevant, including the following: the ability to effect prompt and reliable executions at favorable prices; the operational efficiency with which transactions are effected; the financial strength, integrity and stability of the broker; the quality, comprehensiveness and frequency of available research and other services considered to be of value; and



the competitiveness of commission rates in comparison with other brokers satisfying the Investment Manager's other selection criteria. It is understood that the costs of such services will not necessarily represent the lowest costs available and that the Investment Manager is under no obligation to combine or arrange orders so as to obtain reduced charges.

### 3. Fees and Expenses.

- (a) For its services to the Domestic Fund, the Domestic Fund will pay the Investment Manager the Management Fee (as defined in the Domestic Fund Partnership Agreement), calculated and payable monthly in advance. The Investment Manager may waive or reduce the management fees with respect to capital account and capital sub-accounts of the Domestic Fund in its discretion.
- (b) The Clients will pay, or will reimburse the Investment Manager, for all costs and expenses arising in connection with their operations, including without limitation, with respect to the Domestic Fund, all costs and expenses directly related to portfolio investments or prospective investments (whether or not consummated) of the Domestic Fund.
- (c) The Clients will not have their own separate employees or office, and they will not reimburse the Investment Manager for salaries, office rent and other general overhead costs of the Investment Manager. The Investment Manager will pay all of its own operating and overhead costs (except liability insurance) without reimbursement by the Clients. The Investment Manager is entitled to reimbursement from the Clients for any expenses paid by it on behalf of the Clients; provided that, the Investment Manager in its sole discretion may absorb any or all of such expenses incurred on behalf of the Clients. If the Investment Manager incurs any such expenses for the account of the Clients and any Customers (as defined below), the Investment Manager will allocate such expenses among the Clients and each such Customer in proportion to the size of the investment made by each in the activity or entity to which the expense relates, or in such other manner as the Investment Manager in its sole discretion considers fair and reasonable.

### 4. Other Activities and Investments.

- (a) The Investment Manager is not required to devote its full time to the affairs of the Clients, but must devote such of its time to the business and affairs of the Clients as it may determine, in its discretion exercised in good faith, to be necessary to conduct the affairs of the Clients for the benefit of the Clients, the shareholders of the Offshore Fund and the partners of the Domestic Fund. Subject to this limitation, the Investment Manager, its partners and principals and their affiliates are not precluded from engaging in or owning an interest in other business ventures or investment activities of any kind. It is expressly understood that the Investment Manager and its affiliates may effect investment transactions for their own accounts and for the accounts of other customers (generally, "*Customers*"), and the Clients further understand and agree that nothing herein restricts the ability of the

Investment Manager and its affiliates to engage in any such transactions notwithstanding the fact that the Clients may enter into or engage in such transactions so long as such transactions are in the best interests of the Clients.

- (b) The Investment Manager will act in a manner that it considers fair, reasonable and equitable in allocating investment opportunities to the Clients. It is understood that when the Investment Manager determines that it would be appropriate for the Clients and one or more of the Customers to participate in an investment opportunity, the Investment Manager will seek to execute orders for, or otherwise allocate such opportunities to, the Clients and such Customers on an equitable basis. In such situations, the Investment Manager may place orders for the Clients and each Customer simultaneously, and if all such orders are not filled at the same price, the Investment Manager may cause the Clients and each Customer to pay or receive the average of the prices at which such orders were filled for the Clients and all other Customers. If all such orders cannot be fully executed under prevailing market conditions, the Investment Manager may allocate among the Clients and the Customers the investments traded in a manner which the Investment Manager considers equitable, taking into account the size of the order placed for the Clients and each such Customer as well as any other factors which the Investment Manager deems relevant.

## 5. Account and Other Information.

- (a) The Investment Manager must furnish such information concerning activities undertaken for the account of the Clients as the Clients may reasonably request.
- (b) The Clients agree to keep confidential and not to disclose to any person any information or matter relating to the Clients' investments (other than disclosure to the Clients' shareholders, partners, directors and employees, legal counsel, administrator, registrar and accountant in connection with the preparation and review of financial statements and with the filing of any tax returns or to any other person approved in writing by the Investment Manager (each such person being hereinafter referred to as an "***Authorized Representative***")); provided that the Clients and their Authorized Representatives may make such disclosure to the extent that (x) the information to be disclosed is publicly known at the time of proposed disclosure by the Clients or Authorized Representative, (y) the information otherwise is or becomes legally known to the Clients other than through disclosure by the Investment Manager or (z) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities, provided that such agency, regulatory authorities or association is aware of the confidential nature of the information disclosed. Prior to making any disclosure required by law, the Clients will use their best efforts to notify the Investment Manager of such disclosure. Prior to any disclosure to any Authorized Representative, the Clients must advise such Authorized Representative of the obligations set forth in this Section 5(b) and are responsible for any breach of these obligations made by an Authorized Representative.

- (c) The Investment Manager retains, or arranges for the retention of, for a period of at least 5 years, copies of any documents generated or received by the Investment Manager in the ordinary course of business pertaining to the financial condition of the account of the Clients or to the compensation payable to the Investment Manager. At the request of the Clients, the Investment Manager will afford to the Clients' independent auditors reasonable access to such documents during customary business hours and will permit the Clients' auditors to make copies thereof or extracts therefrom at the expense of the Clients.

**6. Custody.**

The assets of the Clients must be held in the custody of one or more custodians (or other independent institutions performing the functions of custodian, with respect to the assets which are held by such institutions) selected by the Investment Manager. The Investment Manager will notify the Clients promptly of the proposed selection of any custodians.

**7. Scope of Liability.**

The Clients agree that the Investment Manager is not liable to the Clients or any of their partners or shareholders for any losses, damages, expenses or claims occasioned by any act or omission of the Investment Manager in connection with the performance of its services hereunder, other than as a result of the Investment Manager's willful misconduct, fraud or gross negligence, or as otherwise prescribed by applicable law. The Clients explicitly recognize that the investment advisory opinions, recommendations and actions of the Investment Manager will be based on advice and information deemed to be reliable but not guaranteed by or to the Investment Manager.

**8. Indemnification.**

- (a) The Clients must indemnify and hold harmless the Investment Manager, each member, shareholder, partner, manager or director of, or any person who controls, the Investment Manager, each of the respective affiliates of the foregoing and each of the respective executors, heirs, assigns, successors or other legal representatives of the foregoing (each, an "*indemnitee*") from and against any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted against such indemnitee in connection with the Investment Manager's serving or having served as such pursuant to this Agreement; provided, however, that the indemnitee is not entitled to any such indemnification with respect to any expense, loss, liability or damage that was caused by the indemnitee's willful misconduct, fraud or gross negligence.
- (b) In the event that the Investment Manager or any other indemnitee entitled to indemnification pursuant to paragraph (a) above is or becomes a party to any action or proceeding in respect of which, or there otherwise exists a claim pursuant to which, it may be entitled to seek indemnification hereunder, the indemnitee must promptly notify the respective Client thereof. The respective Client is entitled to participate in any such suit or proceeding and, to the extent that it may wish, to

assume the defense thereof with counsel reasonably satisfactory to the indemnitee. After notice of an election by the Client so to assume the defense thereof, the Client will not be liable to the indemnitee hereunder for any legal or other expenses subsequently incurred by the indemnitee in connection with the defense thereof other than reasonable costs of investigation or reasonable legal expenses incurred as a result of (i) potential conflicts of interest between the indemnitee and the Client or (ii) the protection of proprietary or privacy interests of other clients of or parties in interest with the indemnitee. The Client must advance to the indemnitee the reasonable costs and expenses of investigating and/or defending such claim, subject to receiving a written undertaking from the indemnitee to repay such amounts if and to the extent of any subsequent determination by a court or other tribunal of competent jurisdiction that the indemnitee was not entitled to indemnification hereunder.

- (c) A Client is not liable hereunder for any settlement of any action or claim effected without its written consent thereto.

**9. Independent Contractor.**

For all purposes of this Agreement, the Investment Manager is an independent contractor and not an employee or dependent agent of any Client. Nothing herein is to be construed as making any Client a partner or co-venturer with the Investment Manager or any of its affiliates or Customers. Except as provided in this Agreement, the Investment Manager has no authority to bind, obligate or represent the Clients.

**10. Term; Termination; Renewal.**

- (a) This Agreement will remain in full force and effect for a period commencing on the date first above written and ending on December 31, 2014, and thereafter will renew automatically for successive one-year periods. This Agreement may be terminated by any party hereto, without penalty, upon 75 days' prior written notice to the other parties.
- (b) The termination of this Agreement does not extinguish the obligations of the Clients for the payment of fees and expenses in respect of services rendered by the Investment Manager prior to the effective date of such termination.

**11. Acknowledgement.**

Each of the Clients certifies and acknowledges to the Investment Manager that it:

- (i) has fully disclosed to potential investors the fee provisions and other arrangements relating to the Client's account with the Investment Manager and is satisfied that the potential investors have received sufficient information from the Investment Manager to enable them to evaluate the terms of this Agreement; and
- (ii) fully understands the method of compensation provided herein and its associated risks, including the risk that the performance compensation arrangements with

affiliates of the Investment Manager may create an incentive for the Investment Manager to engage in transactions that are riskier or more speculative than would be the case in the absence of performance compensation and that such risk has been disclosed to potential investors.

**12. Amendment; Modification; Waiver.**

Except as otherwise expressly provided herein, this Agreement may not be amended, nor may any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by the party to be charged with such amendment, waiver or modification.

**13. Binding Effect; Assignment.**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations hereunder are not, except as otherwise expressly provided herein, assignable, transferable or delegable without the written consent of the other parties hereto and any attempted assignment, transfer or delegation thereof without such consent is null and void, except that the Investment Manager may assign its rights and obligations hereunder to an entity that controls, is controlled by or is under common control with the Investment Manager; provided, however, that such entity assumes the obligations of the Investment Manager hereunder.


**14. Governing Law.**

This Agreement is governed by and construed in accordance with the substantive laws of the State of Delaware which are applicable to contracts made and entirely to be performed therein, without regard to the place of performance hereunder.

[SIGNATURE PAGE FOLLOWS]

The parties have executed this Agreement as of the day and year first above written.

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, LTD.**

By:   
Name: James Dondero  
Title: Director


**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT  
GP, LLC  
its general partner

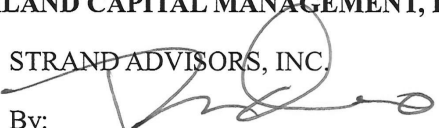
By: HIGHLAND CAPITAL MANAGEMENT,  
L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:   
Name: James Dondero  
Title: President

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

By: STRAND ADVISORS, INC.

By:   
Name: James Dondero  
Title: President

## **EXHIBIT 17**





I, James P. Seery, Jr., pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declare as follows:

1. During the bankruptcy case, I was first appointed as a member of the Board of Directors (the “Board”) of Strand Advisors, Inc. (“Strand”), the general partner of Highland Capital Management, L.P. (the “Highland” or the “Debtor,” as applicable), and later as the Debtor’s Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”).

2. In August 2021, upon the occurrence of the effective date of Highland’s Plan, I became Highland’s CEO.

3. I submit this Declaration in support of *Highland Capital Management, L.P.’s Amended Motion to Dismiss* (the “Motion”),<sup>2</sup> being filed concurrently with this Declaration. Unless stated otherwise, this Declaration is based on my personal knowledge, my review of the documents described below, and my communications with certain of Highland’s employees and counsel.

4. Highland is the investment manager for Multi-Strat (defined below) pursuant to the terms of the *Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P.*, dated November 1, 2013.

5. Multi-Strat is a pooled investment fund structured as a “mini master” and consists of Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “Master Fund”), and Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “Feeder Fund”). We refer to the Master Fund and the Feeder Fund collectively as “Multi-Strat.”

---

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed in the Motion.

6. Multi-Strat is managed by Highland, as its investment manager, and its general partner, Highland Multi Strategy Credit Fund GP, L.P. (“MSCF GP”). MSCF GP is wholly-owned by Highland Multi Strategy Credit GP, LLC, which is in turn wholly-owned by Highland. I am the sole officer of MSCF GP. I am also a director of the Feeder Fund.

7. Multi-Strat’s investors include both the limited partners in the Master Fund and the shareholders of the Feeder Fund (which itself is a limited partner of the Master Fund). The ultimate investors, whether direct or through the Feeder Fund, are commonly referred to as Multi-Strat’s limited partners. Multi-Strat’s current limited partners on a consolidated basis are:

<b>Limited Partner</b>	<b>Ownership %</b>
Highland	58.70%
CLO Holdco, Ltd.	4.06%
The Dugaboy Investment Trust	1.71%
Highland Capital Management Services, Inc.	35.10%
Mark Okada	0.43%

8. In addition to the limited partners, there are a number of former “redeemed” limited partners of Multi-Strat.

9. The Charitable DAF Fund, L.P., is not a Multi-Strat limited partner, investor, or “redeemed” limited partner in Multi-Strat.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

I declare under penalty of perjury OF the laws of the United States that the foregoing is true and correct.

Dated: May 27, 2022

/s/ James P. Seery, Jr.  
James P. Seery, Jr.

## **EXHIBIT 18**

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

[1992–93 CILR 372]

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED

GRAND COURT (Smellie, Ag. J.): July 6th, 1993

Civil Procedure—joinder of parties—party who “ought to have been joined”—Grand Court (Civil Procedure) Rules, r.26 permits joinder of defendant who ought to have been joined at commencement of proceedings only if established link between original cause of action and that against party to be joined—joinder not permitted for purpose of expanding original cause, e.g. to join party not privy to contract forming subject of original cause Civil Procedure—pleading—amendment—application to amend under Rules of Supreme Court, O.20, r.5 to be decided on merits and effect on action against original defendant—normally allowed unless applicant causing injury for which no compensation or acting mala fide—inconsistent, useless or futile claims or those constituting new cause of action not permitted

Landlord and Tenant—characteristics of relationship—exclusivity—if landlord/tenant relationship and remedy for breach comprehensively covered by lease agreement, court will not impose equitable or agency relationship—court will also not impose duties not strictly and necessarily incidental to relationship expressly created by parties

Landlord and Tenant—breach of covenant—forfeiture—notice—Registered Land Law (Revised), s.56 requirements for notice before forfeiture applicable only if breach capable of remedy

The plaintiff sought leave to amend its writ and statement of claim in an action against the defendant for breach of a lease.

The plaintiff leased premises to the defendant for the operation of its jewellery retail business. The form of lease was based on a Canadian model and provided for the payment of an annual basic rent and an annual percentage rent based on sales. The lease contained extensive provisions dealing with the defendant’s obligations to report and account to the plaintiff and specified the relief available in the event of breach of those provisions.

The defendant failed to keep full and faithful records and refused to comply with the directions of an independent auditor engaged by the plaintiff to obtain a reconstruction or compilation of those records. The plaintiff also obtained evidence of at least one sale of a valuable item which had not been recorded. The plaintiff claimed forfeiture of the lease and gave notice

---

1992–93 CILR 373

to that effect. It brought proceedings for recovery of possession and for rent claiming that the defendant had repudiated the lease.

The plaintiff subsequently sought leave to amend its writ and statement of claim (a) to add four more defendants who it alleged conspired with and facilitated or assisted the defendant in its falsification of accounts and disclosures; (b) to plead claims against those defendants; and (c) to effect substantial amendments of the pleadings against the primary defendant to include *inter alia* a claim for an account from the defendant to ascertain the amount owed to it, a claim for a declaration that the lease was duly forfeited and a claim in the alternative for damages for breach of the covenant to pay rent.

The plaintiff submitted that (a) the joinder of the additional defendants was permitted under r.26 of the Grand Court (Civil Procedure) Rules because the proper test was whether they could have been joined in some way at the time the original action was brought irrespective of whether they could have been joined in the action as it was actually brought. Accordingly, though the original action sought recovery of possession and mesne profits from the defendant, it could have instituted proceedings in damages at the same time against the other parties for having procured and conspired with the defendant to breach the lease; (b) the justification for giving leave to amend to include a claim for an account from the defendant consisted in the fiduciary relationship of principal and agent which should be implied as existing between it and the defendant having regard to the lease agreement which demanded a duty of trust from the defendant as tenant; further, an action for an account was an established remedy available to a principal against his agent in lieu of damages; (d) it was entitled to forfeit the lease on the basis that the breach was incapable of being remedied; and (e) it was entitled to make an alternative claim for damages for breach of the covenant to pay rent.

The defendant submitted in reply that (a) the joinder of the proposed defendants under r.26 was not permissible as they were not party to any contract with the plaintiff; (b) the court had no jurisdiction to permit the plaintiff to amend its writ and statement of claim to include new causes of action or inconsistent or useless amendments; (c) no fiduciary relationship existed between itself and the plaintiff; theirs was strictly a relationship of landlord and tenant to be governed by the clearly express terms of the lease; and (d) the plaintiff’s application should be

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

dismissed in its entirety for the most important reason that the cause of action was bound to fail, for though it might have breached the lease, that breach was not irremediable. Accordingly, by virtue of s.56 of the Registered Land Law (Revised) it was entitled to notice requiring it to remedy the breach. As there had been no such proper notice nor any proper demand to remedy, the forfeiture was wrong in law and the cause of action based on it, for recovery of possession, rent and, latterly, damages, could not succeed. Further, the lease was still intact despite the plaintiff's claim to forfeiture.

**Held**, granting the application in part:

(1) The Grand Court (Civil Procedure) Rules, r.26 provided for the

---

1992-93 CILR 374

joinder of defendants who ought to have been joined at the commencement of the proceedings where there was an established link between the original cause and the cause against those to be joined. It did not permit joinder for the purpose of expanding the original cause of action. Since the original action between the plaintiff and the defendant was based on the lease agreement between them as landlord and tenant and the plaintiff's claim to recovery of possession and mesne profits arising from the defendant's breach, there could have been no other parties to the action as instituted because privity of contract existed only between those two (page 381, lines 13-15; lines 21-28; page 383, line 37 - page 384, line 9).

(2) In general, a plaintiff's application to amend pleadings to vary or add claims was to be decided on the merits to the extent that they might affect the action brought against the original defendant. The applicable principles were embodied in the Rules of the Supreme Court, O.20, r.5, by which amendments should normally be allowed unless it was apparent that the plaintiff applicant was acting *mala fide* or that by his omission or by the amendment he had done or would cause injury to his opponent which could not be compensated for by costs or otherwise; a plaintiff would not be permitted to raise entirely new claims amounting to a new cause of action or those that were inconsistent or useless or which sought to support a case that was bound to fail (page 385, line 27 - page 386, line 26).

(3) The court should not search for liability in tort or in equity where the parties were in a contractual relationship and this was particularly so in commercial relationships. More specifically it should not impose duties which were not strictly and necessarily incidental to that relationship. Since the lease agreement between the parties was a commercial transaction and it specified expressly and comprehensively their intentions with regard to the defendant's duties as well as an appropriate remedy for breach of the agreement, the court would not invoke the rules of equity so as to impose a relationship where there was no true need for the special protection that equity afforded. Similarly, no relationship of principal and agent could be found in what was strictly a landlord and tenant relationship. Furthermore, the proposition that the court should impose a fiduciary duty on the defendant because of the self-dealing manner in which he had breached the agreement was not acceptable since the equitable rules about self-dealing were based on a pre-existing fiduciary duty. Accordingly, no separate fiduciary duty on the defendant to account was to be implied from their relationship and the plaintiff's application to amend the pleadings on this basis would therefore be refused (page 387, lines 12-30; page 388, line 28 - page 389, line 36).

(4) The plaintiff had satisfied the court that it had a good, arguable case for forfeiture on the merits since even though it had omitted to address the question of whether the defendant's breach could be

---

1992-93 CILR 375

remedied, it was at least objectively arguable that it should be entitled to treat the circumstances existing at the time it purported to forfeit the case as irremediable because (a) the defendant's falsifications were deliberate; (b) its failure to assist the independent auditor betrayed an intention to continue its dissemblance; and (c) the continued performance of the lease depended on the good faith and willingness of the defendant, not only to remedy the breach but also to keep faithful accounts and make full and frank disclosure of sales and income. Although s.56 of the Registered Land Law (Revised) and its requirements for proper notice superseded any provisions in the lease to the contrary, the section would apply only if it were to be determined on the facts that the breaches were capable of remedy. Since the plaintiff's contention was that the breach was irremediable and repudiatory and entitled him to repudiate the lease without notice, it should be allowed to present that claim for determination on its merits. Given the interlocutory nature of these proceedings, the plaintiff needed to show no more than that it had a good, arguable case in this respect. Accordingly, the leave to amend would be granted to



5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

include the claim for a declaration that the lease had been duly forfeited (page 390, lines 3–10; page 390, line 21 – page 392, line 20; page 392, lines 33–41).

(5) Leave would also be granted to include a claim in the alternative for damages for breach of the covenant to pay rent. This was sustainable in light of the evidence of at least one instance in which the defendant had failed to declare the sale of a valuable item which would have generated income to be assessed for percentage rent (page 393, lines 14–19).

Cases cited:

- (1) *Baker (G.L.) Ltd. v. Medway Building & Supplies Ltd.*, [1958] 1 W.L.R. 1216; [1958] 3 All E.R. 540, observations of Jenkins, L.J. applied.
- (2) *Bank of Nova Scotia v. Becker*, 1988–89 CILR 12, applied.
- (3) *Cayman Arms (1982) Ltd. v. English Shoppe Ltd.*, 1988–89 CILR 383; on appeal, Cause No. 16 of 1989, September 20th, 1989, unreported.
- (4) *Clarapede v. Commercial Union Assn.* (1883), 32 W.R. 262, observations of Brett, M.R. applied.
- (5) *Executive Air Servs. Ltd. v. MacDonald*, 1990–91 CILR N-4.
- (6) *Empire Clothing Serv. & Sales Ltd. v. Hillgate House Ltd.*, [1986] Ch. 340; [1985] 2 All E.R. 998, *dicta* of Slade, L.J. applied.
- (7) *Iorgulescu v. Swiss Bank & Trust Corp. Ltd.*, 1990–91 CILR 163.
- (8) *Jones v. Hughes*, [1905] 1 Ch. 180, observations of Vaughan Williams, L.J. applied.
- (9) *Ketteman v. Hansel Properties Ltd.*, [1987] A.C. 189; [1988] 1 All E.R. 38, observations of Lord Griffiths applied.
- (10) *Kurtz v. Spence* (1887), 36 Ch. D. 770.
- (11) *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 R.C.S. 574, applied.
- (12) *Molnlycke AB v. Procter & Gamble Ltd.*, [1992] 1 W.L.R. 1112; [1992] 4 All E.R. 47, distinguished.

---

1992–93 CILR 376

- (13) *Norwich Pharmacal Co. v. Customs & Excise Commrs.*, [1974] A.C. 133; [1973] 2 All E.R. 943.
- (14) *Paradise Manor Ltd. v. Bank of Nova Scotia*, 1984–85 CILR 437, considered.
- (15) *Raleigh v. Goschen*, [1898] 1 Ch. 73.
- (16) *Salomon v. A. Salomon & Co. Ltd.*, [1897] A.C. 22; [1895–99] All E.R. Rep. 33, considered.
- (17) *Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd.*, [1986] A.C. 519; [1985] 2 All E.R. 947; [1985] 2 Lloyd's Rep. 313, followed.
- (18) *Tildesley v. Harper* (1878), 10 Ch. D. 393, observations of Bramwell, L.J. applied.
- (19) *Tito v. Waddell (No.2)*, [1977] Ch. 106; [1977] 3 All E.R. 129, *dicta* of Megarry, V.-C. applied.

#### Legislation construed:

Grand Court (Civil Procedure) Rules, r.25: The relevant terms of this rule are set out at page 380, lines 29–34.  
r.26: The relevant terms of this rule are set out at page 380, line 35 – page 381, line 9.

Registered Land Law (Revised) (Law 21 of 1971, revised 1976), s.37(1): The relevant terms of this section are set out at page 392, lines 25–27.

s.55(1):

“Subject to the provisions of section 57 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee—

(a) commits any breach of, or omits to perform any agreement or condition on his part expressed or implied in the lease. . . .”

s.56:

“Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease whether expressed or implied, until the lessor has served on the lessee a notice—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.”

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

Rules of the Supreme Court, O.20, r.5:

“Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to

---

1992–93 CILR 377

amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.”

*M. Parkinson* for the plaintiff;

*P. Lamontagne, Q.C.* and *P. Boni* for the defendant.

**SMELLIE, Ag. J.:** By summons dated March 1st, 1993 the landlord/plaintiff sought leave to re-amend its writ and statement of claim in this matter to achieve three main objectives. The first was to add parties—the proposed second to fifth defendants. The second was to plead claims against those additional defendants and the third, to effect consequential amendments of the pleadings against the original defendant. Submissions were taken on March 31st, April 1st and April 5th and an order made on April 16th, 1993 with written reasons to be delivered at a later date. These are the reasons.

The original parties stand in the position of landlord and tenant by virtue of a lease dated August 16th, 1990. In the action the plaintiff’s case is that the tenant/defendant has falsified records of accounts and disclosures required to be respectively kept and made by the defendant pursuant to the lease and that the defendant has falsified those records in order to deprive the plaintiff of rents lawfully due under the lease. The proposed additional defendants are parties who, the plaintiff alleges, conspired with and actually facilitated or assisted the defendant in its falsification of the accounts and disclosures.

The lease is not typical of the forms in use in this jurisdiction and I am informed by counsel that it follows a Canadian model. It is unusual in that, among other things, it includes a provision for “annual percentage rent” as well as a provision for “basic rent.” Central to the dispute is the issue whether the defendant has made full and frank disclosure as to its income from sales as the basis for arriving at the annual percentage rent.

Article III of the lease contains the following provisions:

“3.01 *Basic rent*

The tenant shall pay to the landlord in each lease year \$45,000 *per annum* (in this lease referred to as ‘basic rent’) by equal monthly instalments in advance, commencing upon the commencement date and on the first day of each calendar month thereafter during the term (provided that if the term commences on a day which is not the first day of a calendar

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

month, then the instalment of basic rent payable on the

---

1992-93 CILR 378

commencement date for the broken portion of the calendar month at the beginning of the term shall be calculated at a rate per day of 1/365 of the annual basic rent).

3.02 *Percentage rent*

5 The tenant shall pay to the landlord in each lease year during the term the annual percentage rent for such lease year. Such annual percentage rent shall be payable in monthly instalments of estimated monthly percentage rent which shall be payable 20 days after the close of each

10 calendar month in each and every lease year (including any portion of a calendar month at the commencement of the term if the term commences on a day other than the first day of a calendar month) *the amount of such estimated monthly*

15 *percentage rent to be calculated by the tenant and accompanied by a statement certified as correct by the tenant showing in such detail as the landlord shall reasonably require, the amount of gross revenue for such calendar month and the amount of estimated monthly percentage rent payable.*

3.03 *Adjustment of annual percentage rent*

20 Within 120 days after the end of each lease year *the tenant shall deliver to the landlord a statement in writing and certified by the tenant, and which shall also be certified as being audited by an independent chartered accountant acceptable to the landlord, setting forth accurately and with reasonable*

25 *detail and particulars and in such form as the landlord may require the gross revenue both monthly and in the aggregate, for such lease year and its annual percentage rent payable for such lease year.* If the aggregate annual percentage rent set forth in such statement differs from the annual percentage

30 rent set forth in such statement, the tenant shall pay or the landlord shall refund the difference within 30 days after such statement is provided.” [Emphasis supplied.]

In the definitions in Article I, the following appears:

35 “ ‘Annual percentage rent’ means 6% of gross revenue plus 1.5% of extraordinary off premises revenue (derived from sales by the tenant of stock kept on the leased premises or sold off-premises having been placed for display on the leased premises) minus the basic rent. Annual percentage rent shall only be payable in the event such calculation from

40 time to time produces a net positive figure.”

By virtue of those provisions the plaintiff claims that special

1992-93 CILR 379

duties and responsibilities are created and are owed to him by the defendant and that they give rise to an implied relationship of trust which is not to be found in an ordinary lease where liabilities for rent are essentially stipulated as a pre-determined sum. Here  
5 the plaintiff argues that the lease contains covenants that the tenant must keep proper accounts of its income in order to ensure that the proper amounts of annual percentage rent are known and payable to the plaintiff.

A most important issue centered on this argument. It is  
10 whether this implied relationship of trust is so germane to the landlord/tenant relationship in this lease that the manner in which it was dishonoured by the tenant gave rise to an irremediable breach of the lease. If so the consequence would be that the plaintiff should be entitled to claim that the lease has been duly  
15 forfeited and in the manner which the plaintiff has purported to do so in a letter and notice which it sent to the defendant dated November 17th, 1992.

The plaintiff having raised these allegations of breach of contract and breach of faith, the court was invited by counsel for  
20 the defendant to reject any suggestion of fraudulent conduct on the part of the defendant as fraud had not been specifically pleaded at the outset. Instead, and without any admission on the part of his client, counsel for the defendant invited the court to make the following assumptions for the purposes of the hearing  
25 of this summons that (a) there is no dispute as to the tenant's contractual obligations to pay basic rent and annual percentage rent, although the amount owed may be disputed; (b) there is no dispute that the tenant is in breach of the lease in not having kept full and faithful records as required by Articles 3:03, 3:04 and  
30 3:05 of the lease; (c) despite efforts on the part of the landlord to obtain a reconstruction or compilation of the records of the revenue of the defendant, through an independent auditor engaged for the purpose by the landlord, the tenant had failed to comply with the directions of the auditor to provide names and  
35 addresses of customers from whom verification of sales transactions might be obtained, and that such verification was essential to that exercise of reconstruction or compilation of the records; and (d) in at least one instance a certain named customer had purchased an expensive item of jewellery from the tenants' on-  
40 premises shop and that the tenant had failed to declare that item of revenue for the purposes of the accounting records.

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

1992-93 CILR 380

Despite those assumptions which I was invited to make, counsel for the defendant submitted ultimately that the plaintiff's application on his summons should be dismissed in its entirety for the most important reason that the cause of action was bound to fail. This submission was based on the position taken by the defendant that though it may have breached the lease, those breaches were not irremediable; it was entitled to notice requiring it to remedy them; and as there was no such proper notice nor any proper demand to remedy, the forfeiture was wrong in law and the cause of action based on it, for recovery of possession, rent and, latterly, damages, could not succeed. Further, that the lease was still intact despite the landlord's claim to forfeiture. The landlord's claim was therefore bound to fail.

For the reasons which will follow, I was unable to accept the defendant's submissions that the plaintiff will inevitably fail to establish that it was entitled to forfeit the lease. Although that is the central issue underlying the action as it stands between the plaintiff and the defendant, the plaintiff sought leave by its summons to do a number of things, some of which were allowed by my order of April 16th and others disallowed. I will proceed to set out my reasons for the order in respect of each issue separately.

(A) *Application for leave to re-amend to join the proposed second, third, fourth and fifth defendants. Leave refused.*

For the purposes of joinder of defendants to an existing cause of action, rr. 25 and 26 of the Grand Court (Civil Procedure) Rules are applicable. The text of the rules is as follows:

"25. All persons may be joined as defendants against whom the right of any relief is alleged to exist, whether jointly, severally or in the alternative, and any judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

26. No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court may, at any stage of the proceedings, either upon or without the application of any party and upon such terms as may seem just, order the names of any parties

1992-93 CILR 381

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

improperly joined, whether as plaintiffs or defendants, to be struck out and the names of any parties added who *ought to have been joined*, whether as plaintiffs or defendants, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter:

Provided that no person shall be added as a plaintiff, or as the next friend of a plaintiff under a disability, without his own consent in writing thereto.” [Emphasis supplied.]

Rule 25 deals with the joinder of defendants in a single action. Rule 26 addresses the principles and circumstances which determine the joinder of a party to proceedings already instituted. As to joinder of plaintiffs or defendants, r.26 provides for the addition of two categories of persons: (a) those who ought to have been joined at the commencement of the proceedings, and (b) those whose presence may be necessary to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter. Mr. Parkinson sought the joinder of the additional defendants on the basis that they came within the first category of persons.

The original action is between the landlord and tenant based on the lease agreement between them. The claim at the time that action was brought was against the tenant for recovery of possession, for rent and for mesne profits and arose from the tenant’s alleged repudiation of the lease. Privity of contract existed only between those parties and in the cause of action as it was thus framed, there could have been no other parties to the action as originally instituted. Notwithstanding those circumstances Mr. Parkinson submitted that amendments ought to be allowed to add the proposed second to fifth defendants because the proper test is whether they could have been joined as defendants in some way, *at the time* the original action was brought, irrespective of whether they could have been joined as defendants in the action *as it was actually brought*.

The plaintiff’s claim against the proposed second to fifth defendants was, *inter alia*, for damages for having procured and conspired with the defendant to breach the lease. As such a claim could have been brought originally and *at the same time* as the original action, Mr. Parkinson submitted the requirements of rr. 25 and 26 were met, notwithstanding that the rules of privity of contract would have precluded joinder of the proposed



5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

defendants in the action as originally framed. He relied primarily on the judgment of the Court of Appeal in *Executive Air Servs. Ltd. v. MacDonald* (5).

5 In that case the Court of Appeal upheld the decision of this court in allowing amendments to join a party as a joint tortfeasor in a statement of claim which originally raised allegations of tortious conduct as well as of breach of contract. In so doing it is significant that the court disallowed amendments seeking to join the same party as defendant to the claim based on allegations of  
10 breach of contract. In that case it was urged that the additional defendant was someone who fell within the first of the two categories of persons covered by r.26 of those who ought to have been joined at the commencement of the proceedings. From my reading of that case it appears clear that the court regarded the  
15 additional defendant as a party who “ought to have been joined” in the original action as framed in tort and within the meaning of that expression as it appears within r.26. It follows that the Court of Appeal disallowed the further pleadings as the additional defendant was not a party who ought to have been joined in the  
20 contractual claim as originally pleaded; as such an amendment would have been contrary to the principles of privity of contract, the additional defendant not having been a party to the contract and therefore against the principles established by *Salomon v. A. Salomon & Co. Ltd.* (16). I therefore did not think the case  
25 supported Mr. Parkinson’s position.

Although rr. 25 and 26 may be outmoded, they still apply and I consider that the applicable principles were settled by the Court of Appeal in the earlier case of *Bank of Nova Scotia v. Becker* (2), which was cited in argument by Mr. Lamontagne on behalf of the  
30 proposed defendants.

In that case, the applicant and third defendant, a company in liquidation which had been joined as a party in the suit between the plaintiff bank and the other defendants, applied for an order to join its own receivers as parties. The company had been  
35 granted a loan by the plaintiff bank for which collateral had been provided by the other defendants. It had defaulted in payment and the bank had appointed receivers who took possession of the company’s property. In an action by the bank against the other defendants as guarantors, the company was itself made a  
40 co-defendant upon the successful application of one of the other defendants. It was joined for the purpose of setting off any



5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

damages it might recover for the wrongful acts of the receivers (whom it alleged to be agents or servants of the bank) against any relief granted to the bank in relation to it as principal debtor and the other defendants as guarantors.

5 The company then sought to counterclaim against the bank alleging that the receivers, as the bank's agents or servants, had trespassed upon the company's land, wrongfully taken possession of it and wrongfully converted the company's chattels. The company also applied for leave to join the receivers as added  
10 parties in the counterclaim contending that (a) as it was entitled to damages from the bank or the receivers or both, the receivers were, under the Grand Court (Civil Procedure) Rules, r.26 "necessary parties to the proceedings"; and (b) in any event, since by virtue of r.25 it could have initiated proceedings against  
15 the bank and joined the receivers as co-defendants, it was "only just and convenient" that it should be able to counterclaim against them both at the same time.

The Court of Appeal, in refusing to order the joinder of the receiver, held (a) the court was obliged to have regard to the  
20 terms of the Grand Court (Civil Procedure) Rules and was only entitled to consider whether joinder was "just and convenient" as an aspect of the application of those rules. It was not entitled to use the "just and convenient" principles to give itself an unfettered discretion to order joinder; (b) as the bank had  
25 originally made no claim against the receivers they could not be added as defendants in the bank's writ against the guarantors. Consequently, so far as that action was concerned, the receivers could not qualify as persons who "ought to have been joined" at the beginning of the proceedings. Nor did they so qualify when  
30 the company was introduced into the proceedings as an added party and counterclaimed against the bank. The application had therefore failed the first criterion for joinder in r.26; and (c) nor did the receivers qualify under the second criterion as parties "whose presence before the court may be necessary to enable the  
35 court effectually and completely to adjudicate upon the issue involved within the meaning of r.26. . . ."

From the second head of the *ratio decidendi* of the case as extracted above from the report and from the judgment itself, it seems to me that parties can only be joined pursuant to r.26 as  
40 persons "who ought to have been joined" if that nexus is established with the action as originally commenced. It is

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

1992–93 CILR 384

impermissible to join parties for the purpose of expanding the original cause of action.

5 In the case before me, there was no privity of contract between the proposed additional defendants and the plaintiff. The action based on the lease for recovery of possession and mesne profits as commenced could have joined no other parties. It rested entirely between the plaintiff as landlord and the defendant as tenant. For those reasons I was unable to allow the joinder of the proposed second to fifth defendants.

10 I should also mention in passing that Mr. Parkinson also placed great reliance on the case of *Molnlycke AB v. Procter & Gamble Ltd.* (12) as authority for two propositions. The first was that other members of a corporate group besides the defendant (as were the proposed second and third defendants in relation to the defendant herein) may be brought in as defendants in the same  
15 action if they are in some way shown to have facilitated the conspiracy whereby the original defendant was able to commit the wrongdoing complained of and that is so whether or not the others are willing parties to the conspiracy. The second proposition was that the *Molnlycke* case confirms it is not an abuse of  
20 process to join other parties for the purpose only of obtaining discovery where that discovery will assist in proving the claims against the original defendant and assist in the later claim against the added defendants and further that that approach would not  
25 be in breach of the principles laid down in *Norwich Pharmacal Co. v. Customs & Excise Commrs.* (13).

My reading of the *Molnlycke* case leads me to a different view of it. To my mind it deals with a situation where a plaintiff sought to join as an alleged tortfeasor a German company which was an  
30 affiliate of the defendant company. By virtue of certain provisions of the Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments 1968, joinder in the circumstances of that case was as of right provided the plaintiff met the preliminary criterion of showing it had a good arguable case against the  
35 alleged defendant by satisfying the court that there was a serious question which called for a trial for its proper determination in respect of an alleged defendant company domiciled in a country which was party (as was Germany) to the convention. That criterion is premised on a basis entirely distinct from those  
40 criteria laid down by rr. 25 and 26 of the Grand Court (Civil Procedure) Rules and which are clearly set out in the judgment of

---

1992–93 CILR 385

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

the Court of Appeal in *Bank of Nova Scotia v. Becker* (2), which I regard as applicable here. It follows I did not regard the *Molnlycke* case as persuasive authority for either proposition in the circumstances of this case.

5 I should also make it clear that leave to amend to join the additional defendants was not refused on the basis that the plaintiff's case was doomed to failure in its entirety. Had that been my view of the case I would have been obliged to invoke also the principles stated in *Raleigh v. Goschen* (15) that leave should not be given to add parties to an action which is bound to fail and where such leave would allow the plaintiff to mount a substantially different cause of action against added parties.  
10 (B) *Leave for consequential re-amendments in respect of the proposed additional defendants, including an amendment seeking orders for discovery against them. Leave refused.*

15 It followed from the refusal of leave to join the proposed additional defendants that leave for consequential re-amendments to plead claims against them had also to be refused. I note further that in any event Mr. Parkinson for the plaintiff indicated he would have been prepared to seek discovery from them separately had they been joined as defendants and to have done so by separate process. As joinder was refused, on the merits, that recourse would also fail to materialize. I have set out above  
20 the reasons for the decision not to allow further amendments which sought to add new parties.

The remaining issues related to the application to re-amend the pleadings to vary or add claims. Such applications still fell to be decided on the merits to the extent that they might affect the  
30 action brought against the original defendant. There was no dispute as to the general principles which the court should apply in deciding on an application to amend pleadings for the purposes of adding or varying claims. They are set out at O.20, r.5 of the Rules of the Supreme Court and, as they apply to this case, I  
35 summarize them as follows:

(a) Generally speaking, all amendments ought to be allowed which are for the purpose of determining the real question in controversy between the parties to any proceedings or for correcting any defect or error in any proceedings (*per* Jenkins, L.J. in *G.L. Baker Ltd. v. Medway Building & Supplies Ltd.* (1)  
40 ([1958] 1 W.L.R. at 1231).

---

1992-93 CILR 386

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

(b) Leave should be given to amend unless the court is satisfied that the party applying was acting *mala fide*, or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise. However negligent or careless may have been the omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs (*per* Bramwell, L.J. in *Tildesley v. Harper* (18) (10 Ch. D. at 397) and *per* Brett, M.R. in *Clarapede v. Commercial Union Assn.* (4) (32 W.R. at 263).

(c) An amendment ought to be allowed if thereby “the real substantial question” can be raised between the parties and multiplicity of legal proceedings avoided: see *Kurtz v. Spence* (10).

(d) On the other hand, it should be remembered that there is a clear difference between allowing amendments to clarify the issues in dispute and those that provide distinct defences or claims to be raised for the first time (*per* Lord Griffiths in *Ketteman v. Hansel Properties Ltd.* (9) ([1987] A.C. at 220)).

(e) Furthermore, the court will always look at the materiality of the proposed amendment; inconsistent or useless amendments will not be allowed nor will amendments be allowed to raise a case which must fail: see 1 *The Supreme Court Practice 1991*, para. 20/5 – 8/23; *Jones v. Hughes* (8) ([1905] 1 Ch. at 187 *per* Vaughan Williams, L.J.) and the judgment of the Court of Appeal of the Cayman Islands in *Iorgulescu v. Swiss Bank & Trust Corp. Ltd.* (7).

I now turn to deal with the application for re-amendments to the claims.

(C) *Leave to re-amend the writ and the statement of claim to include a claim for an account from the defendant to be taken in order to ascertain the ultimate amount which the defendant owes the plaintiff by way of annual percentage rent. Leave refused.*

This aspect of the application had proceeded on the basis that a fiduciary relationship of principal and agent should be implied as existing between the plaintiff and defendant having regard to the lease arrangement which demanded a duty of trust from the defendant as tenant. Mr. Parkinson had submitted further that an action for an account is an established remedy available to a principal against his agent (in lieu of damages) and that such an action arose here. I need not provide reasons at length for this

---

1992–93 CILR 387

aspect of the ruling as it appears Mr. Parkinson accepted as

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

correct the principles cited by Mr. Lamontagne in his response but as considerable time was taken on it and as a distinction needs to be struck between the duty to account prescribed by the lease and the remedy in equity which was sought here, I will provide a  
5 brief minute of reasons.

Two considerations were paramount bearing in mind that the lease agreement embodies a commercial arm's length transaction between the parties. It contains extensive provisions as set out in  
10 Articles 3:01 – 3:05 as to the tenant's obligations to report and account to the landlord. It also specifies the relief available in the event of breach of those provisions. The two questions which arose were (a) whether there was the necessity and therefore a basis for implying as between the parties, a term or condition of  
15 the lease that there existed a further fiduciary relationship and arising from it that there should be accounting, as a separate remedy, beyond that expressly provided in the lease in the event the tenant acted in breach of the lease; and (b) could there be a need or basis for finding a relationship of principal and agent and a resulting duty to account, where the written agreement between  
20 the parties is a complete code of the intentions of the parties.

The decision of the Privy Council in *Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd.* (17) was cited in opposition to Mr. Parkinson's submissions and is clear authority for the proposition  
25 that the court should not search for a liability in tort or in equity where the parties are in a contractual relationship and that this is particularly so in commercial relationships. It is not permissible, on the contractual analysis of the relationship between the parties, to imply duties which are not strictly and necessarily  
30 incidental to that relationship.

Mr. Parkinson had conceded there was no English authority directly on point to support his submissions but had cited extracts from Underhill & Hayton, *Law relating to Trusts & Trustees*, 14th ed., at 14 (1987), 1(2) *Halsbury's Laws of England*, 4th ed., para.  
35 86, at 62, and from 1 *Atkin's Court Forms*, 2nd ed., at 601 *et seq.* (1992 Issue) in support of his general submissions that the categories of circumstances which may give rise to a fiduciary relationship are not closed and that a principal/agent relationship might be inferred from the nature of the relationship between the  
40 parties as was evident in this case from the lease. Further, that an action for an account is a remedy arising from that relationship.

---

1992–93 CILR 388

Mr. Lamontagne in opposition relied also on the decision of the Supreme Court of Canada in *Lac Minerals Ltd. v. Interna*

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

5 *tional Corona Resources Ltd.* (11) for the following statement of principles which are extracted from the headnote to the case in the *Canada Supreme Court Reports* ([1989] 2 R.C.S. at 577–578):

“The following common features provide a rough and ready guide to whether or not a fiduciary obligation should be imposed on a new relationship: (1) the fiduciary has scope for the exercise of some discretion or power; (2) the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary’s legal or practical interests; and (3) the beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.”

10  
15 This description of the fiduciary relationship accords with the treatment of the subject in the textbooks which were cited in argument and especially as regards the relationship of principal and agent the following definition of agency is to be found in Fridman’s *Law of Agency*, 6th ed., at 9 (1990):

20 “Agency is the relationship that exists between two persons when one, called the *agent*, is considered in law to represent the other, called the *principal*, in such a way as to be able to affect the principal’s legal position in respect of strangers to the relationship by the making of contracts or the disposition of property.”

25 That definition does not accord with the relationship created between the landlord and tenant in the context of the lease which is the subject of this action.

30 The very helpful and exhaustive treatment of the subject in the *Lac Minerals* case also demonstrates that no relationship of principal and agent could properly be implied into the commercial arm’s length transaction which was the lease agreement between the parties herein. It would not be appropriate to invoke the rules of equity so as to impose a relationship in a situation such as this where there is no true need for the special protection that equity affords.

35  
40 I also observe that the plaintiff’s submissions were based not on any suggestion of a pre-existing fiduciary duty but on the proposition that the court might find one having regard to the self-dealing manner in which the contractual duties of the defendant had been breached. In that regard I was specifically guided by the opinion of Megarry, V.-C. in *Tito v. Waddell (No. 2)* (19) in

---

1992–93 CILR 389

commenting on this approach to identifying a fiduciary obligation



5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

([1977] 3 All E.R. at 232):

“I cannot see why the imposition of a statutory duty to perform certain functions, or the assumption of such a duty, should as a general rule impose fiduciary obligations, or even be presumed to impose any. Of course, the duty may be of such a nature as to carry with it fiduciary obligations. . . . Impose a fiduciary duty and you impose fiduciary obligations. But apart from such cases, it would be remarkable indeed if in each of the manifold cases in which statute imposes a duty, or imposes a duty relating to property, the person on whom the duty is imposed were thereby to be put in a fiduciary relationship with those interested in the property, or towards whom the duty could be said to be owed. . . .

Furthermore, I cannot see that coupling the job to be performed with self-dealing in the performance of it makes any difference. If there is a fiduciary duty, the equitable rules about self-dealing apply: but self-dealing does not impose the duty. Equity bases its rules about self-dealing on some pre-existing fiduciary duty: it is a disregard of this pre-existing duty that subjects the self-dealer to the consequences of the self-dealing rules. I do not think that one can take a person who is subject to no pre-existing fiduciary duty and then say that because he self-deals he is thereupon subjected to a fiduciary duty.”

Notwithstanding the assumptions I was invited by Mr. Lamontagne to make and which lead irresistibly to the conclusion that the defendant was in breach of the lease and thereby guilty of “self-dealing,” I was unable to conclude, having regard to the foregoing statements of principles, that there could be found to be a principal/agent relationship between the landlord and tenant as parties to the lease. Accordingly, no separate fiduciary duty to account was to be implied. The plaintiff had no arguable case for a claim in that regard and the re-amendments could not have been allowed.

(D) *Application for leave to re-amend to include a claim for a declaration that the lease was properly rescinded. Leave refused.*

This aspect of the application was abandoned by Mr. Parkinson and I see no need to comment further on it.

---

1992–93 CILR 390

(E) *Leave to re-amend to include a claim for a declaration against the defendant that the lease was duly forfeited. Leave granted.*



5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

5 Having regard to the assumptions which I should make for present purposes that the defendant was in breach of the lease, the real point in dispute, as I earlier mentioned, was whether the breaches committed by the defendant were repudiatory, that is irremediable breaches giving rise to a right in the plaintiff to repudiate the lease without first giving notice as required by the lease and more importantly as required by ss. 55 and 56 of the Registered Land Law (Revised).

10 Mr. Lamontagne submitted that leave should not be granted because the plaintiff's claim for a declaration that the lease was duly forfeited was bound to fail. This was so, he urged, because in purporting to forfeit the lease the plaintiff treated as irremediable breaches which were patently capable of being remedied and because it failed to give notice to remedy as mandatorily prescribed by s.56 of the Law. Furthermore, he submitted, it was not for the plaintiff unilaterally and subjectively to decide whether the breach was remediable; it was obliged to give notice and see whether the defendant complied within the reasonable time to be set in the notice. Acceptance of Mr. Lamontagne's submissions in this regard would result in the disallowance of the plaintiff's application to re-amend to include a claim for a declaration that the lease was duly forfeited as, having regard to the principles earlier cited, amendments should not be allowed in aid of futile claims. This would be the result as no right of action in forfeiture could have accrued to the plaintiff, if the breach had been capable of remedy.

20 I was satisfied the plaintiff had at least an arguable case that the breaches complained of were not capable of remedy. On the basis of the authorities the plaintiff need not show more than that, at this stage, in order to render his claim strike-out proof. In arriving at that conclusion I was guided by the following passage from the judgment of the English Court of Appeal given by Slade, L.J. in *Empire Clothing Serv. & Sales Ltd. v. Hillgate House Ltd.* (6) ([1985] 2 All E.R. at 1010):

30 "In my judgment, on the remediability issue, the ultimate question for the court was this: if the s.146 notice had required the lessee to remedy the breach and the lessors had then allowed a reasonable time to elapse to enable the lessee fully to comply with the relevant covenant, would such

---

1992-93 CILR 391

compliance, coupled with the payment of any appropriate monetary compensation, have effectively remedied the harm which the lessors had suffered or were likely to suffer from

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

5 the breach? If, but only if, the answer to this question was  
No would the failure of the s.146 notice to require remedy of  
the breach have been justifiable. In the *Rugby School*,  
*Esplanade* and *Hoffman* cases the answer to this question  
plainly would have been No. In the present case, however,  
for the reasons already stated, I think the answer to it must  
10 have been Yes.”

Essentially, given the interlocutory nature of the proceedings  
before me, the issue is whether the plaintiff has an arguable case.  
The answer to that question is No. There is no dispute that the  
plaintiff’s notice did not afford an opportunity to the defendant to  
15 remedy the breach.

I took the view, in the light of the assumptions I was invited to  
draw by the defendant and having regard to the affidavit of Mr.  
Mark Chapman, the independent auditor engaged by the plaintiff  
to examine the records of the defendant, in which Mr. Chapman  
20 expressed the view that there had been no proper records of  
accounts at all maintained by the defendant, that the plaintiff had  
at least an arguable case that the harm had been irretrievably  
done and that the breaches of the positive covenants to keep and  
maintain proper accounts and to enable full disclosure of income  
25 are breaches which in the context of this case may be shown to  
be  
incapable of remedy. This is, in my view, arguable notwithstand-  
ing that Mr. Chapman’s affidavit dealt with the situation as he  
found it and did not specifically address the question whether it  
would be possible for the defendant to rectify the breach by  
30 reconstruction of the records.

To my mind it must be at least objectively arguable that the  
plaintiff should be entitled to treat the circumstances existing at  
the time it purported to forfeit the lease as irremediable because  
the defalcations were deliberate, because the defendant’s failure  
35 to assist Mr. Chapman’s audit betrayed its intention to continue  
its dissemblance and because the continued performance of the  
lease depended on the good faith, willingness and ability of the  
defendant not only to remedy the breach but also to keep faithful  
accounts and make full and final disclosure of sales and income.

40 Put another way, it will be an arguable matter whether a notice  
in keeping with s.56 of the Law, specifying the breach and

---

1992–93 CILR 392

requiring remedy, should have been issued in circumstances  
where it would have been clear no proper records existed and that  
their creation would depend upon the recall and co-operation of

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

5 the officers or employees of the defendant which, from all indications, would likely be convenient to the defendant's own interests and which records may have therefore been predisposed to falsification. Whether the plaintiff as landlord could reasonably and objectively apprehend such an outcome as the inevitable result of a notice to remedy is an issue to be tried.

10 On account of the unusual nature of this lease, none of the cases cited in argument provided a full answer by way of precedent to these factual issues which remain to be resolved on the question whether the plaintiff was entitled to forfeit this lease. It should also be clear that in arriving at this view of the matter I proceeded on the basis that the requirements of ss. 55 and 56 of the Registered Land Law (Revised), in respect of the exercise of the right of forfeiture of leases, are paramount, and specifically as regards the requirements set out in s.56 for proper notice, this is so regardless whether there are provisions to the contrary  
20 contained in the lease itself.

The primacy of the s.56 requirements is confirmed by the pronouncements of this court in *Cayman Arms (1982) Ltd. v. English Shoppe Ltd.* (3) and by their confirmation by the Court of Appeal. Moreover, s.37(1) of the Registered Land Law (Revised) also expressly states that "no land, lease or charge registered under this Law shall be capable of being disposed of except in accordance with this Law. . . ." Henry, J.A. stated in the Court of Appeal case of *Paradise Manor Ltd. v. Bank of Nova Scotia* (14) (1984-85 CILR at 480) that under s.37 of the Registered  
30 Land Law (Revised), "no right of a proprietor in or over his land, lease or charge registered under the Law shall be capable of being affected except in accordance with the Law. . . ."

Nonetheless, as the plaintiff's primary contention is that it was entitled to forfeit the lease on the basis that the breaches were incapable of being remedied and as I decided it should be  
35 allowed to present that claim for determination on its merits, there was no need for me to consider whether the requirements of s.56 as to notice had been met, as those requirements would apply in the factual circumstances of this case only if it is determined that the breach is capable of remedy or that the defendant should have  
40 been afforded an opportunity to remedy.

---

1992-93 CILR 393

(F) *Leave to re-amend to include a claim in respect of auditor's*

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

*fees. Leave granted.*

5 The lease in Article 3:04 provides that the cost of “any special audit or an examination by an accountant designated by the landord pursuant to this section shall be chargeable to and paid by the tenant” in circumstances like those which led to Mr. Chapman’s audit. Accordingly Mr. Lamontagne for the defendant conceded that the plaintiff’s claim in that regard was not prone to being struck out and did not oppose the amendment. (G) *Leave to re-amend to include a claim, in the alternative to the claim for a declaration of forfeiture, for damages for breach of the covenant to pay rent. Leave granted.*

15 In light of the proof of at least one instance where the defendant failed to declare the sale of a valuable item which would have generated income which would be subject to being assessed for percentage rent, a claim in the alternative for damages for breach of the covenant to pay rent is sustainable.

This re-amendment was therefore allowed without opposition.

*Order accordingly.*

Attorneys: *Ritch & Connolly* for the plaintiff; *Ian Boxall & Co.* for the defendant.

## **EXHIBIT 19**

CAYMAN ISLANDS



Supplement No. 5 published with Extraordinary  
Gazette No. 35 dated 21<sup>st</sup> May, 2014.

**THE CONTRACTS (RIGHTS OF THIRD PARTIES) LAW, 2014**

**(LAW 4 OF 2014)**

0020017

*The Contracts (Rights of Third Parties) Law, 2014*

**THE CONTRACTS (RIGHTS OF THIRD PARTIES) LAW, 2014**

**ARRANGEMENT OF SECTIONS**

1. Short title
2. Interpretation
3. Application
4. Rights of third party to enforce contractual term
5. Variation and rescission of contract
6. Defences
7. Enforcement of contract by promisee
8. Protection of promisor from double liability
9. Exceptions
10. Supplementary provisions relating to third party
11. Arbitration provisions



*The Contracts (Rights of Third Parties) Law, 2014*

CAYMAN ISLANDS

Law 4 of 2014.

I Assent

Franz Manderson

Acting Governor.

14<sup>th</sup> May, 2014

**A LAW TO MAKE PROVISION FOR THE ENFORCEMENT OF  
CONTRACTUAL TERMS BY THIRD PARTIES; AND FOR INCIDENTAL  
AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Contracts (Rights of Third Parties) Law, 2014. Short title
2. (1) In this Law - Interpretation  
“contract of employment” has the meaning assigned to that expression under section 2 of the Labour Law (2011 Revision); (2011 Revision)  
“employee” has the meaning assigned to that expression under section 2 of the Labour Law (2011 Revision);  
“set off” includes netting of claims; and  
“third party” means a person who is not a party to a contract.  
(2) In relation to a term of a contract which is enforceable by a third party -
  - (a) “promisor” means a party to the contract against whom the term is enforceable by the third party; and

*The Contracts (Rights of Third Parties) Law, 2014*

(b) “promisee” means a party to the contract by whom the term is enforceable against the promisor.

Application

3. (1) This Law shall apply to any contract which, on or after the date on which this Law comes into force, includes terms which comply with section 4.

(2) A contract made on, before or after the date on which this Law comes into force may be amended to include terms which comply with section 4.

(3) If, after this Law comes into force, a contract is amended to include terms which comply with section 4, a third party may only enforce a right which accrues on or after the date on which the contract is amended.

(4) If, prior to the date on which this Law comes into force, a contract included terms which comply with section 4, a third party may only enforce a right which accrues on or after the date on which this Law comes into force.

Rights of third party to enforce contractual term

4. (1) Subject to section 9, a third party may in his own right enforce a term of the contract if -

- (a) he is expressly identified in the contract by name, as a member of a class or as answering a particular description, which includes a person nominated or otherwise identified pursuant to the terms of the contract but the third party need not be in existence when the contract is entered into; and
- (b) the contract expressly provides in writing that he may.

(2) This section does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.

(3) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly.

(4) Where a term of a contract excludes or limits liability in relation to any matter, references in this Law to the third party enforcing the term shall be construed as references to his availing himself of the exclusion or limitation.

Variation and rescission of contract

5. (1) Where a third party has a right under section 4 to enforce a term of the contract, the parties to the contract may not, by agreement, rescind the contract, or

*The Contracts (Rights of Third Parties) Law, 2014*

vary it so as to extinguish or alter his entitlement under that right, without his consent if -

- (a) the third party has communicated his assent to the term to the promisor;
- (b) the promisor is aware that the third party has relied on the term; or
- (c) the promisor can reasonably be expected to have foreseen that the third party would rely on the term and the third party has in fact relied on it.

(2) The assent referred to in subsection (1)(a) -

- (a) may be by words or conduct; and
- (b) if sent to the promisor by post or other means, shall not be regarded as communicated to the promisor until received by him.

(3) Subsection (1) is subject to any express term of the contract under which -

- (a) the contract may be rescinded or varied without the consent of the third party; or
- (b) the consent of the third party is required in circumstances specified in the contract instead of those set out in subsection (1)(a) to (c).

(4) Where the consent of a third party is required under subsection (1) or (3), the court may, on the application of one or more of the parties to the contract, dispense with his consent if satisfied that it is just and equitable to do so having regard to all the circumstances.

(5) The court may, on the application of one or more of the parties to a contract, dispense with any consent that may be required under subsection (1)(c) if satisfied that it cannot reasonably be ascertained whether or not the third party has in fact relied on the term.

(6) If the court dispenses with a third party's consent, it may impose the conditions it thinks fit, including a condition requiring the payment of compensation to the third party.

6. (1) Subsections (2) to (5) apply where, in reliance on section 4, proceedings for the enforcement of a term of a contract are brought by a third party. Defences

(2) The promisor shall have available to him by way of defence or set-off any matter that -

*The Contracts (Rights of Third Parties) Law, 2014*

- (a) arises from or in connection with the contract and is relevant to the term; and
  - (b) would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.
- (3) The promisor shall also have available to him by way of defence or set-off any matter if -
- (a) an express term of the contract provides for it to be available to him in proceedings brought by the third party; and
  - (b) it would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.
- (4) The promisor shall also have available to him -
- (a) by way of defence or set-off any matter; and
  - (b) by way of counterclaim any matter not arising from the contract,
- that would have been available to him by way of defence or set-off or, as the case may be, by way of counterclaim against the third party if the third party had been a party to the contract.
- (5) Subsections (2) and (4) are subject to any express term of the contract as to the matters that are not to be available to the promisor by way of defence, set-off or counterclaim.

(6) Where in any proceedings brought against him a third party seeks in reliance on section 4 to enforce a term of a contract including, in particular, a term purporting to exclude or limit liability, he may not do so if he could not have done so, whether by reason of any particular circumstances relating to him or otherwise, had he been a party to the contract.

Enforcement of contract by promisee

7. Section 4 does not affect any right of the promisee to enforce any term of the contract.

Protection of promisor from double liability

8. Where under section 4 a term of a contract is enforceable by a third party and a promisee has recovered from the promisor a sum in respect of -

- (a) the third party's loss in respect of the term; or
- (b) the expense to the promisee of making good to the third party the default of the promisor,

then, in any proceedings brought in reliance on that section by the third party, the court shall reduce any award to the third party to the extent it thinks appropriate to take account of the sum recovered by the promisee.

*The Contracts (Rights of Third Parties) Law, 2014*

9. (1) Section 4 confers no rights on a third party in the case of a contract on a bill of exchange, promissory note or other negotiable instrument. Exceptions

(2) Section 4 confers no rights on a third party in the case of any contract binding on a company and its members under sections 12 and 25 of the Companies Law (2013 Revision). (2013 Revision)

(3) Section 4 confers no rights on a third party to enforce any term of a contract of employment against an employee.

(4) Section 4 confers no rights on a third party in the case of -

- (a) a contract for the carriage of goods by sea;
- (b) a contract for the carriage of goods by road, or for the carriage of cargo by air; or
- (c) letters of credit.

(5) In subsection (4) -

“contract for the carriage of goods by sea” means a contract of carriage -

- (a) contained in or evidenced by a bill of lading, sea waybill or a corresponding electronic transaction; or
- (b) under or for the purposes of which there is given an undertaking which is contained in a ship’s delivery order or a corresponding electronic transaction.

10. (1) Section 4 does not affect any right or remedy of a third party that exists or is available apart from this Law. Supplementary provisions relating to third party

(2) In sections 7 and 10 of the Limitation Law (1996 Revision) the references to an action founded on a simple contract and an action upon a specialty shall respectively include references to an action brought in reliance on section 4 relating to a simple contract and an action brought in reliance on that section relating to a specialty. (1996 Revision)

(3) Except to the extent provided in section 11(1) or (2), a third party shall not, by virtue of section 4(4), 6(4), 6(6), 11(1) or 11(2) be treated as a party to the contract for the purposes of any other Law or any instrument made under any other Law.

11. (1) Where a right under section 4 to enforce a term is subject to an arbitration agreement, the third party shall be treated for the purposes of the Arbitration Law, 2012 as a party to the arbitration agreement as regards disputes Arbitration provisions  
(Law 3 of 2012)

*The Contracts (Rights of Third Parties) Law, 2014*

between himself and the promisor relating to the enforcement of the term by the third party.

(2) Where -

- (a) a third party has a right under section 4 to enforce an arbitration agreement; and
- (b) the third party does not fall to be treated under subsection (1) as a party to the arbitration agreement,

the third party shall, if he exercises the right, be treated for the purposes of the Arbitration Law, 2012 as a party to the arbitration agreement in relation to the matter with respect to which the right is exercised, and be treated as having been so immediately before the exercise of the right.

(3) In this section -

“arbitration agreement” has the meaning assigned to that expression under section 2 of the Arbitration Law, 2012.

Passed by the Legislative Assembly the 11<sup>th</sup> day of April, 2014.

Juliana Y. O’Connor-Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.

## **EXHIBIT 20**



## \*366 Ebbw Vale Urban District Council v South Wales Traffic Area Licensing Authority.



No Substantial Judicial Treatment

### Court

Court of Appeal

### Judgment Date

16 March 1951

### Report Citation

[1951] 2 K.B. 366



Court of Appeal

Cohen , Asquith and Birkett , L.JJ.

1951 March 16.

*Road Traffic—Omnibus company—100 per cent. subsidiary of British Transport Commission—Company's application to vary fares made to licensing authority—Jurisdiction of authority—Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 72 — Transport Act, 1947 (10 & 11 Geo. 6, c. 49), ss. 2, sub—ss. 1, 2 (f) (g) (i), 3, 63—5, 76 .*

By s. 65, sub-s. 1, of the Transport Act, 1947 , ss. 72 to 76 of the Road Traffic Act, 1930 , do not apply to any passenger road transport service provided by the British Transport Commission or by any person acting as agent for the commission.

The commission, acting under the Transport Act, 1947 , acquired all the shares of a passenger road transport company with power to appoint and dismiss all their directors, the company thus becoming a 100 per cent. subsidiary of the commission. There was no evidence that the commission had in fact appointed the company to act as their agent. The company applied to a licensing authority for public service vehicles under s. 72, sub-ss. 1 and 4, of the Road Traffic Act, 1930 , to vary the conditions of road service licences then held by them, i.e., to increase the existing scale of fares.

\*367

Held, that the licensing authority had jurisdiction to hear the application of the company, since the service in question was not a passenger road transport service provided by the commission or by any person acting as agent for the commission. The commission, in acquiring the shares of the company in the exercise of their general duty as stated in s. 3 of the British Transport Act, 1947 , were not "providing", but "securing or promoting" the provision of, an efficient, adequate, economical and properly integrated system of public inland transport.

*Salomon v. Salomon & Co. LD.[1897] A. C. 22* followed.

Observations of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.[1924] 2 Ch. 33* , 38, 40, referred to.

Decision of the Divisional Court reversed.

Appeal from the Divisional Court.

The applicants, Ebbw Vale Urban District Council, sought an order to prohibit the licensing authority for public service vehicles for the South Wales Traffic Area from hearing and determining an application by Red and White Services Ld. under s. 72 of the Road Traffic Act, 1930 <sup>1</sup>, to vary the conditions of road service licences then held by them, that was, to increase their existing scale of fares. The ground for the application was that the licensing authority had no jurisdiction to hear the application by the omnibus company by reason of s. 65 of the Transport Act, 1947 <sup>2</sup>.

\*368

The Divisional Court (Lord Goddard, C.J., Hilbery and Hallett, JJ.) held that s. 72 of the Act of 1930 on the facts of the case had ceased to apply, because the services afforded by the omnibus company were provided "by the commission" or by a "person acting as agent for the commission" within the meaning of sub-s. 1 of s. 65 of the Transport Act, 1947.

The omnibus company had been a private enterprise concern when, under the Transport Act, 1947, the British Transport Commission had acquired all their shares and the power to appoint and dismiss all their directors. The omnibus company, therefore, became a 100 per cent. subsidiary of the British Transport Commission. Lord Goddard, C.J., said that the commission were providing the road passenger service of the omnibus company, though he was rather inclined to think that the omnibus company in the circumstances were acting as agents for the commission. The British Transport Commission and the omnibus company appealed.

Before the Court of Appeal, counsel for the urban district council did not see fit to support the order of prohibition made by the Divisional Court on the ground that the omnibus company provided the services as agents of the British Transport Commission: he contended that the services were provided by the commission.

*Heald, K.C.*, and *R. J. Parker* for the commission.

*Fox-Andrews, K.C.*, and *King-Hamilton* for the omnibus company.

*Cyril Morgan* for the urban district council.

The argument, based on the relevant sections of the Transport Act, 1947, appears fully from the judgment of Cohen, L.J. Counsel for the appellants cited *Salomon v. Salomon & Co. LD.* <sup>3</sup>; the speech of Lord Buckmaster in *Rainham Chemical Works LD. (In Liquidation) v. Belvedere Fish Guano Co. LD.* <sup>4</sup>; the judgment of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.* <sup>5</sup>; *Railway Executive v. Henson* <sup>6</sup>; and *Smith v. London Transport Executive* <sup>7</sup>.

COHEN, L.J.

This appeal raises a question as to the jurisdiction of the licensing authority under s. 72 of the Road Traffic Act, 1930, to hear an application by Red and White Services Ld. for the modification of the conditions of their licence in such a way as to enable them to increase the fares which they are entitled to charge for the services that they supply in a district in South Wales.

Section 72, sub-s. 1, provides: "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. It is under that last provision that Red and White Services Ld. made the application which gives rise to the present proceedings.

When the application came before the authority, the suggestion was made, and it has since been decided by the Divisional Court, that the jurisdiction of the authority had been taken away, so far as the point then under discussion was concerned, by s. 65 of the Transport Act, 1947. [His Lordship read sub-s. 1 of s. 65]. The Divisional Court decided that s. 72 of the Road Traffic Act, 1930, had ceased to apply on the facts of this case, because the services in question were services provided "by the commission", or by a "person acting as agent for the commission", within the meaning of s. 65.

I will refer to two passages in the judgment of Lord Goddard, C.J., in order to explain the ratio decidendi of the court. He said: "It seems to me, when one gives s. 65 the ordinary meaning of the English language, that the transport commission, having acquired the whole of the undertaking and share-holding of this company, and running the omnibuses of that company for the purpose of providing a passenger service through the Ebbw Vale, are providing a road transport service. The vehicles are not their own: they still belong to the legal entity which is the company; but it seems to me that the commission are in effect providing the road passenger transport, though I am rather inclined to think that the omnibus company in the circumstances are acting as agents for the commission". Then, in the last paragraph he said: "Mr. \*370 Heald has relied on the well-known case of *Salomon v. Salomon & Co. LD.*<sup>8</sup>, which decided that in what is commonly called a one-man company, the company is a different entity from the man who holds the whole of the shares. and I have no doubt here that the omnibus company are a different entity from the commission; but it seems to me that the commission are providing this road passenger transport service, because the company are put there by the Transport Commission to do what otherwise it is the privilege of the commission to do. For these reasons I think that the order of prohibition must go".

Colloquially speaking, it may be true to say that the British Transport Commission are running the omnibuses of the company; but I am unable to agree, with all respect to the Divisional Court, that so broad a construction can properly be placed on the material phrase in s. 65: "any passenger road transport service provided ... by the commission or by any person acting as agent for the commission".

Under the ordinary rules of law, a parent company and a subsidiary company, even a 100 per cent. subsidiary company, are distinct legal entities, and in the absence of an agency contract between the two companies one cannot be said to be the agent of the other. That seems to me to be clearly established by *Salomon v. Salomon & Co. LD.*<sup>9</sup>, and by the observations of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.*<sup>10</sup>.

Tomlin, J., said<sup>11</sup>: "I do not think that any such inference" - that is, an inference of agency between the directors and the company - "can be or ought to be drawn. It has been made plain by the House of Lords that for the purpose of establishing contractual liability it is not possible, even in the case of the so-called one-man companies, to go behind the legal corporate entity of the company and treat the creator and controller of the company as the real contractor merely because he is the creator and controller. If he is to be fixed with liability as principal, the agency of the company must be established substantively and cannot be inferred from the holding of director's office and the control of the shares alone: see *Salomon v. Salomon & Co. LD.*<sup>12</sup>. Any other conclusion would have nullified the purpose for which the creation of limited companies was authorized by the legislature".

\*371

Tomlin, J., continued: "Nor does the matter stand otherwise in regard to liability for tortious acts". and later<sup>13</sup>: "There is no evidence from which it ought or can be inferred that the defendant directors have authorized the wrongful acts. To draw that inference from the fact that they are sole directors and shareholders of the defendant company would be manifestly wrong and contrary to the principles enunciated by the House of Lords in the cases already referred to, and there is no evidence of any other facts at all in relation to the matter".

So I think that it can clearly be said here that there is no evidence to justify the inference which apparently Lord Goddard, C.J., was inclined to draw, that the omnibus company in the circumstances of the case are acting as agents for the British Transport Commission. In fairness to Mr. Morgan I add that he did not seek to support the order on the ground of agency. He did, however, strongly urge that, on a business view of the matter, the services which were provided in South Wales by the company were services provided by the commission.

I can find nothing in the Act to negative or exclude the ordinary rules of law so far as this question is concerned. I think that the proper approach to the question is to construe s. 65, sub-s. 1, in the light of the other relevant provisions of the Act; and, as Mr. Fox-Andrews said, the proper starting point is s. 3, which lays down the general duty of the commission and states the objects, as distinct from the powers, which the commission was incorporated to perform. By sub-s. 1: "It shall be the general duty of the commission so to exercise their powers under this Act as to provide, or secure or promote the provision of, an efficient, adequate, economical and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods with due regard to safety of operation".

I would emphasize the distinction that is plainly drawn there between "providing", on the one hand, and "securing or promoting" on the other, the provision of an efficient system of transport. It seems to me that those words clearly visualize that the commission may either provide the system themselves or may secure or promote its provision by others. With that in mind I turn back to s. 2, which concerns the powers which the commission are to \*372 have to enable them to fulfil their object. Section 2, sub-s. 1, provides: "Subject to the provisions of this Act, the commission shall have power - (a) to carry goods and passengers by rail, road and inland waterway, within Great Britain". By sub-s. 2: "Subject to the provisions of this Act, the powers conferred by sub-s. 1 of this section include power", and then follow a series of powers lettered in paragraphs from (a) to (i). I need only refer to paragraphs (f), (g) and (i). Paragraph (f): "to acquire by agreement (whether absolutely or for any period) the whole or any part of any undertaking of any other person, being an undertaking, or a part of an undertaking, the activities whereof are wholly or mainly such activities as are specified in the said sub-s. 1". Paragraph (g): "to enter into and carry out agreements with any person for the carrying on by that person, whether as agent for the commission or otherwise, of any of the activities specified in the said sub-s. 1, or for the provision by that person, whether as agent for the commission or otherwise, of clearing house facilities in connexion with the transport of goods". Paragraph (i): "to lend money to, or give guarantees for the benefit of, any person carrying on or about to carry on any of the activities specified in the said sub-s. 1", and then, omitting immaterial words, "and to acquire by agreement any securities of any body corporate which is carrying on or about to carry on or which directly or indirectly controls another body corporate which is carrying on or about to carry on any such activities".

I pause here to observe that it is plain as regards the omnibus company that it is under this latter power to acquire the securities of a body corporate which is carrying on transport activities that the acquisition was made. I pause also to observe that both sub-s. 1 and sub-s. 2 are subject to provisoes prohibiting the commission from doing certain things which might otherwise be within the wide words of the enabling power.

Sub-s. 3 provides: "Where, whether by agreement or otherwise, the commission acquire the whole or any part of any undertaking of any other person, they may, subject to the provisions of this Act, carry on any activities, whether mentioned in sub-s. 1 of this section or not, which were theretofore carried on for the purposes of that undertaking or part of an undertaking or were authorized by any statutory provision to be carried on for the purposes thereof". There again that is followed by a proviso restricting the generality of the foregoing Sub-s. 4 also contains certain restrictive powers.

\*373

It is clear from that section, and I think that it also appears clear from ss. 63 and 64, which concern the preparation and approval of area road transport schemes and the contents of area road transport schemes, that the Act contemplates that the commission may either provide services itself or may secure the provision of those services by or through other bodies, and not only by or through agents of the commission. That being so, prima facie, it would seem necessary to see whether what is being done in any particular case is an act done to provide transport facilities, or is an act done to secure the provision of transport facilities. Where a service is provided through a subsidiary company of the commission, it seems to me that prima facie, having regard to the general rule of law, what the commission are doing is to secure the provision of road transport facilities, and not to provide them.

That the commission can act by providing them themselves is made clear by the decision of this court to which our attention was called by Mr. Heald and Mr. Morgan, namely, *Smith v. London Transport Executive* <sup>14</sup>.

That the commission can act through an agent is also clear under the express provisions of sub-s. (2) (g); but, as I have said, there is no question of agency here. It seems to me quite plain that it can also arrange with independent concerns to provide a service, in which case it will be performing its function of securing or promoting the provision of an efficient, adequate, economical and properly integrated system of public inland transport. In the present case, I think, the commission were securing the provision of an efficient, adequate, economical and properly integrated system of public inland transport within the meaning of s. 3, sub-s. 1, of the Act, through the omnibus company - not an independent concern, but a separate legal entity.

That conclusion, it seems to me, is rendered more certain by sub-s. 6 of s. 2 of the Act. That provides: "For the purposes of sub-s. 4 and of the provisoes to sub-ss. 2 and 3 of this section, where a body corporate is directly or indirectly controlled by the commission, anything done by that body shall be deemed to be done by the commission, and the undertaking of the body shall be deemed to form part of the undertaking of the commission". The importance of that provision seems to me to be that it is quite plain that Parliament when it passed this Act had in mind the general rule of law to which I have \*374 referred as laid down in *Salomon v. Salomon & Co. LD.* <sup>15</sup>, and many other cases, that a subsidiary company is not the agent of the parent company, but is an entirely separate entity. Its acts are not the acts of the parent company, and the parent company is not responsible for its acts or defaults, in the absence of special provisions in some contract between the parties. Parliament, with that in mind, has gone out of its way to prescribe that for certain limited purposes the acts of the subsidiary company shall be

deemed to be the acts of the commission. It seems to me an inevitable inference from that provision that, except to that extent, the intention was that the ordinary rule of law should prevail and that the acts of the subsidiary company should be its own acts and not the acts of the commission.

Mr. Morgan was compelled to admit that if there were a road accident the victim would have a remedy, if he had a remedy at all, not against the commission, but only against the omnibus company. That seems to me to lead to, or support, the conclusion that the services here were provided, not by the commission, but by the company.

There is another argument of Mr. Morgan's to which I ought to refer. He laid some stress on the words in sub-s. 1 of s. 65, "any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise". He relied upon those words as in some way enlarging the meaning to be given to the word "provided". I am unable to follow him in this part of his argument. It seems to me that, in the context in which they appear, the words "or otherwise" are merely in contrast to the words "under a scheme", and mean no more than "provided, whether or not under a scheme under the preceding provisions of this Part of this Act". It does not assist us in determining whether or not as a matter of fact any particular service is provided by the commission.

There is still one other argument to which I must refer. It was said that it would lead to a ridiculous, or at any rate to an artificial, situation if there were to be two bodies dealing with the same subject-matter. Section 76 of the Transport Act, 1947, contains the provisions under which the commission "shall from time to time prepare, and submit to the transport tribunal for confirmation, drafts of schemes (hereafter in this Act referred to as 'charges schemes') for determining, as respects the \*375 services and facilities provided by the commission to which the schemes respectively relate - (a) the charges which are to be made by the commission". So, said Mr. Morgan, it is plain that in one case not the licensing authority under the Road Traffic Act, 1930, but the transport tribunal under the Transport Act, 1947, will have to determine the fares and charges which are to be made by the commission. Is it not, he said, most unlikely that the legislature intended that, as regards other cases, where in substance the service was provided by the commission, the reference should be to the licensing authority? It does not seem to me that that objection really has any substance, and in a sense it begs the question, because it is only where the services are provided by the commission that the obligation to set up a charging scheme arises; and it seems to me that Parliament, having, as it clearly had, in mind the prospect that the commission might discharge their obligations either by providing or by securing provision of the requisite services, should have visualized a different method of settling the charges according to whether the commission provided the services themselves or secured their provision. It seems to me quite natural that the charging scheme should only apply where the commission were providing the services themselves, leaving the matter to be dealt with under the Road Traffic Act, 1930, in cases where the part played by the commission was merely to secure the provision of the services.

For these reasons, I think that the proper inference from the facts proved before the Divisional Court was that this was a case where the services were not provided by the commission but the commission merely secured their provision. I therefore think that it is not a case for prohibition, and I would allow the appeal.

ASQUITH, L.J.

I agree, and I would add only a word or two out of deference to the judgment from which we are differing. The case originally raised two distinct issues: did the commission within the meaning of sub-s. 1 of s. 65 "provide" these services? Or, short of that, did the omnibus company provide them as agents for the commission?

Mr. Morgan has not pressed the second point on the appeal, but, as the Divisional Court based its judgment partly on an affirmative answer to it, it is desirable to glance at it briefly. The only relevant fact before the court is that the commission own substantially all the shares in the company. The two bodies are admittedly separate legal personæ. Admittedly a subsidiary is not necessarily, as such, an agent for the controlling corporation. \*376 There is, of course, nothing to prevent a controlling body from constituting a controlled body its agent if it chooses to do so, but there is no evidence of any such thing having happened here.

I turn, therefore, to the other question: did the commission provide these services themselves? The Divisional Court took a broad, common-sense view of the meaning of the word "provide", but in my view it has to be construed in the light of its context and the general structure of the Act. The other sections of the Act do draw a firm and sharp distinction between services "provided by" the commission themselves, and services of which they "secure the provision", presumably by other people. My Lord has read the first two or three lines of s. 3, sub-s. 1, of the Transport Act, 1947, in support of that proposition, and I will not repeat them, but the same distinction reappears in a salient form in ss. 63 and 64, concerning schemes. Sub-s. 1 of s. 63



provides: "(1) The commission may, at any time, prepare and submit to the Minister a scheme". Sub-s. 1 of s. 64 provides: "A scheme under the last preceding section may provide for all or any of the following matters, that is to say - (a) for constituting or specifying the body or bodies who are to provide passenger road transport services operating within or partly within the area ...". Then by sub-s. 2: "The commission may be the body specified, or one of the bodies specified, in a provision included in a scheme by virtue of paragraph (a) of sub-s. 1 of this section"; so that it is not to be assumed that the distinction between services provided by the commission themselves and services which they cause other bodies to provide - a distinction which is so clearly present in the draftsman's mind when drafting ss. 63 and 64 - has entirely escaped his mind when he passes on to draft s. 65. It would appear to me that the commission have not in fact themselves provided passenger road services up to this time; but it is quite clear that they could, if they wished to do so, purchase a fleet of omnibuses tomorrow and run them themselves under powers given by s. 2, sub-s. 1 (a) and sub-s. 2 : see *Smith. v. London Transport Executive* <sup>16</sup> . If the commission in this case had bought, not shares in the omnibus company, but the physical assets of that company, and had engaged the company's staff to run the undertaking, in that case the commission would have been "providing" the services themselves. But it is, in my view, only if and to the extent that the commission do provide such services by themselves (or by an \*377 "agent" within the meaning of sub-s. 1 of s. 65 ) that the jurisdiction as to fares of the licensing authority is displaced; and as neither of these conditions is fulfilled in the present case I agree with my Lord that the appeal ought to be allowed.

BIRKETT, L.J.

I agree with both the judgments which have just been delivered. The point in this case was described by the Lord Chief Justice in the Divisional Court as being a short point, and a short point it assuredly is.

The Lord Chief Justice said: "I think, therefore, for the reasons which I have endeavoured to express - it is a very short point - that this is a road transport service provided by the commission, or by persons acting as agents for the commission, and that accordingly the Road Traffic Act no longer applies". Also, in the Divisional Court the grounds upon which this order for prohibition was asked were these: "The relief sought is an order of prohibition that the licensing authority for public service vehicles for the South Wales Traffic Area be prohibited from hearing and determining an application by Red and White Services Ld. to vary the conditions attached to road service licences now held by the Red and White Services Ld., that is to say, to increase their present scale of fares. The grounds upon which relief is sought are that the said licensing authority has no jurisdiction to hear and determine the said application".

The short question, therefore, is: is it shown, on the true construction of the statutes, and on the facts which have been proved, that the British Transport Commission are providing these road services in South Wales so that ss. 72 to 76 of the Road Traffic Act, 1930 , no longer apply?

Mr. Morgan invited the court to take a broad view, as he termed it, of the word "provide" in sub-s. 1 of s. 65, and, of course, that, I think, is the gist of the whole matter. Section 65, sub-s. 1, of the Transport Act, 1947 , provides: " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the commission or by any person acting as agent for the commission". Quite naturally, Mr. Morgan said that you must take a broad view of that word "provide". If I may say so, with all respect, it was the acceptance of that invitation in the Divisional Court which led to error. The meaning of the word "provide" cannot be interpreted quite on those lines, but must be ascertained with \*378 some precision, having regard to the wording of the various sections of the Transport Act, 1947 .

I think that Mr. Fox-Andrews was quite right in saying that the section which sheds most light on this matter is s. 3. There the general duty of the commission is set out. Sub-section 1 provides: "It shall be the general duty of the commission so to exercise their powers under this Act as to provide, or secure or promote the provision of, an efficient, adequate, economical and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods with due regard to safety of operation; and for that purpose it shall be the duty of the commission to take such steps as they consider necessary for extending and improving the transport and port facilities within Great Britain in such manner as to provide most efficiently and conveniently for the needs of the public, agriculture, commerce and industry". That is the general duty of the commission, and it is to be observed that one can conceive all sorts of matters as within the power of the Transport Commission under that section: they can provide services themselves; they can, in lieu of providing services themselves, secure the provision of services; or they can, instead of doing that, promote services, all to the end that their general duty under the section shall be fulfilled.

In this case it was shown that the commission in fact controlled the omnibus company, in this sense, that they owned all the shares, with the possible exception of two, and that they had the controlling power over the appointment and the dismissal of directors. In relation to that, sub-s. 6 of s. 2 is very important, because it is contemplated that the commission shall control, directly or indirectly, corporate bodies. The sub-section provides: "For the purposes of sub-s. 4 and of the provisoes to sub-ss. 2 and 3 of this section, where a body corporate is directly or indirectly controlled by the commission, anything done by that body shall be deemed to be done by the commission", thus limiting this provision most carefully to the matters which are set out in the section, i.e., for the purposes of sub-s. 4 and the provisoes of sub-ss. 2 and 3 of s. 2. Therefore, in this case, although the commission do control the omnibus company, though they do own the shares, though they have the power to control the appointment and dismissal of directors, they do not own the property of the company and the vehicles which actually run upon the roads. As my Lord pointed out, there is no power to sue the commission either in contract or in tort. Therefore, popularly, \*379 or, if I may use Mr. Morgan's phrase, "in a broad sense", one may say, of course, that the commission provide the services, as one man might say to another, because they control the company, they own the shares; yet in fact what they are really doing here is, not to provide the services, but, as my Lord has already stated, to secure that those services are provided.

Asquith, L.J., discussed the matter of agency, which clearly influenced the Divisional Court, but which is no longer relied upon here; and Cohen, L.J., disposed of the argument raised on the use of the words "or otherwise" in the words of sub-s. 1 of s. 65: "any passenger road transport service provided whether under a scheme under the preceding provisions of this Part of this Act or otherwise".

In all these circumstances, I am clearly of opinion that this was not a case where the commission in fact provided the services, and, that being so, sub-s. 1 of s. 65, which eliminated ss. 72 to 76 of the Road Traffic Act, 1930, in the case of any passenger road transport service *provided* by the commission, has no application, and I agree that this appeal should be allowed.

## Representation

Solicitors: M. H. B. Gilmour ; M. H. B. Gilmour ; Lewin, Gregory, Torr, Durnford & Co. , for J. L. J. Price, Merthyr Tydfil .

*Appeal allowed. (C. G. M.)*

## Footnotes

- 1 Road Traffic Act, 1930, s. 72, sub-s. 1 : "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. Transport Act, 1947, s. 65, sub-s. 1 : " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the Commission or by any person acting as agent for the Commission, but neither the Commission nor any such person as aforesaid shall use any public service vehicle for the conveyance of passengers for hire or reward at separate fares except - (a) on a route approved, as respects so much thereof as falls within any traffic area, by the licensing authority for public service vehicles for that area; and (b) in accordance with such restrictions as may be imposed by that authority as to the class or description of vehicles which may be used on the route and as to the portions of the route on which, and the points at which, passengers may be taken up or set down ...".
- 2 Road Traffic Act, 1930, s. 72, sub-s. 1 : "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the



provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. Transport Act, 1947, s. 65, sub-s. 1 : " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the Commission or by any person acting as agent for the Commission, but neither the Commission nor any such person as aforesaid shall use any public service vehicle for the conveyance of passengers for hire or reward at separate fares except - (a) on a route approved, as respects so much thereof as falls within any traffic area, by the licensing authority for public service vehicles for that area; and (b) in accordance with such restrictions as may be imposed by that authority as to the class or description of vehicles which may be used on the route and as to the portions of the route on which, and the points at which, passengers may be taken up or set down ...".

- 3 [1897] A. C. 22 .
- 4 [1921] 2 A. C. 465 , 475.
- 5 [1924] 2 Ch. 33 , 38 and 40.
- 6 (1949) 65 T. L. R. 336; 113 J. P. 333 .
- 7 [1949] Ch. 685; [1951] W. N. 157 .
- 8 [1897] A. C. 22 .
- 9 [1897] A. C. 22 .
- 10 [1924] 2 Ch. 33 .
- 11 **Ibid. 38.**
- 12 [1897] A. C. 22 .
- 13 [1924] 2 Ch. 33 , 40.
- 14 [1949] Ch. 685; [1951] W. N. 157 .
- 15 [1897] A. C. 22 .
- 16 [1949] Ch. 685; [1951] W. N. 157

(c) Incorporated Council of Law Reporting for England & Wales

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 11**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1*  
*000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>				<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>				<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

Vol. 8			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001349	8 5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001352	9 5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001359	10 5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
001361	11 5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
001369	12 5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
001381	13 5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Thru Vol. 10



				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				



001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

HAYWARD PLLC  
Melissa S. Hayward (Texas Bar No. 24044908)  
Zachery Z. Annable (Texas Bar No. 24053075)  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

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

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
THE CHARITABLE DAF FUND, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§	
	§	22-03052-sgj
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Defendant.	§	

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that the following matter has been scheduled for a hearing on **Wednesday, August 3, 2022, at 2:30 p.m. (Central Time)** (the “Hearing”):

1. *Highland Capital Management, L.P.’s Amended Motion to Dismiss* [Docket No. 19] (the “Motion”).

<sup>1</sup> The Reorganized Debtor’s last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

The Hearing on the Motion will be held via WebEx videoconference before The Honorable Stacey G.C. Jernigan, United States Bankruptcy Judge. The WebEx video participation/attendance link for the Hearing is: <https://us-courts.webex.com/meet/jerniga>.

A copy of the WebEx Hearing Instructions for the Hearing is attached hereto as Exhibit A; alternatively, the WebEx Hearing Instructions for the Hearing may be obtained from Judge Jernigan's hearing/calendar site at: <https://www.txnb.uscourts.gov/judges-info/hearing-dates/judgejernigans-hearing-dates>.

*[Remainder of Page Intentionally Blank]*

Dated: June 1, 2022.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

**HAYWARD PLLC**

*/s/ Melissa S. Hayward*

---

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

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

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
OFFICE OF THE CLERK

---



July 1, 2021

**CLERK'S NOTICE 21-05**

**PARTICIPATING IN HEARINGS USING WEBEX**

For those participating in hearings using the Court's WebEx audio and video conferencing platform, please review the following information for helpful tips and instructions. WebEx Connection Information, providing applicable WebEx links and call-in numbers for the Judges in the Dallas, Fort Worth, and Wichita Falls Divisions, is attached to this Notice for your reference.

**CONNECTION INSTRUCTIONS FOR PARTICIPATING IN A WEBEX VIRTUAL HEARING**

Please connect at least 10 minutes prior to the hearing time using one of the two options below. It is recommended that attorneys discuss the logistics of the WebEx appearance with their clients/witnesses at least 48 hours prior to the hearing.

**Option 1: Using the WebEx app on your smartphone, tablet, laptop, or desktop.**

It is strongly preferred that participants who wish to speak during a hearing use the WebEx application rather than using the "call-in" option described in Option 2.

Attorneys and/or witnesses who anticipate offering extensive testimony or legal argument, or conducting examination are required to utilize the video function. The Court may consider special requests for other appearance options on a case-by-case basis. Please contact the appropriate courtroom deputy for the presiding judge for further information.

Please connect using only one device. Using two or more devices may cause audio feedback issues.

If using a smartphone or tablet for video, it should be set in a stationary position. Holding a phone or tablet in your hand while speaking does not yield a good video for the Court or other participants.

**NOTE: If you are experiencing audio issues when using the WebEx application,** you may use the "Call Me" selection under "Audio Connection" to move just the audio portion of the WebEx conference to your telephone.

**Option 2: Call-in via phone (audio only).**

The meeting number/access code and dial-in number can be found on the attached WebEx Connection Information. Please use \*6 or the mute function on your smartphone to mute your line.

002021

**HELPFUL HINTS AND ETIQUETTE**

- Please use the mute function when you are not speaking. Please be aware that sometimes the Court mutes everyone when there is background noise. When you want to speak, make sure you are not on mute. Call-in users should dial \*6 to unmute your line.
- Remember to state your name for the record each time before speaking and speak slowly and clearly so the Court can get a good record. Also, use your proper name on your device or for your WebEx login when participating over video, so that the Court can more easily determine who is speaking.
- Use headphones whenever possible, especially if using a desktop PC with external speakers. We have found that newer iPhones provide the best visual and audio feed – better than most desktop computers. If you are on a personal computer, headphones or earbuds are required for those who need to speak during the hearing.
- During examination, attorneys and witnesses should use a separate camera and microphone when possible. To avoid feedback, parties using separate devices must not be in the same room. The Court may consider special requests on a case-by-case basis.
- WebEx participants may use the "share" button to easily share their screen or document with the Court or other WebEx participants. Press “stop sharing” to remove the presentation from the meeting.
- When making an appearance from a vehicle, please park in a safe location with windows rolled up (to minimize background distraction and noise) and use a headset that is ear-to-phone (not the vehicle’s hands-free speaker-phone option).
- Suggestions for participating in a WebEx hearing from home: If you are having connectivity problems, turn off devices that may be using bandwidth on your home network. Devices or applications such as Facetime, Roku, streaming media players, video games, or large downloads can negatively impact the audio and video quality of the WebEx meeting.
- Participants are reminded that they should wear attire suitable for court.
- Participants who wish to test their WebEx connection or the share screen functionality in advance of the hearing may arrange a “practice run” by contacting the appropriate courtroom deputy.

**EXHIBITS AND DEMONSTRATIVE AIDS**

Exhibits should be filed ahead of time by the date that they would normally be exchanged pursuant to our local rules using the "notice" or "list (witness/exhibit/generic)" event in ECF, with a true and correct copy of each designated exhibit filed as a separate, individual attachment, so that the Court and all participants have ready access to all designated exhibits. For voluminous exhibits, please consult the presiding judge’s local exhibit requirements, as it may be necessary for you to provide the Court with an exhibit notebook or electronic file in advance of the hearing. For any witness who is to be called to testify remotely, the party calling the witness is responsible for supplying the witness or counsel, as appropriate, with paper copies of all designated exhibits prior to the hearing.

Demonstrative aids and PowerPoints should also be filed prior to the hearing, if possible. If not, WebEx has the ability to allow you to share your screen, or a particular document, with everyone in the hearing. If these documents are admitted as exhibits, they would then have to be filed after the hearing.



WebEx Meeting Links:

Judge Harlin D. Hale	<a href="https://us-courts.webex.com/meet/hale">https://us-courts.webex.com/meet/hale</a>
Judge Stacey G. C. Jernigan	<a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a>
Judge Mark X. Mullin	<a href="https://us-courts.webex.com/meet/mullin">https://us-courts.webex.com/meet/mullin</a>
Judge Edward L. Morris	<a href="https://us-courts.webex.com/meet/morris">https://us-courts.webex.com/meet/morris</a>
Judge Michelle V. Larson	<a href="https://us-courts.webex.com/meet/larson">https://us-courts.webex.com/meet/larson</a>

WebEx Teleconference Information:

Judge Harlin D. Hale	Dial-in 650-479-3207 Access Code 476-420-189
Judge Stacey G. C. Jernigan	Dial-in 650-479-3207 Access Code 479-393-582
Judge Mark X. Mullin	Dial-in 650-479-3207 Access Code 474-603-746
Judge Edward L. Morris	Dial-in 650-479-3207 Access Code 473-581-124
Judge Michelle V. Larson	Dial-in 650-479-3207 Access Code 160-135-6015

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

**PLAINTIFF’S RESPONSE TO HIGHLAND CAPITAL  
MANAGEMENT, L.P.’S AMENDED MOTION TO DISMISS**

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	ii
I. INTRODUCTION .....	1
II. BACKGROUND .....	1
III. ARGUMENTS & AUTHORITIES .....	3
A. This Action is Not Subject to the Plan’s Bar Date.....	3
B. No Forfeiture or Default is in the Best Interests of the Creditors.....	5
C. The DAF Has Standing and Should be Given Leave to Amend.....	6
IV. CONCLUSION.....	7

**TABLE OF AUTHORITIES**

**Cases**

*Abraugh v. Altimus*,  
 26 F.4th 298 (5th Cir. 2022) .....6

*Amberg v. Fed. Deposit Ins. Corp.*,  
 934 F.2d 681 (5th Cir. 1991) .....7

*In re Cantu*,  
 784 F.3d 253 (5th Cir. 2015) .....6

*In re Jack/Wade Drilling, Inc.*,  
 258 F.3d 385 (5th Cir. 2001) .....4

*In re Whistler Energy II, L.L.C.*,  
 931 F.3d 432 (5th Cir. 2019) .....4

*In re Whistler Energy, II, LLC*  
 931 F.3d 432 (5th Cir. 2019) .....4

*Lambrecht v. O’Neal*, 3 A.3d 277, 282 (Del. 2010) .....6

*Norris v. Causey*,  
 869 F.3d 360 (5th Cir. 2017) .....6

*Outlaw Lab., LP v. Shenoer Enter., Inc.*,  
 371 F. Supp. 3d 355 (N.D. Tex. 2019) .....6

*Rideau v. Keller Indep. Sch. Dist.*,  
 819 F.3d 155 (5th Cir. 2016) .....7

*Santerre v. Agip Petrol. Co.*,  
 45 F. Supp. 2d 558 (S.D. Tex. 1999) .....6

*Wieburg v. GTE Sw., Inc.*,  
 272 F.3d 302 (5th Cir. 2001) .....7

**Rules & Codes**

11 U.S.C. § 1129(a)(7)(A)(i)–(ii) .....5

Fed. R. Bankr. P. 7015 .....5

Fed. R. Bankr. P. 7017 .....7  
Fed. R. Civ. P. 15 .....5  
Fed. R. Civ. P. 17(a)(3).....7

**Other**

11 Collier on Bankruptcy 1129.02[7] (16<sup>th</sup> ed.)..... 5-6

## I.

### INTRODUCTION

Plaintiff The Charitable DAF Fund, L.P. (“DAF”) submits this Response to the May 27, 2022 Amended Motion to Dismiss filed by Defendant Highland Capital Management, L.P. (“Highland”) and would respectfully show as follows:

First, Highland’s Motion mistakenly conflates the defined term “Administrative Expense Claim,” as used in Debtor’s Chapter 11 Plan of Reorganization (the “Plan”), with the definition of an administrative priority claim under the Bankruptcy Code. Plaintiff respectfully submits that this error undermines Highland’s entire argument for dismissal, which should be denied.

Second, and in the alternative, Highland overreaches by requesting a forfeiture or default as a result of any technical noncompliance.

Third, Plaintiff has standing as an indirect investor—at the very least derivatively—and should be granted leave to amend to cure any defect, providing the injunction provisions in the Plan do not prohibit this action altogether.

## II.

### BACKGROUND

The DAF filed this action on July 22, 2021. At that time, no legal impediment existed to filing the action, and Highland has identified none.

On August 11, less than three weeks later, Highland elected to cause the Plan to go effective, thereby triggering the injunction provisions of the Plan (the “Plan Injunction”):

Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, *all Enjoined Parties are and shall be permanently enjoined*, on and after the Effective Date, with respect to any Claims and Equity Interests, *from directly*

***or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.***

Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief [Bankr. Dkt. No. 1943] at 76–77 (Ex. 3, Appx. 00095–96), and Ex. A (Plan) at 50–51 (Ex. 3, Appx. 166–167) (emphasis added).

As a result of the Plan Injunction, on pain of contempt, the DAF was unable to continue this action in any manner. Highland admitted as much in a previous filing, its Memorandum of Law in Support of Motion for Reconsideration of Stay Order [Doc. 9]. There, based on the very language emphasized above, Highland stated that “Plaintiff is an ‘Enjoined Party’ under the Plan, and by their express terms, the Confirmation Order and Plan expressly enjoin Plaintiff from continuing the Action.” *Id.* at 4.

Thus, the parties agree that this Court enjoined the DAF from serving Highland with process. The DAF respectfully submits that the Plan Injunction also enjoins repackaging and continuing this action as an “Administrative Expense Claim,” which Highland apparently contends is appropriate.

Despite the absence of formal service, this Court can and should take judicial notice of its own docket, which demonstrates that Highland learned of the action immediately, as evidenced by the time entries of the lawyers working on this matter. *Compare, e.g.,* Application for



Compensation and for Reimbursement of Expenses [Bankr. Dkt. No. 2742] pdf 87 (“7/28/2021 Review and address open legal issues re Dubaboy/MSCF claim”), *id.*, pdf 72 (“7/26/2021 Conference with J.Dubel regarding litigation issues regarding new Dondero matters”), *and id.*, pdf 71 (“7/24/2021 Email to Board with new Dondero litigation”), *with* Highland’s Mem. of Law in Support of Motion for Reconsideration of Stay Order [Doc. 9] at 1 n. 2 (defining “MSCF” to mean “Highland Multi Strategy Credit Fund, L.P.,” the subject of this litigation).

The DAF sought and obtained a stay of the action to avoid a default while the validity of the Plan was appealed to the Fifth Circuit. Motion to Stay All Proceedings [Doc. 6]; Stay Order [Doc. 7].

Highland obtained relief from that stay, obtaining an order from the district court referring this action here on May 19, 2022. *See* May 19, 2022 Order [Doc. 18].

Highland now asks in this Motion for what amounts to a forfeiture or default judgment. The Motion should be denied.

### III.

#### **ARGUMENTS & AUTHORITIES**

##### **A. THIS ACTION IS NOT SUBJECT TO THE PLAN’S BAR DATE**

Highland’s dismissal argument hinges on the treatment of this action as an “Administrative Expense Claim” under Article I.B.2 of the Plan. This is not a correct reading of the Plan, which defines Administrative Expense Claim as something more limited than any and all claims that could potentially qualify for administrative priority under the Code. Rather, the Plan identifies it as a defined term referring to the following:

[A]ny Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of

preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

Plan at p. 2, (Art. I, § B.2), App. 00118. “Claim” is defined coterminous with the Bankruptcy Code, 11 U.S.C. § 101(5).1. Thus, while the claims in the underlying lawsuit are “claims” as defined by the Bankruptcy Code, it is plain that the universe of Administrative Expense Claims is narrower than any Claim and is limited to “Claim[s] for costs and expenses of administration of the Chapter 11 Case.”

Moreover, the distinction between any Claim and an Administrative Expense Claim is one of priority, not viability. Tellingly, the only authority Highland cites for its argument, *In re Whistler Energy II, L.L.C.*, 931 F.3d 432, 442 (5th Cir. 2019), uses only the term “administrative priority claim”—meaning a claim for priority—and never uses the term “administrative expense claim” at all. *See generally id.* (neither disturbing nor even addressing the bankruptcy court’s finding, quoted at 440, that it is “clear that at a minimum, [the plaintiff] has a general unsecured claim against the bankruptcy estate in the amounts it seeks”); *id.* at 441 (quoting *In re Jack/Wade Drilling, Inc.*, 258 F.3d 385, 389 (5th Cir. 2001), for the proposition that “[t]he question is therefore ‘not whether [the creditor] deserves to get paid, but whether [it] deserves to get paid at the expense of [the debtor’s] existing unsecured creditors’”).

Thus, whether the DAF’s claims are entitled to priority may perhaps be determined by resort to the Plan’s definitions of Administrative Expense Claim and, relatedly, the Administrative Expense Claim Bar Date, but neither these Plan provisions nor the *Whistler Energy* case provide any basis for outright dismissal.

**B. NO FORFEITURE OR DEFAULT IS IN THE BEST INTERESTS OF THE CREDITORS**

Alternatively, the DAF respectfully submits that, even if the Administrative Expense Bar Date applies here, the Court need not and should not apply it in a manner that would effect a forfeiture or the equivalent of a default. Rather, if the Court deems it necessary, the DAF asks it to treat this action—and its reference here by order of the district court—as a request for an order permitting a late claim or treating the filing of this action as a timely Administrative Expense Claim under Rule 15 of the Federal Rules of Civil Procedure, Rule 7015 of the Federal Rules of Bankruptcy Procedure, and the relation-back doctrine.

In light of the timely filing in district court and relation back, at most, the DAF has only failed to meet the formal service requirements applicable to Administrative Expense Claims under the Plan—a failure which caused no prejudice to Highland, who received prompt notice in any event, and which is the result of the DAF’s cautious reading of the broad prohibitions of the Plan Injunction.

Further, in these circumstances, deeming this action forfeited would raise substantial concerns regarding the due-process and takings provisions of the Constitution. Certainly, the DAF was not on notice that preserving this already pending action would require it to violate the Plan Injunction or seek a modification to allow service and resubmission of an already pending action. The DAF respectfully submits that, if it wrongly understood the Plan Injunction to apply, its misunderstanding was based on a reasonable reading of the rules and the Plan’s plain language.

And finally, dismissing the DAF’s claims would result in elevating the interests of equity over the interests of a potential judgment creditor. The DAF respectfully submits that, in these circumstances, doing so would be contrary to the Code. *See* 11 COLLIER ON BANKRUPTCY ¶ 1129.02[7] (16th ed.) (providing that the “best interests of creditors” rule “is one

of the cornerstones of chapter 11 practice”); *In re Cantu*, 784 F.3d 253, 262 (5th Cir. 2015); 11 U.S.C. § 1129(a)(7)(A)(i)–(ii).

**C. THE DAF HAS STANDING AND SHOULD BE GIVEN LEAVE TO AMEND**

Highland’s standing argument fails at this stage of the case because the DAF has adequately alleged that it was an investor. Complaint ¶¶ 7, 11 [Doc.1-1] (“Highland owed contractual and fiduciary duties to Plaintiff as an investor in Multistrat.”); *id.* ¶ 54 (pleading derivatively).

While Highland contends that the DAF’s interest is merely a derivative one that should be pleaded with more specificity, the DAF respectfully submits that this is no basis for dismissal on jurisdictional grounds. *See Outlaw Lab., LP v. Shenoor Enter., Inc.*, 371 F. Supp. 3d 355, 360 (N.D. Tex. 2019) (cleaned up) (quoting *Santerre v. Agip Petrol. Co.*, 45 F. Supp. 2d 558, 566 (S.D. Tex. 1999), for the proposition that “prov[ing] jurisdiction exists . . . is no high bar: ‘[I]t is extremely difficult to dismiss a claim for lack of subject matter jurisdiction.’”). Moreover, “[P]rudential standing does not present a jurisdictional question, but ‘a merits question: who, according to the governing substantive law, is entitled to enforce the right?’” *Abraugh v. Altimus*, 26 F.4th 298, 304 (5th Cir. 2022) (quoting *Norris v. Causey*, 869 F.3d 360, 367 (5th Cir. 2017)).

Furthermore, because the DAF was a direct advisee of the Debtor, the Debtor owed the DAF direct duties—a matter which can be pleaded via amendment if necessary to clarify the relationship. And because the DAF owns CLO Holdco, the DAF’s claims are also viable as derivative claims (the DAF suing on behalf of CLO Holdco, suing on behalf of Multistrat). *See, e.g., Lambrecht v. O’Neal*, 3 A.3d 277, 282 (Del. 2010).

In the alternative, the DAF respectfully requests leave to amend the Complaint to replead its derivative claim and to join its subsidiary CLO Holdco as a Plaintiff in this action. Highland

does not dispute that CLO Holdco is an investor. And the DAF respectfully submits that Rule 7017 of the Federal Rules of Bankruptcy Procedure requires an opportunity to join a real party in interest in such circumstances as these. Specifically, Rule 7017 incorporates FRCP 17(a)(3), which provides:

**The court may not dismiss an action for failure to prosecute in the name of the real party in interest** until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

Thus, the rule literally prohibits the very act that the movant asks for. *See also Rideau v. Keller Indep. Sch. Dist.*, 819 F.3d 155, 165-66 (5th Cir. 2016); *Wieburg v. GTE Sw., Inc.*, 272 F.3d 302, 308 (5th Cir. 2001); *Amberg v. Fed. Deposit Ins. Corp.*, 934 F.2d 681, 686 (5th Cir. 1991) (counseling against technicalities in such circumstances and in favor of “decid[ing] cases on the merits”).

#### IV.

#### CONCLUSION

For these reasons, Plaintiff respectfully asks the Court to (1) deny Highland’s motion, (2) grant Plaintiff leave to amend the complaint if such request is not prohibited by the Plan Injunction, and (3) grant all such other relief to which Plaintiff is entitled.

Dated: July 5, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

***COUNSEL FOR PLAINTIFFS***

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

HAYWARD PLLC  
Melissa S. Hayward (Texas Bar No. 24044908)  
Zachery Z. Annable (Texas Bar No. 24053075)  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

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

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
THE CHARITABLE DAF FUND, L.P.,	§	Adversary Proceeding No.
Plaintiff,	§	22-03052-sgj
vs.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Defendant.	§	

**HIGHLAND CAPITAL MANAGEMENT, L.P.’S REPLY IN SUPPORT OF  
ITS AMENDED MOTION TO DISMISS**

<sup>1</sup> The Reorganized Debtor’s last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



**TABLE OF CONTENTS**

	<b><u>Page</u></b>
PRELIMINARY STATEMENT .....	1
ADDITIONAL BACKGROUND TO THE COMPLAINT .....	2
ARGUMENT .....	3
A.    The Claims Asserted in the Complaint Are Administrative Expense Claims .....	3
i.    The Claims Are Administrative Expense Claims under the Plan .....	4
ii.   The Administrative Expense Claims Are Time-Barred.....	6
B.    Plaintiff Has Articulated No Reasonable Basis to Treat the Complaint as “Timely” ....	7
C.    Plaintiff Lacks Standing to Assert the Claims; Amendment Is Futile .....	10

**TABLE OF AUTHORITIES**

**CASES**

*BCC Merch. Solutions, Inc. v. Jet Pay, LLC*,  
129 F. Supp. 3d 440 (N.D. Tex. 2015) ..... 10

*Houbigant, Inc. v. ACB Mercantile (In re Houbigant, Inc.)*,  
190 B.R. 185 (Bankr. S.D.N.Y. 1995)..... 7, 9, 10

*In re AI Copeland Enters., Inc.*,  
991 F.2d 233 (5th Cir. 1993) ..... 4, 5

*In re Charlesbank Laundry, Inc.*,  
755 F.2d 200 (1st Cir. 1985)..... 5

*In re Maxus Energy Corp.*,  
639 B.R. 51 (Bankr. D. Del.2022) ..... 7

*In re Murchison*,  
85 B.R. 27 (Bankr. N.D. Tex. 1987)..... 9

*In re Opus Mgmt. Grp. Jackson LLC*,  
2017 Bankr. LEXIS 555 (Bankr. S.D. Miss. Feb. 27, 2017) ..... 9

*In re Taco Bueno Rests., Inc.*,  
606 B.R. 289 (Bankr. N.D. Tex. 2019)..... 5, 8, 9

*Lambrecht v. O’Neal*,  
3 A.3d 277 (Del. 2010) ..... 10

*Nabors Offshore Corp. v. Whistler Energy II, L.L.C. (In re Whistler Energy II, L.L.C.)*,  
931 F.3d 432 (5th Cir. 2019) ..... 4

*Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*,  
507 U.S. 380 (1993)..... 7, 8

*Reading Co. v. Brown*,  
391 U.S. 471 (1968)..... 4, 5

*Stripling v. Jordan Prod. Co.*,  
234 F.3d 863 (5th Cir. 2000) ..... 10

*Texas v. Lowe (In re H.L.S. Energy Co.)*,  
151 F.3d 434 (5th Cir. 1998) ..... 4

*Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*,  
258 F.3d 385 (5th Cir. 2001) ..... 4

**STATUTES**

11 U.S.C. § 1129..... 8  
11 U.S.C. § 503..... 4, 10  
11 U.S.C. § 503(a) ..... 7, 8, 9  
11 U.S.C. § 503(b)..... 4, 5  
11 U.S.C. § 503(b)(1)(A)..... 4

**OTHER AUTHORITIES**

4 COLLIERS ON BANKRUPTCY ¶ 503.06[c][i]..... 5

**RULES**

Fed. R. Civ. P. 12(b)(1)..... 10  
Fed. R. Civ. P. 12(b)(6)..... 10  
Fed. R. Civ. P. 15(a) ..... 10  
Fed. R. Civ. P. 17(a) ..... 10

Highland Capital Management, L.P. (“Highland”), the reorganized debtor and defendant in the above-captioned adversary proceeding (the “Adversary Proceeding”), submits this reply (the “Reply”) in further support of *Highland Capital Management, L.P.’s Amended Motion to Dismiss* [Docket No. 19] (the “Motion”) and in opposition to *Plaintiff’s Response to Highland Capital Management, L.P.’s Amended Motion to Dismiss* [Docket Nos. 29, 30] (the “Response”). In further support of its Motion, Highland states as follows:

### **PRELIMINARY STATEMENT**<sup>2</sup>

1. Plaintiff filed its Complaint<sup>3</sup> in the District Court in July 2021, where it was pending when Highland’s Plan became effective in August 2021. Hoping to avoid this Court’s jurisdiction, Plaintiff, represented by counsel who has been active in this case since April 2021, consciously decided to file the Complaint in the District Court (but not serve it) rather than file an administrative claim prior to the Administrative Expense Claim Bar Date as required by the Plan.

2. On November 23, 2021, that same counsel appeared before this Court on behalf of Plaintiff in another matter and argued the Plan injunction prohibited the prosecution of pre-Effective Date lawsuits in this Court and other courts. Highland’s counsel argued the Plan injunction did not leave Plaintiff without a remedy but required Plaintiff to pursue its claims in this Court by filing an administrative expense claim. The Court, in its ruling, commented that Plaintiff’s counsel misunderstood the Plan injunction.

3. Thereafter, rather than promptly filing an administrative expense claim in *this* action, submitting to this Court’s jurisdiction, and attempting to explain why it failed to comply with the Administrative Expense Claim Bar Date, Plaintiff did nothing hoping it could prosecute

---

<sup>2</sup> Concurrently herewith, Highland is filing the *Amended Appendix in Support of the Amended Motion to Dismiss* (the “Amended Appendix”). Citations to the Amended Appendix are notated as follows: Ex. #, Appx. #.

<sup>3</sup> All capitalized terms used but not defined in this Reply have the meanings given to them in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Amended Motion to Dismiss* [Docket No. 20] (“Brief”).

the Complaint in the District Court. Only after the District Court referred this matter to this Court and Highland filed this Motion did Plaintiff attempt to recast its strategic decision as an innocent misunderstanding and to request leniency. The Court should reject each of Plaintiff's arguments.

4. *First*, Plaintiff's argument that the Complaint does not assert administrative expense claims reflects a misunderstanding of basic bankruptcy law. The Supreme Court has held tort and similar claims arising from a debtor's postpetition administration of its estate are administrative expense claims. There is also no legitimate argument that the Plan injunction somehow restricted Plaintiff from asserting its claims as administrative expense claims.

5. *Second*, Plaintiff's attempt to cast its failure to file an administrative claim as "technical" non-compliance is inaccurate. Specific rules—in place to protect the estate and its creditors—govern administrative expense claims and courts regularly sustain objections for failure to comply with such rules.

6. *Third*, Plaintiff's request to file a late claim is procedurally deficient and substantively lacking. Such relief is sought by motion—not in opposition to a motion to dismiss. Moreover, Plaintiff has submitted no evidence of "cause" to support a late-filed claim and could not based on the record. Plaintiff's decision not to file an administrative expense claim was a tactical one that backfired, not negligence—excusable or otherwise.

7. *Finally*, Plaintiff lacks standing to prosecute the Complaint. Any attempt to amend the Complaint would be futile because it is now time barred.

#### **ADDITIONAL BACKGROUND TO THE COMPLAINT**

8. Highland's Plan was confirmed on February 23, 2021, and included clear language regarding the filing of administrative expense claims.

9. On June 25, 2021, this Court held a hearing on Plaintiff's motion to reconsider (Bankr. Docket No. 2248) at which it was disclosed that Plaintiff's counsel, Sbaiti and Co. PLLC

(“Sbaiti”), had filed a complaint in the District Court on behalf of The Dugaboy Investment Trust<sup>4</sup> alleging the same claims asserted in Dugaboy’s proof of claim. This Court admonished Mr. Sbaiti to “go back and hit the books ... and be prepared to defend” filing claims outside of this Court.<sup>5</sup>

10. A month later, on July 22, 2021, Plaintiff surreptitiously filed the Complaint in the District Court notwithstanding this Court’s admonitions. Plaintiff never served the Complaint.

11. On August 11, 2021, the Plan became effective. Plaintiff was served with the Notice of Effective Date, which disclosed that administrative expense claims had to be filed by September 25, 2021. Plaintiff did not file an administrative expense claim by the bar date.

12. On November 23, 2021, this Court held a hearing on Plaintiff’s motion to stay another action filed by Sbaiti.<sup>6</sup> At that hearing, Plaintiff argued the Plan injunction prohibited pursuit of claims in the District Court—the same argument in Plaintiff’s Response. This Court told Plaintiff its arguments “reflect, frankly, a misunderstanding of how the injunction language ... applies here.”<sup>7</sup> At the same hearing, Plaintiff was told by Highland, on the record, that the Plan did not leave Plaintiff without a remedy but required the filing of an administrative claim.<sup>8</sup>

13. Notwithstanding the foregoing, Plaintiff elected not to file an administrative expense claim in this Court as required by the Plan and the Bankruptcy Code.

## ARGUMENT

### **A. The Claims Asserted in the Complaint Are Administrative Expense Claims**

14. The Complaint alleges three causes of action premised on conduct that allegedly occurred postpetition: Highland’s alleged (a) violation of the Advisers Act; (b) breach of fiduciary

---

<sup>4</sup> Ex. 2, Appx. 7-18.

<sup>5</sup> Ex. 21, Appx. 749-53. Despite being admonished by the Court, Plaintiff has apparently not engaged co-counsel with bankruptcy expertise

<sup>6</sup> Adv. Proc. No. 21-03067-sgj, Docket No. 55 (Bankr. N.D. Tex. Sept. 29, 2021).

<sup>7</sup> Ex. 22, Appx. 786-87.

<sup>8</sup> Ex. 22, Appx. 782.

duty; and (c) breach of contract. Ex. 5, Appx. 252-58. Each cause of action is an administrative expense claim subject to the Plan's Administrative Expense Claim Bar Date.

**i. The Claims Are Administrative Expense Claims under the Plan**

15. An administrative expense claim is a priority claim under Section 503(b) for, among other things, “the actual, necessary costs and expenses of preserving the estate ....” 11 U.S.C. § 503(b)(1)(A). To qualify as an “‘actual and necessary cost’ under section 503(b)(1)(A), a claim against the estate must have arisen post-petition and as a result of actions taken by the trustee [or debtor-in-possession] that benefited the estate.” *See Nabors Offshore Corp. v. Whistler Energy II, L.L.C. (In re Whistler Energy II, L.L.C.)*, 931 F.3d 432, 441 (5th Cir. 2019) (citing *Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001). Administrative expense claims include, in pertinent part, claims arising from a debtor-in-possession's postpetition negligence, tortfeasance, and malfeasance. *See Reading Co. v. Brown*, 391 U.S. 471, 478-79 (1968) (holding that if a debtor-in-possession commits a tort or otherwise harms a non-debtor following the petition date, the injured party's claim against the debtor is an administrative expense claim even though there was no benefit to the debtor's estate).

16. The “*Reading* exception,” as it is known, is routinely applied. *See, e.g., Jack/Wade Drilling*, 258 F.3d at 388 (“The *Reading* exception has survived Congressional amendments to the bankruptcy code and been recognized and applied by nearly every Court of Appeal in the nation.”); *Texas v. Lowe (In re H.L.S. Energy Co.)*, 151 F.3d 434, 437 (5th Cir. 1998) (same); *In re AI Copeland Enters., Inc.*, 991 F.2d 233, 238-39 (5th Cir. 1993) (same). *Reading* has been interpreted broadly to include torts and other negligent or intentional acts committed by a debtor-in-possession as administrative expense claims. *See AI Copeland*, 991 F.2d at 239 (“[T]hose injured during ... administration of an estate are entitled to an administrative priority [claim] regardless of whether their injury was caused by a tort or other wrongdoing.”); *In re Charlesbank Laundry, Inc.*, 755



F.2d 200, 202 (1st Cir. 1985) (“If fairness dictates that a tort claim based on negligence should be paid ahead of pre-reorganization claims, then, a fortiori, an intentional action which violates the law and damages others should be so treated”), accord *AI Copeland*, 991 F.2d at 239, n.12; 4 COLLIERS ON BANKRUPTCY ¶ 503.06[c][i] (“Courts have found *Reading* directly applicable to victims of postpetition torts committed by a debtor in possession or trustee. Courts have also applied the doctrine to a variety of other postpetition claims”) (citing cases).

17. The facts here are undisputed. Plaintiff was allegedly harmed by Highland’s breach of its duties and obligations (a) *after* the Petition Date, *after* this Court’s appointment of the Independent Directors in January 2020, but *before* the Effective Date, *i.e.*, while Highland was a debtor-in-possession, and (b) arising from the ordinary course operation of the estate. Accordingly, under *Reading*, the claims alleged in the Complaint, if valid, are administrative claims.

18. Plaintiff ignores the facts and the law by arguing that “administrative priority claims” are not subject to the Plan because the Plan uses the term “Administrative Expense Claim.” See Response at 3-4. Plaintiff attempts to create confusion where none exists. The Plan defines “Administrative Expense Claim,” in relevant part, as a:

Claim for costs and expenses of administration of the Chapter 11 Case ... pursuant to sections 503(b), 507(a)(2), 507(b) ... including, without limitation, (a) the actual and necessary costs and expense incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor ....

Ex. 4, Appx. 189. There is no “distinction” in the Plan between an “administrative priority claim” and an “Administrative Expense Claim.” See Response at 4. Both refer to claims arising from the “actual and necessary costs and expense” of the debtor-in-possession’s postpetition management.<sup>9</sup>

---

<sup>9</sup> In fact, this Court has used the phrase “administrative-expense claim” to refer to an administrative priority claim under Section 503(b). See *In re Taco Bueno Rests., Inc.*, 606 B.R. 289, 302 (Bankr. N.D. Tex. 2019) (“Section 503 governs administrative-expense claims”).

Highland's naming convention not change the substantive application of the Bankruptcy Code or the nature of an administrative expense/priority claim.

**ii. The Administrative Expense Claims Are Time-Barred**

19. The claims in the Complaint are time-barred. Under the clear terms of the confirmed Plan, parties seeking “administrative expense claims” were required to (a) file a request for payment of administrative claims with this Court (not the District Court) *and* (b) serve such request on Highland by the Administrative Expense Claim Bar Date. The Plan is clear that any administrative expense claim not filed by the Administrative Expense Claim Bar Date would be time-barred. The case law is also clear.

20. In *Taco Bueno*, the debtor's plan set an “Administrative Claims Bar Date” to file administrative expense claims. *Taco Bueno*, 606 B.R. at 295. However, before the bar date, the claimant filed a proof of claim allegedly asserting an administrative expense claim instead of filing an administrative claim on the docket. *Id.*, at 295-96. The claimant subsequently filed an administrative expense claim after the expiration of the administrative claims bar date. *Id.* at 296. The Court found the claim was time-barred because it was an administrative expense claim and not filed on the Court's docket by the administrative claims bar date—notwithstanding that

claimant had filed a proof of claim prior to the bar date.<sup>10</sup> The Court also found that claimant failed to submit sufficient evidence of “cause” under Section 503(a). *Id.* at 303-04.<sup>11</sup>

21. Here, Plaintiff alleged causes of action are administrative expense claims and had to be filed *with this Court* by the Administrative Expense Claim Bar Date. Plaintiff knowingly chose not to file an administrative claim. As a result, the Complaint is time barred.

**B. Plaintiff Has Articulated No Reasonable Basis to Treat the Complaint as “Timely”**

22. Plaintiff argues the Court should excuse its “technical” non-compliance and treat the Complaint as a “request for an order permitting a late claim or treating the filing of this action as a timely Administrative Expense Claim.” Response at 5. There is nothing “technical” about Plaintiff’s non-compliance, and its “request” is procedurally and legally improper.

23. The relief must be sought by a separate motion and include evidence of “cause” under Section 503(a) or, to the extent applicable to administrative expense claims, “excusable neglect.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 394 (1993). Here, there is no evidence supporting “cause,” just the following undisputed facts:

- Sbaiti has represented Plaintiff at all relevant times. In another matter before this Court, Plaintiff admitted it had received informal advice from bankruptcy counsel.<sup>12</sup>

---

<sup>10</sup> See also *Houbigant, Inc. v. ACB Mercantile (In re Houbigant, Inc.)*, 190 B.R. 185, 188 (Bankr. S.D.N.Y. 1995) (administrative claim barred despite claimant asserting it in district court because it was not filed with the bankruptcy court before the bar date).

<sup>11</sup> In support of its holding, this Court explained the policy behind an administrative expense claim bar date:

[D]ebtors and reorganized debtors have a keen interest in obtaining finality sooner rather than later with regard to administrative-expense claims. ... It is a very important event in the bankruptcy case for the debtor and reorganized debtor to have a deadline for administrative-expense claims because administrative claims pose a significant feasibility issue for plans. ... The debtor and reorganized debtor need to be able to ascertain an amount such entities must have in cash due to pay administrative expenses and must ensure the availability of an amount in cash to pay existing creditors on the effective date of the plan or soon thereafter.

*Id.*, at 302-03; see also *In re Maxus Energy Corp.*, 639 B.R. 51, 64 (Bankr. D. Del. 2022) (“[A] claims bar date ‘operates as a federally created statute of limitations, after which the claimant loses all of [its] rights to bring an action against the debtor.’”) (citations omitted).

<sup>12</sup> At the June 25, 2021, hearing shortly before the Complaint was filed, Mr. Sbaiti represented to this Court that he was receiving advice from bankruptcy counsel on whether postpetition administrative expense claims, like those asserted in the Complaint, could be filed in courts other than this Court. Ex. 21, Appx. 752-53.

- The Plan was confirmed on February 22, 2021, and included clear disclosures about the Administrative Expense Claim Bar Date. Plaintiff knew of the Plan and its terms.
- At a hearing on June 25, 2021, this Court admonished Plaintiff's counsel to "hit the books" and "be prepared to defend" its filing of claims outside this Court.
- On July 22, 2021, Plaintiff, through Sbaiti, filed (but did not serve) the Complaint—*i.e.*, seven months after the Confirmation Order and two months before the Administrative Expense Claim Bar Date.
- On or about August 11, 2021, Plaintiff was served with notice of the Administrative Expense Claim Bar Date.
- Plaintiff did not file an administrative expense claim with this Court by the Administrative Expense Claim Bar Date (*i.e.*, September 25, 2021).
- On November 23, 2021, this Court told Plaintiff its arguments on the Plan injunction—the same arguments made here—were mistaken. At the same hearing, Highland told Plaintiff, on the record, it should have filed an administrative expense claim in this Court.
- Between the November 2021 hearing and the filing of the Motion (more than eight months), Plaintiff never moved this Court to allow its claim as late filed or took any other action to protect its rights.
- Only after the Complaint was referred to this Court and Highland filed its Motion did Plaintiff ask this Court to consider the Complaint as "a late claim" in the Response.
- Plaintiff has not submitted evidence of "cause" as required by Section 503(a) or "excusable neglect" under *Pioneer* (to the extent it is applicable).

These undisputed facts doom the request to have the claim allowed as late filed.<sup>13</sup>

24. To avoid this result, Plaintiff argues it is entitled to a late claim because (a) the Complaint was filed (but not served) before the Administrative Expense Claim Bar Date; (b) Highland received "prompt" notice and was not prejudiced; (c) enforcing the Administrative Expense Claims Bar Date would raise concerns regarding Constitutional "due process and taking;" and (d) the "best interests of creditors test" in Section 1129 favors Plaintiff. Response at 5. Plaintiff

---

<sup>13</sup> See *Taco Bueno*, 606 B.R. at 303-04. Plaintiff had notice of the need to file an administrative expense claim with this Court, which "defeats any equitable argument that [claimant] might have raised" to support its tardy filing. *Taco Bueno*, 606 B.R. at 303. Plaintiff also is not "an unsophisticated party that might not have appreciated [the notice it received] ... A significant fact defeating any equitable argument is that [claimant] had an attorney involved here at all relevant times." *Id.*, at 304.

also blames its failure to comply on the Plan itself, arguing the Plan injunction prevented Plaintiff from fulfilling its obligations. Each argument misses the point.

25. *First*, it is irrelevant that the Complaint was filed before the Administrative Expense Claim Bar Date. The Bankruptcy Code, the Plan, and the case law require the filing of administrative expense claims—like those in the Complaint—*on this Court’s docket*, not the District Court’s, for a claim to be deemed timely filed. *See, e.g.*, 11 U.S.C. § 503(a); Ex. 4, Appx. 125, 203-04; *Taco Bueno*, 606 B.R. at 302-03; *Houbigant*, 190 B.R. at 188.<sup>14</sup>

26. *Second*, Plaintiff’s argument regarding prejudice is disingenuous. Plaintiff filed the Complaint but refused to serve it. Plaintiff cannot rely on Highland’s purported diligence to justify its misconduct. Plaintiff decided (a) to avoid this Court by filing in the District Court and (b) to hide its actions.<sup>15</sup> The bar date exists to avoid prejudice *to Highland*, not Plaintiff.

27. *Third*, no due process or taking concerns arise if Plaintiff is required to abide by court- and statutorily-created deadlines, and Plaintiff cites to nothing to support this position.

28. *Fourth*, the “best interests of creditors” test applies to plan confirmation and is irrelevant. Regardless, it would weigh in Highland’s favor. Creditors want Highland’s assets monetized and proceeds distributed. Plaintiff’s efforts to backdoor a frivolous administrative expense claim delays that process, increases expenses, and directly contradicts the policy behind bar dates.

---

<sup>14</sup> Any suggestion that the Complaint is an “informal proof of claim” should be rejected. Even assuming it is applicable, an “informal proof of claim” must be filed in the bankruptcy court and the equities must favor the claimant. *In re Opus Mgmt. Grp. Jackson LLC*, 2017 Bankr. LEXIS 555, at \* 29-30 (Bankr. S.D. Miss. Feb. 27, 2017) (“The Court is unaware of any precedent that would allow it to treat the pre-bar date filing in one case as an informal proof of claim in another case.”); *In re Murchison*, 85 B.R. 27, 41 (Bankr. N.D. Tex. 1987) (“Debtor’s knowledge of the claim has never been held sufficient to constitute an informal proof of claim ... These communications cannot constitute a proof of claim because they were not filed with the Court.”).

<sup>15</sup> Plaintiff relies on time entries related to Dugaboy and Mr. Dondero to assert that Highland was aware of Plaintiff’s Complaint. Response at 3. Even if Plaintiff is finally admitting Mr. Dondero, Dugaboy, and Plaintiff are the same, there is no evidence that *Plaintiff* put Highland, its creditors, or this Court on notice of its Complaint prior to the Administrative Claim Bar Date. Plaintiff’s alleged diligence does not justify Plaintiff’s decision to avoid this Court.

29. *Finally*, Plaintiff’s argument that it was confused by the Plan injunction is not credible. The Plan injunction is clear; it prohibited Plaintiff from pursuing claims in the District Court. But it is also clear that Plaintiff could have pursued its alleged claims in this Court by properly filing them. This Court, and Highland, told Plaintiff as much in November 2021. All other claimants, even Mr. Dondero’s other affiliates,<sup>16</sup> complied with the bar date. Plaintiff is not entitled to special treatment because it, and it alone, found the Plan confusing.

30. Ultimately, filing the Complaint in the District Court was a strategic move to avoid this Court. That decision binds Plaintiff. *Houbigant*, 190 B.R. at 187 (“[Claimant] concedes that it failed to [file its claim] to avoid the claims allowance process ... [Claimant] cannot have it both ways. Equity mandates that it be bound by its tactical decisions.”).

**C. Plaintiff Lacks Standing to Assert the Claims; Amendment Is Futile**

31. Highland argued the Complaint should be dismissed under FRCP 12(b)(1) and FRCP 12(b)(6). Plaintiff does not contest its failure to plead constitutional or prudential standing. Instead, it argues it has direct claims or, in the alternative, a derivative claim.<sup>17</sup> These allegations were not raised in the Complaint, and the Complaint must be amended to assert them.

32. Notwithstanding FRCP 15(a) and 17(a), amending the Complaint to correct Plaintiff’s standing would be futile. *See Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 872-73 (5th Cir. 2000). The Complaint is time barred. Any amendment would fail to state a claim.

*[Remainder of Page Intentionally Blank]*

---

<sup>16</sup> NexPoint Advisors, L.P., Highland Capital Management Fund Advisors, L.P., NexBank, and CPCM, LLC, all filed administrative expense claims with this Court as required. Bankr. Docket Nos. 1826, 1888, 2868, 2869.

<sup>17</sup> Plaintiff has no standing, derivative or otherwise, to assert CLOH’s alleged claims. *See, e.g., BCC Merch. Sols., Inc. v. Jet Pay, LLC*, 129 F. Supp. 3d 440, 460 (N.D. Tex. 2015). *Lambrecht v. O’Neal*, 3 A.3d 277 (Del. 2010), is inapposite. It addressed whether a derivative suit brought by Merrill Lynch’s shareholders could continue after Merrill Lynch was purchased by Bank of America and whether Merrill Lynch’s shareholders—now Bank of America’s—could prosecute the derivative action despite holding no direct equity interests in Merrill Lynch.

Dated: July 26, 2022.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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



PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

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

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

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

In re:	§ Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§ Case No. 19-34054-sgj11
Reorganized Debtor.	§
THE CHARITABLE DAF FUND, L.P.,	§ Adversary Proceeding No.
Plaintiffs,	§ 22-03052-sgj
vs.	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§
Defendant.	§
	§

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

**AMENDED APPENDIX IN SUPPORT OF HIGHLAND  
CAPITAL MANAGEMENT, L.P.'S AMENDED MOTION TO DISMISS**

<b>Ex.</b>	<b>Description</b>	<b>Appx. #</b>
1.	<i>Proof of Claim 177</i> , filed in Case No. 19-34054-sgj by The Dugaboy Investment Trust	1-6
2.	<i>Original Complaint</i> , Case No. 21-cv-01479-S, D.I. 1 (N.D. Tex. June 23, 2021)	7-18
3.	<i>Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief</i> , Case No. 19-34054-sgj, D.I. 1943 (Bankr. N.D. Tex. Feb. 22, 2021)	19-180
4.	<i>Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> , Case No. 19-34054-sgj, D.I. 1808 (Bankr. N.D. Tex. Jan. 22, 2021)	181-247
5.	<i>Original Complaint</i> , Adv. Proceeding No. 22-03052, D.I. 1-1 (Bankr. N.D. Tex. May 25, 2022)	248-259
6.	<i>Schedule of Contracts and Leases to Be Assumed</i> , Case No. 19-34054-sgj, D.I. 1875-5 (Bankr. N.D. Tex. Feb. 1, 2021)	260-268
7.	<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> , Case No. 19-34054-sgj, D.I. 2700 (Bankr. N.D. Tex. Aug. 11, 2021)	269-273
8.	<i>Certificate of Service of Vincent Trang re: Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> , Case No. 19-34054-sgj, D.I. 2747 (Bankr. N.D. Tex. Aug. 19, 2021)	274-449
9.	<i>Plaintiff's Motion to Stay All Proceedings</i> , Adv. Proceeding No. 22-03052, D.I. 6 (Bankr. N.D. Tex. May. 25, 2022)	450-456
10.	<i>Electronic Order</i> , Adv. Proceeding No. 22-03052, D.I. 7 (Bankr. N.D. Tex. May. 25, 2022)	457-458
11.	<i>Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order</i> , Adv. Proceeding No. 22-03052, D.I. 8 (Bankr. N.D. Tex. May. 25, 2022)	459-467
12.	<i>Plaintiff's Motion to Dismiss</i> , Adv. Proceeding No. 22-03052, D.I. 11 (Bankr. N.D. Tex. May. 25, 2022)	468-476
13.	<i>Order</i> , Adv. Proceeding No. 22-03052, D.I. 18 (Bankr. N.D. Tex. May. 25, 2022)	477-479
14.	<i>Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P.</i> , dated November 1, 2014	480-534
15.	<i>Amended and Restated Memorandum and Articles of Association of Highland Multi Strategy Credit Fund, Ltd.</i> , as adopted on 1 November 2014	535-577
16.	<i>Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P.</i> , dated November 1, 2013	578-589

17.	<i>Declaration of James. P. Seery, Jr., in Support of Amended Motion to Dismiss</i>	590-594
18.	<i>Cayman Hotel and Golf Incorporated v. Resort Gems Limited Grand Court</i>	595-615
19.	The Contracts (Rights of Third Parties) Law, 2014	616-624
20.	<i>Ebbw Vale Urban DC v. South Wales Traffic Area</i>	625-633
21.	June 25, 2021, Hearing Transcript	634-756
22.	November 23, 2021, Hearing Transcript	757-861

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Dated: July 26, 2022.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

# EXHIBIT 1

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** The Dugaboy Investment Trust  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
The Dugaboy Investment Trust 300 Crescent Court, Ste. 700 Dallas, TX 75201  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)  Contact phone _____ Contact email <u>gscott@myersbigel.com</u>	Contact phone _____ Contact email _____  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. **Do you have any number you use to identify the debtor?**  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_ \_

---

7. **How much is the claim?** \$ See attached Exhibit "A". **Does this amount include interest or other charges?**  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. **What is the basis of the claim?** Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
  
See attached Exhibit "A"

---

9. **Is all or part of the claim secured?**  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. **Is this claim based on a lease?**  No  
 Yes. **Amount necessary to cure any default as of the date of the petition.** \$ \_\_\_\_\_

---

11. **Is this claim subject to a right of setoff?**  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

- No  
 Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ \_\_\_\_\_
- Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ \_\_\_\_\_
- Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ \_\_\_\_\_
- Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ \_\_\_\_\_
- Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ \_\_\_\_\_
- Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies. \$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

- No  
 Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/23/2020  
MM / DD / YYYY

/s/Grant Scott  
 Signature

Print the name of the person who is completing and signing this claim:

Name Grant Scott  
First name Middle name Last name

Title Trustee

Company The Dugaboy Investment Trust  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 4140 Park Lake Ave., Suite 600, Raleigh, NC, 27612

Contact phone 919-854-1407

**1α}HV4\$7 #^«**  
10216main@scottinstruments.com

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> The Dugaboy Investment Trust 300 Crescent Court, Ste. 700  Dallas, TX, 75201 <b>Phone:</b> <b>Phone 2:</b> <b>Fax:</b> <b>Email:</b> gscott@myersbigel.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See attached Exhibit "A"	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See attached Exhibit "A"	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Grant Scott on 23-Apr-2020 5:01:59 p.m. Eastern Time <b>Title:</b> Trustee <b>Company:</b> The Dugaboy Investment Trust		
<b>Optional Signature Address:</b> Grant Scott 4140 Park Lake Ave., Suite 600  Raleigh, NC, 27612 <b>Telephone Number:</b> 919-854-1407 <b>Email:</b> gscott@myersbigel.com		

### **Exhibit A**

The Dugaboy Investment Trust (“Claimant”), an investor in certain funds managed by the Debtor, including Highland Multi-Strategy Credit Fund, L.P. and Highland Multi-Strategy Credit Fund, Ltd., may have claims against the Debtor relating to the post-petition actions or inactions of the fund investment manager in managing these funds pursuant to Debtor’s Fourth Amended and Restated Limited Partnership Agreement and that certain Third Amended and Restated Investment Management Agreement by and between Highland Multi-Strategy Credit Fund, L.P., Highland Multi-Strategy Credit Fund, Ltd., and the Debtor, as amended from time to time. While the potential claims relate to the post-petition actions or inactions of the fund investment manager, Claimant is filing this claim to preserve all potential rights, claims, and causes of action it may have against the Debtor under these prepetition agreements relating to the investment manager’s actions or inactions in managing these funds.

## EXHIBIT 2

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

**THE DUGABOY INVESTMENT TRUST,** §  
§  
§  
*Plaintiff,* §  
§  
v. § **Cause No.** \_\_\_\_\_  
§  
**HIGHLAND CAPITAL MANAGEMENT,** §  
**LP,** §  
*Defendant.* §

**ORIGINAL COMPLAINT**

This matter concerns grave accounts of self-dealing and deception and seeks redress for violation of federal law including, but not limited to, violations of the Advisers Act of 1940, and other state causes of action.

**I.**

**PARTIES**

1. Plaintiff, The Dugaboy Investment Trust (“Plaintiff”), is a Delaware perpetual non-revocable trust with its principal place of business in Dallas County, Texas.
2. Defendant Highland Capital Management LP (“Highland” or “HCMLP”) is a Delaware limited partnership, whose principal place of business is in Dallas, Texas.

**II.**

**JURISDICTION AND VENUE**

3. Subject matter jurisdiction is proper in this court under 28 U.S.C. § 1331, and under 28 U.S.C. § 1334 because the suit arises out of post-petition acts or omissions of the debtor and certain of its principals.

4. This Court has general personal jurisdiction over Defendant Highland Capital Management, LP, because it has continuously done business in this state, and the causes of action arise from the acts or omissions committed in this state.

5. Venue is proper in this Court because a substantial number of the acts or omissions giving rise to this lawsuit and the causes of action asserted herein occurred in Dallas County.

### III.

#### **FACTUAL BACKGROUND**

6. HCMLP is a registered investment advisor (“RIA”) subject to the regulations of the Securities Exchange Commission.

7. HCMLP is both the advisor of and investor in Highland Multi Strategy Credit Fund, LP (“Multistrat”), a Delaware limited partnership. Highland Multi Strategy Credit Fund GP, L.P., itself a Delaware limited partnership, is the general partner of Multistrat, and HCMLP is the sole member of the general partner of Highland Multi Strategy Credit Fund GP, L.P.

8. HCMLP’s advisory capacity is governed, or at all relevant times was governed, by the Third Amended and Restated Investment Management Agreement, effective November 1, 2013 (the “IMA”).

9. The purpose of Multistrat as a vehicle was stated as such: “The Fund’s investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.”

10. The Confidential Private Placement Memorandum for Multistrat disclosed that “[t]he Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the ‘Advisers Act’).

Each prospective investor will be required to make a representation to indicate that it is a 'qualified client' as defined in the Advisers Act.”

11. Because of these agreements and roles as the General Partner and RIA, Highland owed contractual and fiduciary duties to Plaintiff, as an investor in Multistrat.

12. James Seery, the principal, CEO, and CRO of HCMLP in its capacity as a debtor, admitted under oath that HCMLP owes fiduciary duties to the investors of the funds HCMLP manages—which would include Multistrat—and therefore, has admitted under oath that HCMLP and its governed persons owe fiduciary duties to the investors in Multistrat, which includes Plaintiff, the Charitable DAF Fund, Ltd., and Highland Capital Management Services, Inc., among others.

13. As an investment vehicle advised at all times and controlled at all times by HCMLP, Multistrat purchased and owned a pool of viaticals—investments in life insurance policies keyed to the lives of other persons. When a person passes away, the life insurance money is paid to the owner of the policy—in this case, Multistrat.

14. The notional value of the viatical pool was approximately \$145 million.

15. In or around August 2020, HCMLP sold the entire viatical pool for approximately \$35,000,000 – less than one quarter of the insured value.

16. The policies insured people aged 90 on average, suggesting that the policies were highly likely to pay off in the ensuing few years given the age and life expectancies of the insureds, as well as considering the actuarial impact of the COVID pandemic.

17. In the spring of 2020, Multistrat raised funds specifically for the purpose of paying the premiums on the viatical pool—amounts raised, borrowing availability, and liquid securities provided enough cash to pay the premiums. But HCMLP did not pursue this path as promised.



Instead, it sold the assets. To this day it is unclear why the policies were sold, and why, just prior to a planned mediation.

18. Furthermore, the process of selling was severely flawed. For example, the health assessments used to determine the likelihood and timeline for the payout were two years old. HCMLP did not cause new, up-to-date health assessments to be performed, and instead was content to rely on stale information or worse, no information at all.

19. Furthermore, HCMLP made no effort to adjust the projected life expectancies due to the increasing age of the insureds during a process that stretched over seven months, nor for the potential impact of COVID on people over the age of 90, which would have impacted the price..

20. Equally troubling is that Multistrat obtained the funds to pay the premiums from another investor—yet, it apparently did not use the funds for that purpose.

21. HCMLP apparently used the proceeds of the sale to pay itself, notwithstanding the fact that there were redeemed interests waiting to be paid—interests to whom HCMLP also owed fiduciary duties.

22. In short, HCMLP caused Multistrat to sell the viatical pool at a substantially discounted amount to curry favor with the brokers and buyers in the marketplace for no apparent benefit to Multistrat’s investors or the debtor’s estate.

### III.

#### **CAUSES OF ACTION**

##### **First Cause of Action** **Breach of Fiduciary Duty**

23. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

24. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.

25. The contracts set forth above—the subscription agreement and the IMA—impose and incorporate the duties and obligations of the Investment Advisers Act of 1940.

26. Under this federal law, an investment adviser is a fiduciary.<sup>1</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.

27. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules, but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”

28. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>2</sup> In order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

---

<sup>1</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. IA2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”).

<sup>2</sup> *SEC v. Capital Gains*, *supra*, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, *supra*, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

29. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>3</sup>

30. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

31. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

32. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

33. HCMLP’s CEO testified under oath that he and HCMLP were aware of these duties and had to comply with them.

34. Section 204 of the Advisers Act requires HCMLP to carry written policies and procedures that must be followed in order to adhere to its federal obligations.

35. Section 206 of the Advisers Act prohibits transactions by an adviser that were accomplished via a “deceit” on a client or prospective client, e.g., by concealing the role and

---

<sup>3</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *SEC v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

interest the adviser has in the transaction, or via engaging in a course of conduct that has a tendency to mislead a client or which is manipulative.

**36.** These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

**37.** The Advisors Act declares any contract that was made in violation of its provisions or regulations, or any contract that has been performed in violation of the Advisors Act, **void**.

**38.** The Advisors Act created a private right of action to void unlawful agreements and acts and to seek such equitable relief as accompanies such claims.

**39.** Texas law allows a fiduciary plaintiff to seek damages for breaches of fiduciary duty and to seek disgorgement of all ill-gotten gains obtained by a fiduciary.

**40.** Plaintiff has been damaged due to the breaches of fiduciary duty outlined herein, and it is entitled to recover damages, punitive damages, and attorneys' fees.

**41.** To the extent this claim must be brought as a derivative action, it is plain that the demand requirement under Delaware law could not be met because serving a demand on Highland or to sue Highland would have been futile.

**Second Cause of Action**  
**Breach of Contract**

42. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

43. The contracts set forth above—the subscription agreement and the IMA—impose a duty of prudent investment management for the benefit of the investors in Multistrat and incorporate the duties and obligations of the Investment Advisers Act of 1940.

44. The violations set forth above constitute a breach of each or both of these agreements.

45. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

46. Plaintiff has been damaged by the breaches of contract outlined herein.

47. Plaintiff is entitled to recover damages and attorneys' fees.

**JURY DEMAND AND PRAYER**

48. Plaintiff demands trial by jury.

49. Plaintiff respectfully requests judgment and an order:

- Disgorging all ill-gotten gains in an amount to be determined at trial;

- Voiding the IMA agreements herein with HCMLP pursuant to the Advisers Act;
- Awarding damages in an amount to be determined at trial;
- Awarding punitive damages in an amount to be determined at trial;
- Awarding attorneys' fees and costs in an amount to be determined at trial;
- Awarding all interim and final relief to which Plaintiff is legally or equitably entitled under the facts and circumstances raised herein.

Dated: June 23, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

/s/ Mazin A. Sbaiti

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Plaintiff**

JS 44 (Rev. 10/20) - TXND (10/20)

**CIVIL COVER SHEET**

Case 3:21-cv-01479-S Document 1-1 Filed 06/23/21 Page 1 of 2 PageID 10

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>The Dugaboy Investment Trust</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Dallas County</u>  <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small></p> <p><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number)                  Sbaiti &amp; Company PLLC, 2200 Ross Avenue, Suite 4900W,                  Dallas, TX 75201 (T: 214-432-2899)</p>	<p><b>DEFENDANTS</b></p> <p>Highland Capital Management, LP</p> <p>County of Residence of First Listed Defendant <u>Dallas County</u>  <small>(IN U.S. PLAINTIFF CASES ONLY)</small></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
---	---

<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input checked="" type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. § 80b-1

Brief description of cause:  
Adviser's Act

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    **DEMAND \$** \_\_\_\_\_    CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE Stacey G. Jernigan    DOCKET NUMBER 19-34054-sgi11 NDTX BK

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

0020917



JS 44 Reverse (Rev. 10/20) - TXND (10/20)

Case 3:21-cv-01479-S Document 1-1 Filed 06/23/21 Page 2 of 2 PageID 11  
**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

APP 00913

## **EXHIBIT 3**



CLERK, U.S. BANKRUPTCY COURT  
 NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
 THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

*Henry G. C. George*  
 \_\_\_\_\_  
 United States Bankruptcy Judge

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

**ORDER (I) CONFIRMING THE FIFTH AMENDED  
 PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
 MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court<sup>2</sup> having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.



*Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

*Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

*Certificate of Service* dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed<sup>3</sup> pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;<sup>4</sup> (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

---

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

<sup>4</sup> The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.



## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor’s Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an “asset monetization plan” because it involves the orderly wind-down of the Debtor’s estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor’s economic stakeholders. The Claimant Trustee is responsible



for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.<sup>5</sup> As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,<sup>6</sup> and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

---

<sup>5</sup> This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

<sup>6</sup> See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).



13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.<sup>7</sup> The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

---

<sup>7</sup> See Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

**17. Questionability of Good Faith as to Outstanding Confirmation**

**Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently



testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other



Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trustee Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.



45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

**46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

**47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the "Liquidation Analysis") to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, un rebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the



acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be



assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.<sup>8</sup> Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

---

<sup>8</sup> See Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15<sup>th</sup> Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.<sup>9</sup>

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

---

<sup>9</sup> The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan’s release, discharge and release provisions (the “Injunction Provision”). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor’s assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor’s assets and those assets could be monetized for less money to the detriment of the Debtor’s creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a “third-party release.” The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms “implementation” and “consummation” are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the “Gatekeeper Provision”). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is



colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5<sup>th</sup> Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5<sup>th</sup> Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5<sup>th</sup> Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots<sup>10</sup> – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

---

<sup>10</sup> As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**A. Confirmation of the Plan.** The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the



Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.<sup>11</sup>

**B. Findings of Fact and Conclusions of Law.** The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

**C. Objections.** Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

**D. Plan Supplements and Plan Modifications.** The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

---

<sup>11</sup> The Plan is attached hereto as **Exhibit A**.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**E. Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

**F. Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

**G. Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

**H. Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

**I. Preservation of Causes of Action.** Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**J. Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

**K. Cancellation of Equity Interests and Issuance of New Partnership**

**Interests.** On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

**L. Transfer of Assets to Claimant Trust.** On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

**M. Transfer of Estate Claims to Litigation Sub-Trust.** On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

**N. Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

**O. Objections to Claims.** The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

**P. Assumption of Contracts and Leases.** Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the



Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

**Q. Rejection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

**R. Assumption of Issuer Executory Contracts.** On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers<sup>12</sup> a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples” and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

**S. Release of Issuer Claims.** Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

---

<sup>12</sup> The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

**T. Release of Debtor Claims against Issuer Released Parties.** Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Ferona Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

**U. Authorization to Consummate.** The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

**V. Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

**W. Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

**X. Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**Y. Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

*provided, however,* the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

**Z. Releases by the Debtor.** On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under



any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

**AA. Injunction.** Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

**in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in**

**Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.**

**BB. Duration of Injunction and Stays.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

**CC. Continuance of January 9 Order and July 16 Order.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

**DD. No Governmental Releases.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

**EE. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**FF. Cancellation of Notes, Certificates and Instruments.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

**GG. Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

**HH. Post-Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

**II. Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**JJ. Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

**KK. Notice of Effective Date.** As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

**LL. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

**MM. Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.



**NN. References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

**OO. Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

**PP. Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

**QQ. Resolution of Objection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

**RR. Resolution of Objections of Scott Ellington and Isaac Leventon.**

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

**SS. No Release of Claims Against Senior Employee Claimants.** For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

**TT. Resolution of Objection of Internal Revenue Service.** Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

**UU. IRS Proof of Claim.** Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

**VV. CLO Holdco, Ltd. Settlement** Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

**WW. Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

**XX. Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**YY. Dissolution of the Committee.** On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

**ZZ. Miscellaneous.** After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that



the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

**###END OF ORDER###**

**Exhibit A**

**Fifth Amended Plan (as Modified)**

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

---

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

---

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

---

**PACHULSKI STANG ZIEHL & JONES LLP**

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

**HAYWARD & ASSOCIATES PLLC**

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

Counsel for the Debtor and Debtor-in-Possession

---

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

002165

ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
 GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law..... 1

    B. Defined Terms ..... 2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 17

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
 AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
 Equity Interests ..... 18

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes ..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests..... 19

    I. Special Provision Governing Unimpaired Claims..... 24

    J. Subordinated Claims ..... 24

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN ..... 24

    A. Summary ..... 24

    B. The Claimant Trust ..... 25

        1. Creation and Governance of the Claimant Trust and Litigation  
 Sub-Trust..... 25

        2. Claimant Trust Oversight Committee..... 26

	<u>Page</u>
3. Purpose of the Claimant Trust. ....	27
4. Purpose of the Litigation Sub-Trust.....	27
5. Claimant Trust Agreement and Litigation Sub-Trust Agreement. ....	27
6. Compensation and Duties of Trustees. ....	29
7. Cooperation of Debtor and Reorganized Debtor. ....	29
8. United States Federal Income Tax Treatment of the Claimant Trust. ....	29
9. Tax Reporting. ....	30
10. Claimant Trust Assets. ....	30
11. Claimant Trust Expenses. ....	31
12. Trust Distributions to Claimant Trust Beneficiaries.....	31
13. Cash Investments. ....	31
14. Dissolution of the Claimant Trust and Litigation Sub-Trust. ....	31
C. The Reorganized Debtor.....	32
1. Corporate Existence.....	32
2. Cancellation of Equity Interests and Release.....	32
3. Issuance of New Partnership Interests.....	32
4. Management of the Reorganized Debtor.....	33
5. Vesting of Assets in the Reorganized Debtor.....	33
6. Purpose of the Reorganized Debtor.....	33
7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets.....	33
D. Company Action.....	34
E. Release of Liens, Claims and Equity Interests.....	35
F. Cancellation of Notes, Certificates and Instruments.....	35

	<u>Page</u>
G. Cancellation of Existing Instruments Governing Security Interests.....	35
H. Control Provisions .....	35
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	36
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	38
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	39
C. Cash Distributions.....	40
D. Disputed Claims Reserve.....	40
E. Distributions from the Disputed Claims Reserve .....	40
F. Rounding of Payments.....	40
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	41
I. General Distribution Procedures.....	41
J. Address for Delivery of Distributions.....	41
K. Undeliverable Distributions and Unclaimed Property.....	41
L. Withholding Taxes.....	42

	<u>Page</u>
M. Setoffs .....	42
N. Surrender of Cancelled Instruments or Securities .....	42
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	43
A. Filing of Proofs of Claim .....	43
B. Disputed Claims.....	43
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	43
D. Allowance of Claims and Equity Interests.....	44
1. Allowance of Claims.....	44
2. Estimation .....	44
3. Disallowance of Claims .....	44
ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	45
A. Conditions Precedent to the Effective Date .....	45
B. Waiver of Conditions.....	46
C. Dissolution of the Committee .....	46
ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	47
A. General.....	47
B. Discharge of Claims.....	47
C. Exculpation .....	47
D. Releases by the Debtor.....	48
E. Preservation of Rights of Action.....	49
1. Maintenance of Causes of Action .....	49
2. Preservation of All Causes of Action Not Expressly Settled or Released .....	49



	<u>Page</u>
F. Injunction .....	50
G. Duration of Injunctions and Stays.....	51
H. Continuance of January 9 Order .....	51
ARTICLE X. BINDING NATURE OF PLAN .....	51
ARTICLE XI. RETENTION OF JURISDICTION.....	52
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	54
A. Payment of Statutory Fees and Filing of Reports .....	54
B. Modification of Plan .....	54
C. Revocation of Plan.....	54
D. Obligations Not Changed.....	55
E. Entire Agreement .....	55
F. Closing of Chapter 11 Case .....	55
G. Successors and Assigns.....	55
H. Reservation of Rights.....	55
I. Further Assurances.....	56
J. Severability .....	56
K. Service of Documents .....	56
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	57
M. Governing Law .....	58
N. Tax Reporting and Compliance .....	58
O. Exhibits and Schedules .....	58
P. Controlling Document .....	58

---

**DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

**ARTICLE I.**  
**RULES OF INTERPRETATION, COMPUTATION OF TIME,**  
**GOVERNING LAW AND DEFINED TERMS**

**A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

0029074

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests



unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.



42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.



102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder



of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## ARTICLE II.

### ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

#### A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until



full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.



4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

### **ARTICLE IV.** **MEANS FOR IMPLEMENTATION OF THIS PLAN**

#### **A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### *1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.



The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:



- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

### **C. The Reorganized Debtor**

#### **1. Corporate Existence**

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

#### **2. Cancellation of Equity Interests and Release**

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

#### **3. Issuance of New Partnership Interests**

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,



the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.



**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.



**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.



Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trust, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**

**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.**  
**EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

**B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

**C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing



will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation



Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### **1. Maintenance of Causes of Action**

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### **2. Preservation of All Causes of Action Not Expressly Settled or Released**

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court**

**(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.**

**G. Duration of Injunctions and Stays**

**ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.**

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

**ARTICLE XII.**  
**MISCELLANEOUS PROVISIONS**

**A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.



**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the



Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700

Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

Case 19-34054-sgj11 Doc 1943 Filed 02/22/21 Entered 02/22/21 16:48:16 Page 157 of 161

**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.



36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

## **EXHIBIT 4**



ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
 GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law..... 1

    B. Defined Terms .....2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 18

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
 AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
 Equity Interests ..... 19

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes ..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests.....20

    I. Special Provision Governing Unimpaired Claims.....24

    J. Subordinated Claims .....25

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN .....25

    A. Summary .....25

    B. The Claimant Trust .....26

        1. *Creation and Governance of the Claimant Trust and Litigation Sub-  
 Trust.* .....26

        2. *Claimant Trust Oversight Committee* .....27

	<u>Page</u>
3. <i>Purpose of the Claimant Trust</i> .....	27
4. <i>Purpose of the Litigation Sub-Trust</i> .....	28
5. <i>Claimant Trust Agreement and Litigation Sub-Trust Agreement</i> .....	28
6. <i>Compensation and Duties of Trustees</i> .....	29
7. <i>Cooperation of Debtor and Reorganized Debtor</i> .....	30
8. <i>United States Federal Income Tax Treatment of the Claimant Trust</i> .....	30
9. <i>Tax Reporting</i> .....	30
10. <i>Claimant Trust Assets</i> .....	31
11. <i>Claimant Trust Expenses</i> .....	31
12. <i>Trust Distributions to Claimant Trust Beneficiaries</i> .....	31
13. <i>Cash Investments</i> .....	31
14. <i>Dissolution of the Claimant Trust and Litigation Sub-Trust</i> .....	32
C. <i>The Reorganized Debtor</i> .....	32
1. <i>Corporate Existence</i> .....	32
2. <i>Cancellation of Equity Interests and Release</i> .....	33
3. <i>Issuance of New Partnership Interests</i> .....	33
4. <i>Management of the Reorganized Debtor</i> .....	33
5. <i>Vesting of Assets in the Reorganized Debtor</i> .....	34
6. <i>Purpose of the Reorganized Debtor</i> .....	34
7. <i>Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets</i> .....	34
D. <i>Company Action</i> .....	34
E. <i>Release of Liens, Claims and Equity Interests</i> .....	35
F. <i>Cancellation of Notes, Certificates and Instruments</i> .....	36
G. <i>Cancellation of Existing Instruments Governing Security Interests</i> .....	36

	<u>Page</u>
H. Control Provisions .....	36
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	37
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases .....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases .....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases .....	39
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS .....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	40
C. Cash Distributions .....	41
D. Disputed Claims Reserve .....	41
E. Distributions from the Disputed Claims Reserve .....	41
F. Rounding of Payments .....	41
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims .....	42
I. General Distribution Procedures .....	42
J. Address for Delivery of Distributions .....	42
K. Undeliverable Distributions and Unclaimed Property .....	42
L. Withholding Taxes .....	43
M. Setoffs .....	43



	<u>Page</u>
N. Surrender of Cancelled Instruments or Securities .....	43
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
 ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	
44	
A. Filing of Proofs of Claim .....	44
B. Disputed Claims.....	44
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	44
D. Allowance of Claims and Equity Interests.....	44
1. <i>Allowance of Claims</i> .....	45
2. <i>Estimation</i> .....	45
3. <i>Disallowance of Claims</i> .....	45
 ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	
46	
A. Conditions Precedent to the Effective Date .....	46
B. Waiver of Conditions.....	47
C. Effect of Non-Occurrence of Conditions to Effectiveness	<b>Error! Bookmark not defined.</b>
D. Dissolution of the Committee .....	47
 ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	
48	
A. General.....	48
B. Discharge of Claims.....	48
C. Exculpation .....	48
D. Releases by the Debtor.....	49
E. Preservation of Rights of Action.....	50
1. <i>Maintenance of Causes of Action</i> .....	50
2. <i>Preservation of All Causes of Action Not Expressly Settled or Released</i> .....	50
F. Injunction .....	51

	<u>Page</u>
G. Term of Injunctions or Stays.....	52
H. Continuance of January 9 Order .....	52
ARTICLE X. BINDING NATURE OF PLAN .....	52
ARTICLE XI. RETENTION OF JURISDICTION.....	53
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	55
A. Payment of Statutory Fees and Filing of Reports .....	55
B. Modification of Plan .....	55
C. Revocation of Plan.....	55
D. Obligations Not Changed.....	56
E. Entire Agreement.....	56
F. Closing of Chapter 11 Case .....	56
G. Successors and Assigns.....	56
H. Reservation of Rights.....	56
I. Further Assurances.....	57
J. Severability .....	57
K. Service of Documents .....	57
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	58
M. Governing Law .....	59
N. Tax Reporting and Compliance .....	59
O. Exhibits and Schedules .....	59
P. Controlling Document .....	59

---

## **DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### **ARTICLE I.** **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

#### **A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns;

002248

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**  
The Charitable DAF Fund LP §

Appellant § 22-03052

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**  
**VOLUME 12**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1*  
*000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p>Vol. 2</p> <p>000066</p> <p>000081</p> <p>Thru Vol. 6</p>			<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p>Vol. 7</p> <p>001093</p> <p>001101</p> <p>001111</p>			<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # 1 Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>



Vol. 8			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001349	8 5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001352	9 5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001359	10 5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
001361	11 5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
001369	12 5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
001381	13 5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				

001. 22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

*/s/ Mazin A. Sbaiti*  
Mazin A. Sbaiti

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.



15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.



24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.



69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,



and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any

damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized

Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized



Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee

Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF  
CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.



**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the

Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

## **H. Classification and Treatment of Claims and Equity Interests**

### *1. Class 1 – Jefferies Secured Claim*

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

### *2. Class 2 – Frontier Secured Claim*

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

#### 11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.



**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor’s limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor’s current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be



cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust**<sup>2</sup>

*1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and

monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust

Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.



(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are

investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.



2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in

the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of

doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a



contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed

and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity



Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the

Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.**  
**PROCEDURES FOR RESOLVING CONTINGENT,**  
**UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.



1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH**

**LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding



upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

#### **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's

Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross

negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

## **E. Preservation of Rights of Action**

### *1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

### *2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final

Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or**



arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state,

Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or



expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such

orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.** **MISCELLANEOUS PROVISIONS**

### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

### **B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

### **C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement

executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this

Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego

the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*



## **EXHIBIT 5**

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

<b>THE CHARITABLE DAF FUND, LP.,</b>	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Cause No. _____
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<i>Defendant.</i>	§	

**ORIGINAL COMPLAINT**

This matter concerns self-dealing and seeks redress for violation of state and federal law, including, but not limited to, violations of the Advisers Act of 1940, and other state causes of action.

**I.**

**PARTIES**

1. Plaintiff The Charitable DAF Fund, L.P. (“Plaintiff” or “DAF”) is a limited partnership formed under the laws of the Cayman Islands.
2. Defendant Highland Capital Management L.P. (“Highland” or “HCMLP”) is a Delaware limited partnership, whose principal place of business is in Dallas, Texas, at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

**II.**

**JURISDICTION AND VENUE**

3. Subject matter jurisdiction is proper in this Court under 28 U.S.C. § 1331 and under 28 U.S.C. § 1334 because the suit arises out of post-petition acts or omissions of the debtor and certain of its principals.

4. This Court has personal jurisdiction over Defendant Highland Capital Management, L.P. because it has continuously done business in this state, and the causes of action arise from the acts or omissions committed in this state.

5. Venue is proper in this Court because a substantial number of the acts or omissions giving rise to this lawsuit and the causes of action asserted herein occurred in Dallas County.

### III.

#### **FACTUAL BACKGROUND**

6. HCMLP is a registered investment advisor (“RIA”) subject to the regulations of the Securities Exchange Commission.

7. HCMLP is both the advisor of and investor in Highland Multi Strategy Credit Fund, L.P. (“Multistrat”), a Delaware limited partnership. Highland Multi Strategy Credit Fund GP, L.P., itself a Delaware limited partnership, is the general partner of Multistrat, and HCMLP is the sole member of the general partner of Highland Multi Strategy Credit Fund GP, L.P.

8. HCMLP’s advisory capacity is governed, or at all relevant times was governed, by the Third Amended and Restated Investment Management Agreement, effective November 1, 2013 (the “IMA”).

9. The purpose of Multistrat as a vehicle was stated as such: “The Fund's investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.”

10. The Confidential Private Placement Memorandum for Multistrat disclosed that “[t]he Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the ‘Advisers Act’).

Each prospective investor will be required to make a representation to indicate that it is a ‘qualified client’ as defined in the Advisers Act.”

**11.** Because of these agreements and roles as the General Partner and RIA, Highland owed contractual and fiduciary duties to Plaintiff as an investor in Multistrat.

**12.** James Seery, the principal, CEO, and CRO of HCMLP, in its capacity as a debtor, admitted under oath that HCMLP owes fiduciary duties to the investors of the funds HCMLP manages—which would include Multistrat—and therefore, has admitted under oath that HCMLP and its governed persons owe fiduciary duties to the investors in Multistrat, which include Plaintiff, The Charitable DAF Fund, and Highland Capital Management Services, Inc., among others.

**13.** As an investment vehicle advised at all times and controlled at all times by HCMLP, Multistrat purchased and owned a pool of viaticals—investments in life insurance policies keyed to the lives of other persons. When a person passes away, the life insurance money is paid to the owner of the policy—in this case, Multistrat.

**14.** The notional value of the viatical pool was approximately \$145 million.

**15.** In or around August 2020, HCMLP sold the entire viatical pool for approximately \$35,000,000—less than one quarter of the insured value.

**16.** The policies insured people aged 90 on average, suggesting that the policies were highly likely to pay off in the ensuing few years given the age and life expectancies of the insureds, as well as considering the actuarial impact of the COVID pandemic.

**17.** In the spring of 2020, Multistrat raised funds specifically for the purpose of paying the premiums on the viatical pool—amounts raised, borrowing availability, and liquid securities provided enough cash to pay the premiums. But HCMLP did not pursue this path as promised.

Instead, it sold the assets. To this day, it is unclear why the policies were sold, and why, just prior to a planned mediation.

18. Furthermore, the process of selling was severely flawed. For example, the health assessments used to determine the likelihood and timeline for the payout were two years old. HCMLP did not cause new, up-to-date health assessments to be performed, and instead was content to rely on stale information or worse, no information at all.

19. Furthermore, HCMLP made no effort to adjust the projected life expectancies due to the increasing age of the insureds during a process that stretched over seven months, nor for the potential impact of COVID on people over the age of 90, which would have impacted the price..

20. Equally troubling is that Multistrat obtained the funds to pay the premiums from another investor—yet, it apparently did not use the funds for that purpose.

21. HCMLP apparently used the proceeds of the sale to pay itself, notwithstanding the fact that there were redeemed interests waiting to be paid—interests to whom HCMLP also owed fiduciary duties.

22. In short, HCMLP caused Multistrat to sell the viatical pool at a substantially discounted amount to curry favor with the brokers and buyers in the marketplace for no apparent benefit to Multistrat’s investors or the debtor’s estate.

### III.

#### CAUSES OF ACTION

##### First Cause of Action **Breach of the Advisers Act**

23. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

24. Highland’s actions violate the Advisers Act.

25. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.

26. The IMA imposes and incorporates the duties and obligations of the Investment Advisers Act of 1940.

27. Under this federal law, an investment adviser is a fiduciary.<sup>1</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.

28. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”

29. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>2</sup> In order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

---

<sup>1</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s “references to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. 2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”)).

<sup>2</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

30. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>3</sup>

31. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

32. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

33. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

34. Therefore, Plaintiff seeks to declare the sale of the viaticals void because they were accomplished in violation of the Advisers Act.

35. Plaintiff further seeks to declare the agreement(s) between Highland and Multistrat void because they were continued in violation of the Advisers Act.

### **Second Cause of Action** **Breach of Fiduciary Duty**

36. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

---

<sup>3</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *Sec. & Exch. Commission v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).



37. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.
38. The IMA imposes and incorporates the duties and obligations of the Investment Advisers Act of 1940.
39. Under this federal law, an investment adviser is a fiduciary.<sup>4</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.
40. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules, but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”
41. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>5</sup> In order for disclosure to be full and fair, it should be

---

<sup>4</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. IA2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”).

<sup>5</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

42. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>6</sup>

43. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

44. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

45. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

46. HCMLP’s CEO testified under oath that he and HCMLP were aware of these duties and had to comply with them.

47. Section 204 of the Advisers Act requires HCMLP to carry written policies and procedures that must be followed in order to adhere to its federal obligations.

---

<sup>6</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *SEC v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

48. Section 206 of the Advisers Act prohibits transactions by an adviser that were accomplished via a “deceit” on a client or prospective client, e.g., by concealing the role and interest the adviser has in the transaction, or via engaging in a course of conduct that has a tendency to mislead a client or which is manipulative.

49. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

50. The Advisers Act declares any contract that was made in violation of its provisions or regulations, or any contract that has been performed in violation of the Advisers Act, **void**.

51. The Advisers Act created a private right of action to void unlawful agreements and acts and to seek such equitable relief as accompanies such claims.

52. Texas law allows a fiduciary plaintiff to seek damages for breaches of fiduciary duty and to seek disgorgement of all ill-gotten gains obtained by a fiduciary.

53. Plaintiff has been damaged due to the breaches of fiduciary duty outlined herein, and it is entitled to recover damages, punitive damages, and attorneys’ fees.

54. To the extent this claim must be brought as a derivative action, it is plain that the demand requirement under Delaware law could not be met because serving a demand on Highland or to sue Highland would have been futile.

**Third Cause of Action**  
**Breach of Contract**

55. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

56. The IMA imposes a duty of prudent investment management for the benefit of the investors in Multistrat and incorporate the duties and obligations of the Investment Advisers Act of 1940.

57. The violations set forth above constitute a breach of each or both of these agreements.

58. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

59. Plaintiff has been damaged by the breaches of contract outlined herein.

60. Plaintiff is entitled to recover damages and attorneys' fees.

**JURY DEMAND AND PRAYER**

61. Plaintiff demands trial by jury.
62. Plaintiff respectfully requests judgment and an order:
- Disgorge all ill-gotten gains in an amount to be determined at trial;
  - Voiding the sale and other relevant agreements herein with HCMLP pursuant to the Advisers Act;
  - Awarding damages in an amount to be determined at trial;
  - Awarding punitive damages in an amount to be determined at trial;
  - Awarding attorneys' fees and costs in an amount to be determined at trial;
  - Awarding all interim and final relief to which Plaintiff is legally or equitably entitled under the facts and circumstances raised herein.

Dated: July 22, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

/s/ Mazin A. Sbaiti

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: [mas@sbaitilaw.com](mailto:mas@sbaitilaw.com)

[jeb@sbaitilaw.com](mailto:jeb@sbaitilaw.com)

**Counsel for Plaintiff**

## **EXHIBIT 6**

### Schedule of Contracts and Leases to Be Assumed

1. Advisory Services Agreement, dated November 21, 2011, effective June 20, 2011, by and between Carey International, Inc., and Highland Capital Management, L.P.
2. Amended and Restated Advisory Services Agreement, dated March 4, 2013, by and between Trussway Holdings, Inc., and Highland Capital Management, L.P.
3. Reference Portfolio Management Agreement, dated March 4, 2004, by and between Highland Capital Management, L.P., and Citibank N.A.
4. Advisory Services Agreement, dated May 25, 2011, by and between CCS Medical, Inc., and Highland Capital Management, L.P.
5. Amended and Restated Advisory Services Agreement, dated February 28, 2013, by and between Cornerstone Healthcare Group Holding, Inc., and Highland Capital Management, L.P.
6. Prime Brokerage Agreement by and between Jefferies LLC and Highland Capital Management, L.P., dated May 24, 2013.
7. Amended and Restated Shared Services Agreement, dated August 21, 2015, by and between Highland Capital Management, L.P., and Falcon E&P Opportunities GP, LLC.
8. Amended and Restated Administrative Services Agreement, effective as of August 21, 2015, by and between Highland Capital Management, L.P., and Petrocap Partners II GP, LLC.
9. Office Lease, between Crescent Investors, L.P., and Highland Capital Management, L.P.
10. Paylocity Corporation Services Agreement, between Highland Capital Management, L.P., and Paylocity Corporation, dated November 19, 2012.
11. Electronic Trading Services Agreement, between SunTrust Robinson Humphrey Inc., and Highland Capital Management, L.P., dated February 6, 2019.
12. Letter Agreement, between FTI Consulting, Inc., and Highland Capital Management, L.P., dated November 19, 2018.
13. Administrative Services Agreement, dated January 1, 2018, between Highland Capital Management, L.P., and Liberty Life Assurance Company of Boston.
14. Electronic Communications: Customer Authorization & Indemnification, between Highland Capital Management, L.P., and The Bank of New York Mellon Corporation, dated August 9, 2016.
15. Letter Agreement, dated August 9, 2016, Electronic Access Terms and Conditions, by and between The Bank of New York Mellon Trust Company, N.A., and Highland Capital Management, L.P.
16. Shared Services Agreement by and between Highland HCF Advisor, Ltd., and Highland Capital Management, L.P., dated effective October 27, 2017.



17. Sub-Advisory Agreement, by and between Highland HCF Advisors, Ltd., and Highland Capital Management, dated effective October 27, 2017.
18. Collateral Management Agreement, dated November 2, 2006, by and between Highland Credit Opportunities CDO Ltd. and Highland Capital Management, L.P.
19. Management Agreement, dated November 15, 2007, between Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Partners Master L.P., Highland Restoration Capital Partners GP, LLC, and Highland Capital Management, L.P.
20. Investment Management Agreement, between Highland Capital Multi-Strategy Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
21. Investment Management Agreement, between Highland Capital Multi-Strategy Master Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
22. Management Agreement, dated August 22, 2007, between and among Highland Capital Management, L.P., and Walkers Fund Services Limited, as trustee of Highland Credit Opportunities Japanese Unit Trust.
23. Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013.
24. Investment Management Agreement, dated March 31, 2015, by and among Highland Select Equity Master Fund, L.P., Highland Select Equity Fund GP, L.P., and Highland Capital Management, L.P.
25. Amended and Restated Investment Management Agreement, dated February 27, 2017, by and among Highland Prometheus Master Fund L.P., Highland Prometheus Feeder Fund I, L.P., Highland Prometheus Feeder Fund II, L.P., Highland SunBridge GP, LLC, and Highland Capital Management, L.P.
26. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
27. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
28. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
29. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
30. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
31. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jasper CLO Ltd., and Highland Capital Management, L.P.
32. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.

33. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
34. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
35. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
36. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
37. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
38. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
39. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
40. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
41. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
42. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
43. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.
44. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
45. AT&T Managed Internet Service, between Highland Capital Management, L.P. and AT&T Corp., dated February 24, 2015.
46. ViaWest, Master Service Agreement, dated October 3, 2011, between Highland Capital Management, L.P. and ViaWest
47. Stockholders' Agreement, dated April 15, 2005, by and between American Banknote Corporation and Highland Capital Management, L.P.
48. Stockholders' Agreement and Amendment No. 1, dated January 25, 2011, by and between Carey Holdings, Inc. and Highland Capital Management, L.P.
49. Stockholders' Agreement and Amendment, dated March 24, 2010, by and between Cornerstone Healthcare Group Holding, Inc. and Highland Capital Management, L.P.
50. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
51. Stock Purchase and Sale Agreement and Amendment, dated January 16, 2013, by and between Progenics Pharmaceuticals, Inc. and Highland Capital Management, L.P.

52. Stockholders' Agreement and Amendments, dated October 24, 2008, by and between JHT Holdings, Inc. and Highland Capital Management, L.P.
53. Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P., dated February 25, 2013, by and between Highland Dynamic Income Fund GP, LLC and Highland Capital Management, L.P.
54. Highland Multi-Strategy Fund, L.P. Limited Partnership Agreement, dated July 6, 2006, by and between Highland Multi-Strategy Fund GP, L.P. and Highland Capital Management, L.P.
55. Operating Agreement of HE Capital, LLC (as amended), dated September 27, 2007, by and between ENA Capital, LLC Ellman Management Group, Inc. and Highland Capital Management, L.P.
56. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund II, LLC, dated February 27, 2007, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
57. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund, LLC, dated July 19, 2006, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
58. Highland Capital Management, L.P., Limited Liability Company Agreement of Highland Receivables Finance 1, LLC, by and between Highland Capital Management, L.P. and Highland Capital Management, L.P.
59. Agreement of Limited Partnership of Highland Restoration Capital Partners, L.P. and Amendments, dated November 6, 2007, by and between Highland Restoration Capital Partners GP, LLC and Highland Capital Management, L.P.
60. Agreement of Limited Partnership of Highland Select Equity Fund GP, L.P., dated October 2005, by and between Highland Select Equity Fund GP, LLC and Highland Capital Management, L.P.
61. Agreement of Limited Partnership of Penant Management LP, dated December 12, 2012, by and between Penant Management GP, LLC and Highland Capital Management, L.P.
62. Agreement of Limited Partnership of Petrocap Incentive Partners III, LP, dated April 12, 2018, by and between Petrocap Incentive Partners III GP, LLC, Petrocap Incentive Holdings III, LP and Highland Capital Management, L.P.
63. Amended and Restated Agreement of Limited Partnership of Petrocap Partners II, LP, dated October 30, 2014, by and between Petrocap Partners II GP, LLC, Petrocap Incentive Partners II, LP and Highland Capital Management, L.P.
64. Agreement of Limited Partnership of Highland Credit Opportunities CDO GP, L.P., dated December 29, 2005, by and between Highland Credit Opportunities CDO GP, LLC and Highland Capital Management, L.P.
65. Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P., dated November 1, 2014, by and between Highland Multi Strategy Credit Fund GP, L.P. and Highland Capital Management, L.P.

66. DUO Security, 2 factor authentication, by and between DUO Security and Highland Capital Management, L.P.
67. GoDaddy Domain Registrations, by and between GoDaddy and Highland Capital Management, L.P.
68. Highland Loan Fund, Ltd. et al, Investment Management Agreement, dated July 31, 2001, by and between Highland Loan Fund, Ltd. et al and Highland Capital Management, L.P.
69. E Mailflow Monitoring, by and between Mxtoolbox and Highland Capital Management, L.P.
70. Cloud single sign on for HR related employee login, by and between Onelogin and Highland Capital Management, L.P.
71. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
72. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
73. Order Addenda, dated January 28, 2020, by and between CenturyLink Communications, LLC and Highland Capital Management, L.P.
74. Service Agreement (as amended), dated April 1, 2005, by and between Intex Solutions, Inc. and Highland Capital Management, L.P.
75. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
76. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
77. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
78. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
79. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
80. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
81. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
82. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

83. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
84. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
85. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
86. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
87. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.
88. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
89. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
90. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
91. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
92. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
93. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
94. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
95. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
96. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
97. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust



98. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
99. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
100. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
101. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
102. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
103. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
104. Securities Account Control Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Highland CDO Opportunity Fund, Ltd.; JPMorgan Chase Bank, National Association
105. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
106. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
107. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
108. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
109. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
110. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
111. Extension/Buy-Out Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Citigroup Financial Products Inc.; Citigroup Global Markets Inc.
112. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
113. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
114. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

115. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery
116. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel
117. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms
118. Colocation Service Order dated October 14, 2019 between Highland Capital Management and Dawn US Holdings, LLC d/b/a Evoque Date Center Solutions
119. Tradesuite Web Module Services/Agreement between Highland Capital Management and DTCC ITP LLC
120. Bloomberg (Terminal) Agreement No. 306371 between Highland Capital Management and Bloomberg Finance, L.P.<sup>1</sup>
121. Master Service Agreement between Highland Capital Management and Via West
122. Amendment to Bloomberg Order Management System Addendum and Bloomberg Order Management System Schedule of Services Account No. 167969 between Highland Capital Management and Bloomberg Finance, L.P.
123. Fourth Amendment to Software License and Services Agreement between Highland Capital Management and Markit WSO Corporation
124. Master Services Agreement, First Amendment to Master Services Agreement, Second Amendment and Restatement of Master Services Agreement between Highland Capital Management and Siepe Services, LLC
125. Internet Agreement Account No. 831-000-7888-651 between Highland Capital Management and AT&T
126. Landline Fax Agreement Account No. 831-000-2532-176 between Highland Capital Management and AT&T
127. Amazon Web Services Account No. 353534426569 between Highland Capital Management and Amazon Web Service, Inc.
128. Website Hosting Agreement Account No. 325667 between Highland Capital Management and WP Engine

---

<sup>1</sup> The Debtor is currently in discussions with Bloomberg regarding the assumption of this agreement.



## **EXHIBIT 7**

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

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

*Counsel for the Debtor*

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

\_\_\_\_\_  
In re: )  
 ) Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> )  
 ) Case No. 19-34054-sgj11  
 )  
Debtor. )  
\_\_\_\_\_ )

**NOTICE OF OCCURRENCE OF EFFECTIVE DATE OF  
CONFIRMED FIFTH AMENDED PLAN OF REORGANIZATION  
OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

**PLEASE TAKE NOTICE** that on February 22, 2021, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1943] (the “Confirmation Order”) confirming the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as

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



amended, supplemented, or modified, the “Plan”). Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Plan and the Confirmation Order, as applicable.

**PLEASE TAKE FURTHER NOTICE** that the Effective Date of the Plan occurred on August 11, 2021.

**PLEASE TAKE FURTHER NOTICE** that, except with respect to Administrative Expense Claims that are Professional Fee Claims or as otherwise set forth in the Plan, requests for payment of an Administrative Expense Claim must be Filed with the Bankruptcy Court **no later than forty-five (45) days after the Effective Date** (the “Administrative Expense Claims Bar Date”). **HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE EXPENSE CLAIMS BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE THAT DO NOT FILE AND SERVE SUCH A REQUEST BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE EXPENSE CLAIMS AGAINST THE DEBTOR OR THE REORGANIZED DEBTOR.**

**PLEASE TAKE FURTHER NOTICE** that, unless otherwise ordered by the Bankruptcy Court, all final requests for payment of Professional Fee Claims must be Filed **no later than sixty (60) days after the Effective Date.**

**PLEASE TAKE FURTHER NOTICE** that the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtor or the Reorganized Debtor, as applicable, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan and Confirmation Order, including, without limitation: the injunction with respect to the commencement of claims and causes of action against Protected Parties set forth in Section IX.F of the Plan and Sections AA and BB of the Confirmation Order, the duration of injunction and stays set forth in Section IX.G of the Plan and Section AA of the Confirmation Order, and the continuance of the January 9 Order and July 16 Order set forth in Section IX.H of the Plan and Section CC of the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE** that on the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor’s formation documents, including the Limited Partnership Agreement.

**PLEASE TAKE FURTHER NOTICE** that the Confirmation Order and the Plan

are available for inspection. If you would like to obtain copies you may: (a) access the Debtor's restructuring website at <http://www.kccllc.net/hcmlp>; (b) call toll free: (877) 573-3984 or international: (310) 751-1829; or (c) email HighlandInfo@kccllc.com and reference "Highland" in the subject line. You may also obtain copies of any pleadings filed in this case for a fee via PACER at: [pacer.uscourts.gov](http://pacer.uscourts.gov).

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: August 11, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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

-and-

**HAYWARD PLLC**

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

*Counsel for the Debtor*

## **EXHIBIT 8**

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

\_\_\_\_\_  
In re: )  
 ) Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> )  
 ) Case No. 19-34054 (SGJ)  
 )  
Debtor. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I, Vincent Trang, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On August 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit A**; and via First Class Mail upon the service lists attached hereto as **Exhibit B** and **Exhibit C**:

- **Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.** [Docket No. 2700]

Furthermore, on August 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via First Class Mail upon “Highland Capital Management LP, For Further Delivery to Addressed Parties, 300 Crescent Ct, Ste 700, Dallas, TX 75201,” for distribution in individually addressed envelopes to each party on the service list attached hereto as **Exhibit D**; and via First Class Mail upon “Highland Capital Management LP, For Further Delivery to Addressed Parties, 13455 Noel Rd, Ste 800, Dallas, TX 75240,” for distribution in individually addressed envelopes to each party on the service list attached hereto as **Exhibit E**:

- **Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.** [Docket No. 2700]

Dated: August 19, 2021

/s/ Vincent Trang  
Vincent Trang  
KCC  
222 N Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

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

002325



Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 2 of 175

## **EXHIBIT A**

Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	ctimmons@abernathy-law.com; bankruptcy@abernathy-law.com; ehahn@abernathy-law.com
Counsel for NexBank	Alston & Bird LLP	Jared Slade	jared.slade@alston.com
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	jonathan.edwards@alston.com
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandeneau	debra.dandeneau@bakermckenzie.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	michelle.hartmann@bakermckenzie.com
Counsel for NWCC, LLC	Barnes & Thornburg LLP	Thomas G. Haskins, Jr.	thomas.haskins@btlaw.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	mintz@blankrome.com; jubilioni@blankrome.com
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	John Y. Bonds, III, Bryan C. Assink	john@bondsellis.com; bryan.assink@bondsellis.com
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	schristianson@buchalter.com
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	c Carlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel for BH Equities, L.L.C.	Dentons US LLP	Casey Doherty	Casey.doherty@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Counsel to Acis Capital Management, LP and Acis Capital Management GP, LLC ("Creditors") and Joshua N. Terry and Jennifer G. Terry	Forshey & Prostok LLP	Jeff P. Prostok, J. Robert Forshey, Suzanne K. Rosen	jprostok@forsheyprostok.com; bforshey@forsheyprostok.com; srosen@forsheyprostok.com
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	selliot@frontier-ok.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	ddraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	Jhonis@RandAdvisors.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
IRS	Internal Revenue Service	Centralized Insolvency Operation	Mimi.M.Wong@irscounsel.treas.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Secured Creditor	Jefferies LLC	Director of Compliance	cbianchi@jefferies.com
Secured Creditor	Jefferies LLC	Office of the General Counsel	cbianchi@jefferies.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	asrush@jonesday.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	jbain@joneswalker.com; aanderson@joneswalker.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	artoush.varshosaz@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	james.wright@klgates.com

Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	stephen.topetzes@klgates.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	pbessette@kslaw.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	Andrew.Clubok@lw.com; Sarah.Tomkowiak@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala, Kathryn K. George	asif.attarwala@lw.com; Kathryn.George@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	jeff.bjork@lw.com; kim.posin@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Zachary F. Proulx	Zachary.Proulx@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Counsel for Jack Yang and Brad Borud	Loewinsohn Flegle Deary Simon LLP	Daniel P. Winikka	danw@lfdslaw.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnlp.com
Equity Holders	Mark K. Okada		mokadadallas@gmail.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsh & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Bank	NexBank	John Danilowicz	john.holt@nexbankcapital.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD, Plano ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslough@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	judith.ross@judithwross.com; frances.smith@judithwross.com; eric.soderlund@judithwross.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	david.karp@srz.com; jay.williams@srz.com
SEC Regional Office	Securities & Exchange Commission	Richard Best, Regional Director	bankruptcynoticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
Counsel to Patrick Daugherty	Spencer Fane LLP	Jason P. Kathman	jkathman@spencerfane.com

Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel for NexPoint Real Estate Partners, LLC F/K/A HCRE Partners, LLC	Wick Phillips Gould & Martin, LLP	Brant C. Martin, Jason M. Rudd, Lauren K. Drawhorn	brant.martin@wickphillips.com; jason.rudd@wickphillips.com; lauren.drawhorn@wickphillips.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 6 of 175

## **EXHIBIT B**

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	1700 Redbud Blvd, Ste. 300			McKinney	TX	75069
Counsel for NexBank	Alston & Bird LLP	Jared Slade	Chase Tower	2200 Ross Avenue		Dallas	TX	75201
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	One Atlantic Center	1201 West Peachtree Street		Atlanta	GA	30309
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	500 Delaware Avenue, 8th Floor	PO Box 1150		Wilmington	DE	19899-1150
Counsel for Scott Ellington, Thomas Sargent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Ave			New York	NY	10018
Counsel for Scott Ellington, Thomas Sargent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500		Dallas	TX	75201
Counsel for NWCC, LLC	Barnes & Thornburg LLP	Thomas G. Haskins, Jr.	2121 North Pearl Street, Suite 700			Dallas	TX	75201
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800			Wilmington	DE	19801
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	John Y. Bonds, III, Bryan C. Assink	420 Throckmorton Street, Suite 1000			Fort Worth	TX	76102
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	55 Second Street, 17th Floor			San Francisco	CA	94105-3493
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	2911 Turtle Creek Blvd.	Suite 1400		Dallas	TX	75219
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	265 E. Warm Springs Road, Suite 107			Las Vegas	NV	89119
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosselliers	Hercules Plaza	1313 North Market Street, Suite 5400		Wilmington	DE	19801
Creditor	Cole, Scholtz, Meisel, Forman & Leonard, P.A.		301 Commerce Street, Suite 1700			Fort Worth	TX	76102
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	8080 Park Lane, Suite 700			Dallas	TX	75231
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	1105 N. Market Street, Suite 901			Wilmington	DE	19801
Counsel for BH Equities, L.L.C.	Dentons US LLP	Casey Doherty	1221 McKinney Street, Suite 1900			Houston	TX	77010
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	1221 Avenue of the Americas			New York	NY	10020-1089
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	233 South Wacker Drive	Suite 5900		Chicago	IL	60606-6361
Counsel to Acis Capital Management, LP and Acis Capital Management GP, LLC ("Creditors") and Joshua N. Terry and Jennifer G. Terry	Forshey & Prostok LLP	Jeff P. Prostok, J. Robert Forshey, Suzanne K. Rosen	777 Main Street, Suite 1550			Fort Worth	TX	76102
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	5100 South I-35 Service Road			Oklahoma City	OK	73129

0923381

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	100 Crescent Court, Suite 350			Dallas	TX	75201
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	200 Park Avenue			New York	NY	10066
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	3161 Michelson Drive			Irvine	CA	92612
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	650 Poydras Street, Suite 2500	87 Railroad Place Ste 403		New Orleans	LA	70130
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	John Honis			Saratoga Springs	NY	12866
IRS	Internal Revenue Service	Altn Susanne Larson	31 Hopkins Plz Rm 1150			Baltimore	MD	21201
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	2323 Ross Avenue, Suite 600			Dallas	TX	75201
Secured Creditor	Jefferies LLC	Director of Compliance	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Secured Creditor	Jefferies LLC	Office of the General Counsel	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	919 Third Avenue			New York	NY	10022-3908
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	2727 N. Harwood Street			Dallas	TX	75201
Counsel to the issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	811 Main Street, Suite 2900			Houston	TX	77002
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	1717 Main Street, Suite 2800			Dallas	TX	75201
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	1 Lincoln Street			Boston	MA	02110
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	1601 K Street, NW			Washington	DC	20006-1600
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	901 Main Street, Suite 5200			Dallas	TX	75242-1699
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	500 West 2nd St., Suite 1800			Austin	TX	78701-4684
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	401 S. 2nd Street, Suite 200			Philadelphia	PA	19147
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000			Washington	DC	20004

002338



**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attanwala, Kathryn K. George	330 N. Wabash Avenue, Ste. 2800			Chicago	IL	60611
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100			Los Angeles	CA	90071
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Zachary F. Proulx	1271 Avenue of the Americas			New York	NY	10020
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207
Counsel for Jack Yang and Brad Borud	Loewensohn Flegle Deary Simon LLP	Daniel P. Winiikka	12377 Merit Drive, Suite 900			Dallas	TX	75251
Creditor Equity Holders	Lynn Plinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	2100 Ross Avenue, Ste 2700			Dallas	TX	75201
	Mark K. Okada		300 Crescent Court	Suite 700		Dallas	TX	75201
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arshnt & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	1201 North Market Street, Suite 1600			Wilmington	DE	19801
Counsel to Meta-e Discovery, LLC Bank	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	909 Third Avenue			New York	NY	10022
Counsel to California Public Employees' Retirement System ("CalPERS")	NexBank	John Danilowicz	2515 McKinney Ave	Ste 1100		Dallas	TX	75201
SEC Headquarters	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	One Embarcadero Center, 32nd Floor			San Francisco	CA	94111
Texas Attorney General	Office of General Counsel	Securities & Exchange Commission	100 F St NE			Washington	DC	20554
Attorney General of the United States	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
US Attorneys Office for Northern District of TX	Office of the Attorney General	Erin Nealy Cox, Esq	Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Trustee for District of DE	Office of the United States Attorney	Linda Casey	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	844 King St Ste 2207	Lockbox 35		Wilmington	DE	19801
US Trustee for District of DE	Office of the United States Trustee Delaware	Jane M. Leamy	1100 Commerce Street, Room 976	Earle Cabell Federal Building		Dallas	TX	75242
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	J. Caleb Boggs Federal Building	844 King St Ste 2207	Lockbox 35	Wilmington	DE	19801
Counsel to City of Garland, Garland ISD, Wylie ISD, Plano ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Office of the General Counsel	Office of the General Counsel	1200 K Street, N.W.		Washington	DC	20005-4026
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Linda D. Reece	1919 S. Shiloh Rd., Suite 310			Garland	TX	75042
Secured Creditor	Prime Brokerage Services	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	1313 North Market Street, 6th Floor			Wilmington	DE	19801
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Jefferies LLC	520 Madison Avenue			New York	NY	10022
		Michael J. Merchant, Sarah E. Silveira	One Rodney Square	920 North King Street		Wilmington	DE	19801

0023389

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	325 North St. Paul Street, Suite 4500			Dallas	TX	75201
Counsel for Scott Ellington, Thomas Sargent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCMI, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610			Dallas	TX	75201
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	919 Third Avenue			New York	NY	10022
SEC Regional Office	Securities & Exchange Commission	Richard Best, Regional Director	New York Regional Office	Brookfield Place, Suite 400	200 Vesey Street	New York	NY	10281
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	Philadelphia Regional Office	One Penn Center, Suite 520	1617 JFK Boulevard	Philadelphia	PA	19103
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	One South Dearborn Street			Chicago	IL	60603
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	2021 McKinney Avenue Suite 2000			Dallas	TX	75201
Counsel to Patrick Daugherty	Spencer Fane LLP	Jason P. Kathman	5700 Granite Parkway, Suite 650			Plano	TX	75024
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division - Bankruptcy Section	PO Box 13258			Austin	TX	78711
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	401 Federal Street	PO Box 898		Dover	DE	19903
Equity Holders	Strand Advisors, Inc.		300 Crescent Court	Suite 700		Dallas	TX	75201
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	919 North Market Street, Suite 420			Wilmington	DE	19801
TX AG Office	Texas Attorney Generals Office	Bankruptcy-Collections Division	PO Box 12548			Austin	TX	78711-2548
Equity Holders	The Dugaboy Investment Trust		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		300 Crescent Court	Suite 700		Dallas	TX	75201
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	717 N. Harwood St., Suite 400			Dallas	TX	75201
United States Attorney General	United States Attorney General	U.S. Department of Justice	William Barr, Esquire	950 Pennsylvania Avenue, NW	Room 4400	Washington	DC	20530-0001
United States Bankruptcy Court	United States Bankruptcy Court	Honorable Stacey G. Jernigan	Northern District of Texas - Dallas Division	Earle Cabell Federal Building	1100 Commerce St., Rm. 1254	Dallas	TX	75242-1496
U.S. Department of the Treasury	US Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
Counsel for NextPoint Real Estate Partners, LLC F/K/A HCRE Partners, LLC	Wick Phillips Gould & Martin, LLP	Brant C. Martin, Jason M. Rudd, Lauren K. Drawhorn	3131 McKinney Avenue, Suite 500			Dallas	TX	75204

002338

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P., (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Harwood Street, Suite 500			Dallas	TX	75201
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: David Neier	200 Park Avenue			New York	NY	10166-4193
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	800 Capitol Street, Suite 2400			Houston	TX	77002
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	2121 N. Pearl Street, Suite 900			Dallas	TX	75201
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

002339

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 12 of 175

## **EXHIBIT C**

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
13D Global Strategy and Research		491 N Main Street			Ketchum	ID	83340-0000	
13D RESEARCH, INC		PO BOX 2087	109 BOULDER VIEW LANE		Ketchum	ID	83340	
13D RESEARCH, INC		6115 Estate Smith Bay	Box 2/Suite 333		St. Thomas	VI	00802-1304	
1564 Entertainment, LLC		391 E. Las Colinas Blvd.	#130-428		Irving	TX	75039	
1st AMERICAN FIRE PROTECTION, INC		PO BOX 2123			Mansfield	TX	76063-2123	
1st Partners & Co		PO Box 141629			Dallas	TX	75222	
2011 PCDC Teachers Cup		25 Highland Park Village	#100-188		Dallas	TX	75205	
2-10 HOME BUYERS		10375 E HARVARD AVE			Denver	CO	80231	
2905 Maple LLC		2905 Maple Avenue			Dallas	TX	75201	
299 Credit Finance Holdings LLC		875 Third Avenue	10th Floor		New York	NY	10022	
300 Inc.		3805 Beltline Rd			Addison	TX	75001	
4CAST Inc		420 Lexington Avenue, Suite 2147			New York	NY	10170	
4th Bin, Inc.		703 3rd Avenue	6th Floor		New York	NY	10017	
A. Dean Jenkins		Address on File						
A.S.A.P. Advisor Services		5000 Olde Towne Parkway	Suite 100		Marietta	GA	30068	
AA GMT		4700 AMERICAN BLVD			Ft. Worth	TX	76155	
Aaron, Philip B.		Address on File						
ABALON BUSINESS MACHINES & SERVICES		60 E 42ND ST			New York	NY	10167	
Abayarathna, Sahan		Address on File						
Abbit Stonecypther		Address on File						
Aberdeen Loan Funding, Ltd.		Walker House 87 Mary Street	George Town		Grand Cayman		KY1-9002	Cayman Islands
Aberdeen Loan Funding, Ltd.		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Aberdeen Loan Funding, Ltd. and State Street Bank and Trust Company		87 Mary Street	George Town		Grand Cayman	KY	1-9902	Cayman Islands
Aberdeen Loan Funding, Ltd. and State Street Bank and Trust Company		200 Clarendon St	Mail Code EUC 108		Boston	MA	02116	
Ableco, LLC		299 Park Avenue	Floor 21-23		New York	NY	10171	
Ablon and Co., PLLC		10000 N. Central Expy #1400			Dallas	TX	75231	
ABM		PO Box 419860			Boston	MA	02241-9860	
ABM Janitorial Services		P.O. Box 951864			Dallas	TX	75395	
ABM Texas General Services, Inc.		2020 Westridge Drive			Irving	TX	75038-0000	
About Faces Entertainment, LLC		5092 Dorsey Hall Drive	Suite 202		Ellicott City	MD	21042	
AboveNet Communications Inc.		PO Box 79006			City of Industry	CA	91716-9006	
Abraham Rondina		Address on File						

0023487

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Abrams & Bayliss LLP	John M. Seaman	20 Montchanin Road, Suite 200			Wilmington	DE	19807	
Abrams Mediation		7616 Burns Run Suite 180			Dallas	TX	75248	
Abrams Mediation		4901 LBJ Fwy	#150		Dallas	TX	75244-6179	
Absolute Entertainment		1517 Prudential Drive			Dallas	TX	75235	
ACA Compliance Group		8403 Colesville Road	Suite 870		Silver Spring	MD	20910	
Academy Engraving Inc		271 Madison Avenue	Suite 207		New York	NY	10016	
Accessibility Today		PO Box 1757			Roanoke	TX	76262	
Accountant General	Appleby Services (Bermuda) Ltd.	PO Box HM 1179			Hamilton		HM EX	BERMUDA
Accountant General	ATTN Lorna Phillips	M Q Services Limited Victoria Place			Hamilton		HM 10	BERMUDA
ACCOUNTEMPS		PO Box 743295			Los Angeles	CA	90074-3295	
ACCOUNTEMPS		FILE 73484	PO BOX 60000		San Francisco	CA	94160-3484	
Acuity Inc. dba NRS		PO Box 7247-8077			Philadelphia	PA	19170-8077	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al		3110 Webb Ave., Suite 203			Dallas	TX	75205	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Attn Annmarie Chiarello, Rakhee V. Patel	c/o Winstead PC	500 Winstead Building	2728 N. Harwood Street	Dallas	TX	75201	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Brian P. Shaw	Rogge Dunn Group PC	500 N. Akard St. Suite 1900		Dallas	TX	75201	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	James T. Bently	Schulte Roth & Zabel LLP	919 Third Avenue		New York	NY	10022	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Joseph E. Bain	Jones Walker LLP	811 Main St. Suite 2900		Houston	TX	77002	
Ackerman McQueen Inc.		1601 Northwest Expressway	Suite 1100		Oklahoma City	OK	73118	
ACMLP Claim, LLC		4514 Cole Ave., Suite 600			Dallas	TX	75205	
Action Fire Pros		3709 S IH 35			Waxahachie	TX	75165	
Action Shred of Texas		2835 Congressman Lane			Dallas	TX	75220	
Action Shred of Texas		1420 S. Barry Ave			Dallas	TX	75223	
Act-On Software, Inc.		121 SW Morrison Street, Ste 1600			Portland	OR	97204	
Ada Hsieh		Address on File						
ADAM DYBALA		Address on File						
Adam Energy Forum		PO Box 802511			Dallas	TX	75380-2511	
ADAM FALCON		Address on File						
Adam Hanson		Address on File						
Adam Kneller		Address on File						
Adam Ostermiller		Address on File						
ADAM PETERSON		Address on File						
Adam-Permian Energy Network		1439 Wakefield Dr.			Houston	TX	77018	
ADAM-Tulsa	Attn Melissa Turgeon	3500 One Williams Center, MD 2600			Tulsa	OK	74172-0135	

002342

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Addleshaw Goddard LLP		Sovereign House, PO Box 8	Sovereign Street Leeds		West Yorkshire		LS1 1HQ	United Kingdom
Adeo Internet Marketing Inc.		2501 East Charleston Rd			Island Pond	VT	05846	
Adesso Process Service		PO BOX 12621			Albany	NY	12212	
Adeyemi Ogunkoya		Address on File						
ADISA		10401 North Meridian Street	Suite 202		Indianapolis	IN	46290	
AdMaster Compliance		1101 Arrow Point Drive	Suite 301		Cedar Park	TX	78613	
ADMIN .U.C.			Employment Security Division					
Admiral Communications	State of Connecticut	Department of Labor			Hartford	CT	06104-2940	
ADP		4505 Excel Pkwy, Ste 300			Addison	TX	75001	
ADP		2735 Stemmons Fwy			Dallas	TX	75207	
ADP		PO BOX 78415			Phoenix	AZ	85062-8415	
ADP		PO Box 31001-1568			Pasadena	CA	91110-1568	
ADSUAR MUNIZ GOYCO SEDA & PEREZ-OCHOA		PO BOX 70294			San Juan	PR	00936-8294	
ADT SECURITY SERVICES, INC	ATTN M MALDONADO	335 W 16th ST			New York	NY	10011	
ADT SECURITY SERVICES, INC		PO BOX 371956			Pittsburgh	PA	15250-7956	
Advanced Business Group, Inc.		520 Eighth Ave, 15th Flr			New York	NY	10018	
Advanced Discovery, Inc.		13915 N Mopac Expy	Suite 400		Austin	TX	78728	
Advanced Discovery, Inc.		PO Box 102242			Atlanta	GA	30368-2242	
Advanced Discovery, Inc.		PO Box 3173			Wichita	KS	67201-3173	
Advantage Data Inc.		PO Box 961210			Boston	MA	02196-1210	
Advent Software Inc	Attn Bill Hall	600 Townsend St., Suite 4000			San Francisco	CA	94103	
Advent Software, Inc.		PO BOX 823374			Philadelphia	PA	19182-3374	
Advent Software, Inc.		Three Lincoln Centre	5430 LBJ Freeway Site 800		Dallas	TX	75240-0000	
Advent Software, Inc.		Dept 33096 PO Box 39000			San Francisco	CA	94139-3096	
ADVENTURE PHOTO TOURS, INC.		3111 S VALLEY VIEW BLVD	X-106		Las Vegas	NV	89102	
ADVISOR CONSULTANT NETWORK INC		600 SUPERIOR AVE	SUITE 1300		Cleveland	OH	44114	
Advisor Group, Inc.		PO Box 978516			Dallas	TX	75397-8516	
Advisory Group Equity Services, Ltd.		444 Washington Street	Suite 407		Woburn	MA	01801	
Advocates Professional Services, Inc		119 North Park Ave, Suite 303			Rockville Centre	NY	11570	
AERIAL FOCUS		4885 ALPHA RD	STE 155		Dallas	TX	75244-4633	
Aerolndustry Jobs, Inc		PO Box 215			Oxford	ME	04270	
Aetna	AETNA-MIDDLETOWN	PO BOX 88863			Chicago	IL	60695-1863	
Aetna	Attn Lockbox No 804735	350 East Devon Avenue	Suite 500		Itasca	IL	60143	
Aetna		10275 W. Higgins Rd			Rosemont	IL	60018	
Aetna		PO Box 804735			Chicago	IL	60680-4108	
Aetna		PO Box 88860			Chicago	IL	60695-1860	
Aetna-COBRA		COBRA/Special Plans	PO Box 13050		Secaucus	NJ	07188-0050	
Aetna-FSA Payment Remittance		PO Box 13504			Newark	NJ	07188-0504	

002343



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Afshan Mohammed		Address on File						
Agio, LLC		201 David L Boren Blvd	Ste 250		Norman	OK	73072	
Agren Blando Court Reporting Video Inc.		216 16th Street	Suite 650		Denver	CO	80202	
Aguilar Movers, Inc.		1206 Edwards Circle			Dallas	TX	75224	
AHLUWALIA, SANJIV		Address on File						
AI Insight		P.O. Box 639250			Cincinnati	OH	45263-9250	
AICPA		PO BOX 10069			Newark	NJ	07101-3069	
AICPA		Multiple Member Payment	PO Box 2219		Jersey City	NJ	07303-2219	
AIG Advisor Group, Inc.		PO Box 978516			Dallas	TX	75397-8516	
AIMSE		12100 Sunset Hills Road	Suite 130		Reston	VA	20190	
Aimware, Inc		16 Olde Taverne Lane			Amesbury	MA	01913	
AIQ, Inc.	ATTN Joyce Welsh	270 Rutherford Blvd	2nd Floor		Clifton	NJ	07014	
AIQ, Inc.		1500 Broadway	Suite 2900		New York	NY	10036	
Air Graffiti Dallas		4901 Harbor Ct			Flower Mound	TX	75022	
AIRBAND								
COMMUNICATIONS, INC		75 Remittance Drive	Suite 6566		Chicago	IL	60675-6566	
Aire Dynamics		2305 E BELTLINE RD	STE 190		Carrollton	TX	75006	
Aire Dynamics		305 E Beltline Rd Ste 190			Carrollton	TX	75006	
Aire Dynamics		3250 WEST STORY RD #102			Irving	TX	75038	
AirWatch, LLC		931 Monroe Drive NE	Ste 102-303		Atlanta	GA	30308	
AirWatch, LLC		PO Box 742332			Atlanta	GA	30374-2332	
Akerman Senterfitt & Edison, PA		P.O. Box 4906			Orlando	FL	32802	
AKF Reporters, Inc.		436 Blvd of the Allies			Pittsburgh	PA	15219-1314	
Akin, Gump, Strauss, Hauer & Feld LLP		1333 New Hampshire Ave, NW			Washington	DC	20036	
Akin, Gump, Strauss, Hauer & Feld LLP		DEPT. 7247-6827			Philadelphia	PA	19170-6827	
Akin, Gump, Strauss, Hauer & Feld LLP		Dept 7247-6838			Philadelphia	DE	19170-6838	
Akin, Gump, Strauss, Hauer & Feld LLP		Dept. 2909			Carol Stream	IL	60132-2909	
Akin, Gump, Strauss, Hauer & Feld LLP		2300 N Field St Ste 1800			Dallas	TX	75201-2481	
Alabama Department of Revenue	Individual and Corporate Tax Division	Corporate Income Tax Section	PO Box 327435		Montgomery	AL	36132-7435	
Alabama Power Service Organization	c/o Katrina Haynes	PO Box 1209			Eufaula	AL	36072	
Alabama Sheriffs Youth Ranches		200 Crescent Ct Ste 1900			Dallas	TX	75201	
Alan Adams		Address on File						
ALAN WELCH		Address on File						
Albion Computer Services A-Legal		49 Barkely Square			London			United Kingdom
Alejandro Vargas		1201 Elm Street	Suite 2560		Dallas	TX	75270	
Alex Kanji		Address on File						
ALEX SOMERS		Address on File						

002349

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Alexanders Mobility Services		2750 Miller Park N Ste 300			Garland	TX	75042-7751	
ALEXIS ZHOU		Address on File						
ALFERMANN, NICHOLAS		Address on File						
ALICE WANG		Address on File						
All American Entertainment		5790 Fayetteville Rd.	Ste. 200		Durham	NC	27713	
All Star Group, Inc		3835 E. Thousand Oaks Blvd	Suite 282		Westlake Village	CA	91362	
ALL SYSTEMS SERVICES		7901 WHISPERS WOODS LN.			N. Richland Hills	TX	75240	
Allan Huffman		Address on File						
ALLAN PAPPWORTH		Address on File						
Allen ISD	Attn Elizabeth Weller	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Allen ISD	c/o Laurie A. Spindler, Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
ALLEN KIM		Address on File						
ALLEN, MICAELA S.		Address on File						
ALLEN, TARA		Address on File						
Aliens Arthur Robinson		GPO Box 50			Sydney	NSW	02001	AUSTRALIA
Alliance Legal Staffing		PO Box 670534			Dallas	TX	75367	
ALLIANCE REPORTING LLC		3500 OAK LAWN AVE	SUITE 400		Dallas	TX	75219	
Allied Capital Partners		PO BOX 676649			Dallas	TX	75267-6649	
Allied Electronics Inc.	Accts Receivable Dept. c/o Frederik Michel	PO Box 2325			Fort Worth	TX	76113-2325	
Allison Lam		Address on File						
Allison Taylor		PO Box 187			Dingmans Ferry	PA	18328	
ALPHA ELECTRICAL SERVICES INC		3727 HWY 138			Stockbridge	GA	30281	
AlphaLit		8201 Greensboro Drive	Suite 717		McLean	VA	22102	
Alphasense, Inc.		PO Box 37176			San Francisco	CA	94137-0176	
Alpine Macro		1130 Sherbrooke St West PH1			Montreal	QC	H3A2M8	Canada
Alston & Bird LLP		1201 W. Peachtree Street			Atlanta	GA	30309-3424	
Alternative Asset Investment Mgmt LLC		PO Box 5274			New York	NY	10185	
Altex Electronics, Ltd.		11342 HI 35 North			San Antonio	TX	78233	
Altus Network Solutions, Inc.		dba nFront Security	4920 Atlanta Highway, Suite 313		Alpharetta	GA	30004-2921	
Alvarez & Marsal Global Forensic and Dispute Services		555 Thirteenth Street NW, 5th Floor West			Washington	DC	20004	
Alvarez & Marsal North America, LLC		2029 Century Park East, Suite 2060			Los Angeles	CA	90067	
Alvarez and Marsal CRF Management, LLC		2029 Century Park East, Suite 2060			Los Angeles	CA	90067	
ALVAREZ, ADRIANA		Address on File			San Juan	PR	00911	
Alvaro Idoate Photographer		18 Tapia Street			San Juan	PR	00911	
Alvaro Magalhaes		Address on File						
AM Linen Rental		1611B Tantor Rd			Dallas	TX	75229	
Amanda Coussens		Address on File						
AMANDA RUDOLPH		Address on File						
Amazon Web Services, Inc.	Attn AWS Legal	410 Terry Avenue North			Seattle	WA	98109-5210	

0023493

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
AMB Janitorial Services	American Building Maintenance	PO Box 97292			Dallas	TX	75397	
Ambassador Funds Management Services		Level 8, 3 Spring St			Sydney	N8W	02000	AUSTRALIA
Ambassador Funds Management Services		STE 1202, LEVEL 12	3 SPRING ST		SYDNEY	NSW	02000	AUSTRALIA
Amber Electrical Contractors		2251 Century Center Blvd			Irving	TX	75062	
Ambridge Partners LLC		Due Diligence Services	520 Eighth Ave, 25th Floor		New York	NY	10018	
AMC Theaters		13731 Collections Center Drive			Chicago	IL	60693	
American Airlines		4255 Amon Carter Blvd	MD 4106		Fort Worth	TX	76155	
American Airlines, Inc.		PO Box 619616 MD4106			Ft Worth	TX	76155-0000	
AMERICAN APPRAISAL CANADA, INC		310 FRONT ST WEST Suite 710			TORONTO	ON	M5V 3B5	CANADA
American Arbitration Association	ATTN Kathleen Cantrell	1750 Two Galleria Tower	13455 Noel Road		Dallas	TX	75240	
American Arbitration Association		120 Broadway, 21st Floor			New York	NY	10271	
American Arbitration Association		Lackey Hershman, LLP	3102 Oak Lawn Avenue, Suite 777		Dallas	TX	75219	
American Arbitration Association		13455 Noel Road, Suite 1750			Dallas	TX	75240	
AMERICAN BANK NOTE COMPANY		PO BOX 1931			Columbia	TN	38402	
American Banknote Corporation	Attention Patrick J. Gentile	560 Sylvan Avenue			Englewood Cliffs	NJ	07632	
American Bar Association		PO Box 4745			Carol Stream	IL	60197-4745	
American Bldg. Maintenance Co.		PO Box 951864			Dallas	TX	75395-1864	
American Cancer Society	ATTN JAMIE SLOAN	1199 S Belt Line Rd Ste 160			Coppell	TX	75019-4656	
American Cancer Society	Attn Sharyn Klumb	1199 S Belt Line Rd Ste 160			Coppell	TX	75019-4656	
American Chamber of Commerce Resources		65 East Wacker Place	Suite 1804		Chicago	IL	60601	
American Express National Bank	c/o Becket & Lee LLP	PO Box 3001			Malvern,	PA	19355-0701	
American Federation of the Arts		305 East 47 St.	10 th Floor		New York	NY	10017	
American Furniture Rental		3201 E. Arkansas Lane	Suite 101		Arlington	TX	76010	
American Global Wealth Management		1600 Pennsylvania Avenue			McDonough	GA	30253	
American Heart Assoc. National Center	Attn SouthWest Affiliate-A/R	PO Box 4002903			Des Moines	IA	50340-2903	
American Heart Association	c/o Cotes du Coeur	Attn Gabbi Sikes	105 Decker Ct, Ste 200		Irving	TX	75062	
American Heart Association		2550 US Highway 1			North Brunswick	NJ	08902	
American Heart Association		Greater Kansas City Community Found	1055 Broadway Blvd., Suite 130		Kansas City	MO	64105	
American Heart Association		Southwest Affiliate	105 Decker Court, Suite 200		Irving	TX	75062	
American Heart Association		7272 Greenville Avenue			Dallas	TX	75231	

0023488

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
American Heart Association		8200 Brookriver Dr	Suite N-100		Dallas	TX	75247	
American Heart Association		SouthWest Affiliate - Acct Rec.	PO Box 4002031		Des Moines	IA	50340-2031	
AMERICAN IDENTITY		PO BOX 219189			Kansas City	MO	64121-9189	
American Language Technologies		3941 Legacy Drive, #204	PMB 199A		Plano	TX	75023	
AMERICAN LOCKSMITHS		830 THIRD AVE			New York	NY	10022	
American Metal Market LLC		Subscription Department	PO Box 15127		North Hollywood	CA	91615-5127	
American National Bank & Trust	Attention Commercial Lending	2732 Midwestern Parkway			Wichita Falls	TX	76308	
American National Bank & Trust		2732 Midwestern Parkway			Wichita Falls	TX	76308	
American Portfolios - Kollinsky W/It Mgt		4250 Veterans Memorial Hwy	Ste 420 E		Holbrook	NY	11741	
American Portfolios Financial Svcs Inc.	Attn Ann Antunovich	4250 Veterans Memorial Hwy			Holbrook	NY	11741	
American Program Bureau, Inc.		One Gateway Center	Suite 751		Newton	MA	02458	
American Red Cross		PO Box 4002018			Des Moines	IA	50340-2018	
AMERICAN RESEARCH BUREAU		2386 HERITAGE WAY			Salt Lake City	UT	84109-1808	
American Restaurant Association		2907 126th Ter E			Parrish	FL	34219-1629	
American Solutions for Business		NW#7794	PO Box 1450		Minneapolis	MN	55485-7794	
American Solutions for Business		PO Box 218			Glenwood	MN	56334-0218	
American Solutions for Business		8479 Solution Center			Chicago	IL	60677-8004	
American Stock Exchange		PO Box 11181A			New York	NY	10286-1181	
American Stock Exchange		BOX 757510			Philadelphia	PA	19175-7510	
Ameriprise Financial Services, Inc.		50798 Ameriprise Financial Center			Minneapolis	MN	55474	
Amicus Search Group		700 N. Pearl St	Suite # 1640		Dallas	TX	75201	
AMIR RAO		1020 MEDFORD RD			Pasadena	CA	91107	
AMX Environmental Ltd		2351 W Northwest HWY-STE 2118			Dallas	TX	75220-8406	
Amy Nguyen		Address on File						
Analysis Group		111 Huntington Ave, 14th Floor			Boston	MA	02199	
ANAND DESAI		Address on File						
Anchor Advisory Services Corporation		4 Court St.	Ste 207		Plymouth	MA	02360	
ANDERSEN, DEREK C.		Address on File						
ANDERSON, KIRK		Address on File						
ANDREI DORENBAUM		Address on File						
ANDREI DORENBAUM		Address on File						
Andrew Hayton		Address on File						
Andrew Hilgenbrink		Address on File						
Andrew Lieberman		Address on File						

0023499

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Andrew Mangin		Address on File						
Andrew Merrick Homes LLC		13455 NOEL RD	STE 1330		Dallas	TX	75240	
Andrew Parmentier		Address on File						
Andrew Rosemore		Address on File						
ANDREW STONE		Address on File						
ANDREW YACENDA		Address on File						
Andrews Kurth	Scott A. Brister, Esq.	Address on File						
Andrews Kurth		Address on File						
Andrews Kurth LLP		600 Travis St., Suite 4200			Houston	TX	77002	
Andrews Kurth LLP		PO Box 301276			Dallas	TX	75303-1276	
Andrius Balta		Address on File			San Antonio	TX	78217-2318	
Animal Defense League		11300 Nacogdoches Rd						
Anish Tailor		Address on File						
Anna Englert		Address on File						
Ansarada Pty Limited		30 South Wacker Dr	22 Floor		Chicago	IL	60606	
ANTONOVICH, THOMAS G.		Address on File						
Aon Consulting, Inc.		445 Hutchinson Ave	Ste 900		Columbus	OH	43235-0000	
Aon Consulting, Inc.		29695 Network Place			Chicago	IL	60673-1296	
APIR Systems Ltd.		PO Box 5446			Kingston	ACT	02604	AUSTRALIA
APKE & KIMBRELL, LLP		1650 HIGHWAY 6	STE 100		Sugar Land	TX	77478	
Appleby Corporate Services (Bermuda) Ltd.		PO Box HM 1179			Hamilton	HM EX	HM EX	BERMUDA
Appliance Fixx Air & Heat		PO Box 271258			Flower Mound	TX	75027-1258	
Aptiviti, Inc.		145 W 28th St Fl 9			New York	NY	10001-6114	
Aramark		2120 Hutton Dr	Suite 100		Carrollton	TX	75006	
ARCHON SOLICITORS		MARTIN HOUSE	5 MARTIN LANE		London			United Kingdom
ARCPoint Labs of Irving		8925 Sterling Street	Suite 255		Irving	TX	75063	
ARGENTIC REAL ESTATE FINANCE LLC		40 WEST 57TH STREET	29TH FLOOR		New York	NY	10019	
Argo Partners		12 West 37th Street, 9th Floor			New York	NY	10018	
Argonaut Insurance Company		225 W Washington Street	24th floor		Chicago	IL	60606-0000	
Argosy Group		PO Box 5094			Brentwood	TN	37024	
Argosy Group		Two Washingtonian Center	9737 Washingtonian Blvd., Ste. 200		Gaithersburg	MD	20878-7364	
Argosy Group LLC		9737 Washingtonian Blvd.	Ste. 100		Gaithersburg	MD	20878	
Argus Software		PO BOX 671591			Dallas	TX	75267	
Argus Software		3050 Post Oak Blvd	Suite 900		Houston	TX	77056	
Ari L. Faneuil		Address on File						
Arizona Baltimore Resort & Hotel		PO Box 740949			Los Angeles	CA	90074-0949	
Arizona Corporation Commission		Z Corp Commission - Securities DIV	1300 West Washington Street, 3rd Floor		Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		ATTN Collections Division			Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		1600 West Monroe St			Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		PO BOX 29079			Phoenix	AZ	85038	

002348

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ARIZONA DEPARTMENT OF REVENUE		PO Box 29085			Phoenix	AZ	85038-9085	
Arizona Land Management Services, LLC		4900 North Scottsdale Rd	Suite 3000		Scottsdale	AZ	85251	
Arizona Land Management Services, LLC		PO Box 13303			Scottsdale	AZ	85267-3303	
Arizona Outback Adventures		17465 N 93rd St	Suite 200		Scottsdale	AZ	85255-6324	
Arizona PSPRS Trust		E Camelback Road	Collection Center Dr		Phoenix	AZ	85016	
Arkadin, Inc.		Lockbox #32726			Chicago	IL	60693-0726	
Arkansas Secretary of State	Business & Commercial Services Division	PO Box 8014			Little Rock	AR	72203	
Arkansas Securities Department		201 E. Markham, Rm 300	Heritage West Bldg		Little Rock	AR	72201	
Arnold, Connor		Address on File						
Arnold, Jeffrey		Address on File						
Arnstein & Lehr LLP		120 South Riverside Plaza	Ste 1200		Chicago	IL	60606-3910	
Amitzen de Besche		Address on File						
ARORA, SANDEEP		Address on File						
Airredondo, Alba M.		Address on File						
Ariss Western Corp.		718 N Buckner #316			Dallas	TX	75218	
Arthouse Design		2373 Central Park Blvd	Suite 204		Denver	CO	80238	
Arthur Klausner		Address on File						
Article 1		Rua Eugen Germer, 86	Blumenau		Santa Catarina	TX	89015-140	BRAZIL
Artograf, Inc.		2611 Anojon			Dallas	TX	75220	
AS&K Services Limited		PO Box HM 1179			Hamilton		HM EX	BERMUDA
Asante Phase I Community Association		1600 W Broadway	Suite 200		Tempe	AZ	85282	
Ashby & Geddes		PO Box 1150			Wilmington	DE	19899	
Ashley Van Hoef		Address on File						
Ashton Consulting Limited		9F, Atago East Building	3-16-11 Nishishinbashi		Minato-ku	Tokyo	105-0003	JAPAN
Ashurst LLP		Time Square Tower	7 Time Square		New York	NY	10036	
ASI Business Solutions		820 W Sandy Lake Rd Ste 100			Coppell	TX	75019-4108	
ASI Business Solutions		12801 N Stemmons Frwy Ste 710			Dallas	TX	75234-5881	
ASI, Corporate		8181 Jetstar Drive	Suite 100		Irving	TX	75063	
ASI, Corporate		3860 W. Northwest Hwy	Suite 350		Dallas	TX	75220	
Asociacion Suzuki de Violin de PR		Villa Nevarez	1026 calle 18		San Juan	PR	00927	
Aspen Publishers Inc.		7201 McKinney Circle			Frederick	MD	21704	
Aspen Publishers Inc.		PO Box 64054			Baltimore	MD	21264-4054	
Aspen Publishers Inc.		4829 INNOVATION WAY			Chicago	IL	60682-0048	
ASSAR, VATSAL		Address on File						
Asset Communications, Inc.		1764 Prospector Ave	Suite 1		Park City	UT	84060	
Asset-Backed Alert		5 Marine View Plaza #400			Hoboken	NJ	07030-5795	
ASSIST THE OFFICER FOUNDATION		1412 GRIFFIN STE			Dallas	TX	75215	
Asn of Asian American Invest Managers	Attn Amy Gee	50 California Street	Suite 2320		San Francisco	CA	94111	

002349

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Assoc. Asian American Investment Mgrs	c/o V. Lau, Leading Edge Invest Advisors	50 california Street, Suite 2320			San Francisco	CA	94111	
Assoc. for American Innovation, Inc.		2200 Wilson Blvd	Suite 102-533		Arlington	VA	22201	
Assoc. of Asian America Investment Mgrs		1045 N. Utah St., Suite 512			Arlington	VA	22201	
Assured Environments		45 Broadway	10th Floor		New York	NY	10019	
AST Equity Plan Solutions		123 S. Broad Street	Suite 1160		Philadelphia	PA	19109	
AST Equity Plan Solutions		PO Box 12893			Philadelphia	PA	19176-0893	
ASTRON SOLUTIONS		535 W 34TH ST	STE 407		New York	NY	10001	
ASW Law Limited		Crawford House	50 Cedar Avenue		Hamilton		0HM11	Bermuda
ASW Law Limited		Crawford House	PO Box HM2879		Hamilton		0HMLX	Bermuda
AT&T	c/o Bankruptcy	4331 Communications Dr	Fir 4W		Dallas	TX	75211	
AT&T		PO BOX 5012			Carol Stream	IL	60197	
AT&T		PO BOX 5019			Carol Stream	IL	60197	
AT&T		PO BOX 78045			Phoenix	AZ	85062	
AT&T		PO BOX 13128			Newark	NJ	07101-5628	
AT&T		PO BOX 13146			Newark	NJ	07101-5646	
AT&T		PO BOX 105068			Atlanta	GA	30348-5068	
AT&T		PO Box 105414			Atlanta	GA	30348-5414	
AT&T		PO BOX 5001			Carol Stream	IL	60197-5001	
AT&T		PO BOX 5020			Carol Stream	IL	60197-5020	
AT&T		PO Box 9005			Carol Stream	IL	60197-9005	
AT&T		PO BOX 630047			Dallas	TX	75263-0047	
AT&T		PO BOX 650661			Dallas	TX	75265-0661	
AT&T		PO BOX 660324			Dallas	TX	75266-0324	
AT&T		PO Box 660921			Dallas	TX	75266-0921	
AT&T		PO BOX 930170			Dallas	TX	75393-0170	
AT&T		PO BOX 940012			Dallas	TX	75394-0012	
AT&T		PO BOX 78225			Phoenix	AZ	85062-8225	
AT&T Internet Services	ATTN HIPCS	PO BOX 650040			Dallas	TX	75265-0040	
AT&T Internet Services		PO BOX 5016			Carol Stream	IL	60197-5016	
AT&T Internet Services		PO Box 650396			Dallas	TX	75265-0396	
AT&T Long Distance		PO Box 5017			Carol Stream	IL	60197-5017	
AT&T MOBILITY		PO Box 105773			Atlanta	GA	30348-5773	
AT&T MOBILITY		PO BOX 538695			Atlanta	GA	30353-8695	
AT&T MOBILITY		PO BOX 31287			Tampa	FL	33631-3287	
AT&T MOBILITY		PO BOX 31488			Tampa	FL	33631-3488	
AT&T MOBILITY		PO BOX 6428			Carol Stream	IL	60197-6428	
AT&T MOBILITY		PO Box 6444			Carol Stream	IL	60197-6444	
AT&T MOBILITY		PO BOX 6463			Carol Stream	IL	60197-6463	
AT&T MOBILITY		PO Box 8229			Aurora	IL	60572-8229	
AT&T MOBILITY		208 South Akard Street			Dallas	TX	75202-0000	
AT&T MOBILITY		PO Box 650553			Dallas	TX	75265-0553	
AT&T MOBILITY		PO BOX 650574			Dallas	TX	75265-0574	
AT&T Performing Arts Center	Attn Development	700 N. Pearl Street, Suite N1800			Dallas	TX	75201	
Atlas IDF, LP	c/o Atlas IDF GP, LLC	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Attia Medical, PC		5820 Oberlin Dr., Suite 205			San Diego	CA	92121	

09230396



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Attorney General of South Carolina	Securities Division	1000 Assembly St Address on File	Rembert C. Dennis Office Bldg		Columbia	SC	29201	
Atul Kavthekar								
Audio Visual Innovations, Inc.		P.O. Box 62251			Baltimore	MD	21264-2251	
AURORA BOREALIS	ATTN GEORGE WHITE	101 BARCLAY ST 13W			New York	NY	10286	
AUSHRIF JAVEED		Address on File						
Austin Brown		Address on File						
AUSTIN TRANTHAM		Address on File						
AUSTIN, TIMOTHY		Address on File						
Automotive News		DRAWER #7718	PO BOX 79001		Detroit	MI	48279	
		Subscriber Services Department 77940			Detroit	MI	48277-0940	
Automotive News			13355 Noel Rd, Suite 1100		Dallas	TX	75240	
Avalon Synergy		One Galleria Tower			Jersey City	NJ	07311	
AvePoint, Inc		3 Second Street Suite 803						
Avi Levine		Address on File						
AVIATION SERVICES ELITE		4502 CLAIRE CHENNAULT			Addison	TX	75001	
Aviation Services Group		14001 Dallas Pkwy			Dallas	TX	75240	
Aviation Week		PO Box 505			Hightstown	NJ	08520-9897	
AVIDITY PARTNERS		180 N STETSON	STE 1310		Chicago	IL	60601	
AVI-SPL		13859 Diplomat Drive	Suite 180		Dallas	TX	75234	
AVI-SPL		PO Box 844612			Boston	MA	02284-4612	
AVI-SPL		PO BOX 62251			Baltimore	MD	21264-2251	
Avitar Technologies, Inc.		65 Dan Rd			Canton	MA	02021	
Avtech	ATTN Accounts Receivable	PO Box 394			Newport	RI	02840-0004	
AWAIS SHAIKH		Address on File						
AWARE		2828 Hood Street	Residence 1705		Dallas	TX	75219	
Axicon Partners, LLC	ATTN Robert T. Scott	1325 Avenue of the Americas	27th floor		New York	NY	10019	
Axios Institute		PO Box 457			Edinburg	VA	22824	
Axis Global Systems		PO Box 831			North Bergen	NJ	07047	
A-Z Cleaning Services		1729 Crosby Rd.			Carrollton	TX	75006	
B&H Photo - Video, Inc.		420 Ninth Avenue			New York	NY	10001	
B3 Entertainment Productions, Inc.		1509 Schooner Bay Dr.			Wylie	TX	75098	
Badge of Honor Memorial Fund		Executive Office	3131 Maple Ave 7E		Dallas	TX	75201	
Bailey Kennedy, LLP		8984 Spanish Ridge Ave			Las Vegas	NV	89148	
Bailey, Connor		Address on File						
Baker & Daniels		111 E Wayne Ste 800			Fort Wayne	IN	46802	
Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Avenue			New York	NY	10018	
Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500		Dallas	TX	75201	
Baker Botts LLP		901 Louisiana Street			Houston	TX	77002	
Baker Botts LLP		PO BOX 201626			Houston	TX	77216	
Baker Botts LLP		PO Box 301251			Dallas	TX	75303-1251	
Baker McKenzie LLP		100 New Bridge Street			London	United Kingdom		
Baker McKenzie LLP		2300 Trammell Crow Center	2001 Ross Ave		Dallas	TX	EC4V 6JA 75201	
Baker McKenzie LLP		815 Connecticut Ave, NW			Washington	DC	20006-4078	

00230397

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Baker Tilly Virchow Krause, LLP		1050 Crown Pointe Parkway, Ste 1650			Atlanta	GA	30338	
Baker Tilly Virchow Krause, LLP		205 N Michigan Ave			Chicago	IL	60601-5927	
Baker, Lauren		Address on File						
BAKER, SCOTT		Address on File						
Baker, Stephen		Address on File						
Balch & Bingham LLP		P.O. Box 306			Birmingham	AL	35201	
BALFOUR ASSOCIATES, INC	ATTN DAVID VANWALKENBURG	5350 PRESERVE DR			Greenwood Village	CO	80121	
Ballard Spahr LLP		1735 Market Street	51st Floor		Philadelphia	PA	19103	United Kingdom
BALLS BROTHERS Bancroft Associates PLLC		313 CAMBRIDGE HEATH RD	BETHNAL GREEN Seventh Floor		London	DC	E2 9LQ	
Bank Director		500 New Jersey Avenue			Washington	DC	20001	
Bank Director		201 Summit Drive	Suite 250		Brentwood	TN	37027	
BANK OF AMERICA		5110 Maryland Way Ste 250			Brentwood	TN	37027-9501	
Bannon, Lucy		335 MADISON AVE			New York	NY	10017	
Baradach, Artsiom		Address on File						
BARANSI, SAMER		Address on File						
Barbera, Angela		Address on File						
Bamdollar Investment Advisory Services		2719 Letap Ct	Ste 101		Land O Lakes	FL	34638	
BARNES & ROBERTS, LLC		2701 Canton St.			Dallas	TX	75226	
BARNES & ROBERTS, LLC		2816 COMMERCE ST			Dallas	TX	75226	
Barnes and Noble College		2943 SMU Blvd			Dallas	TX	75205	
BARNES&THORNBURG LLP		11 South Meridian Street			Indianapolis	IN	46204	
Barri, Pearson		Address on File						
Barrier Advisors		13455 Noel Rd, Ste 2200			Dallas	TX	75240	
Barrington Financial Group, LLC		77 Franklin Street	Suite 802		Boston	MA	02110	
Barrister Books, Com		615 Florida St.			Lawrence	KS	66044	
Barristers & Attorneys		PO Box HM 26			Hamilton	HM LX	BERMUDA	
Barrons		200 Burnett Rd	PO Box 7031		Chicopee	MA	01021-7031	
BARTH GROSS ELECTRIC CO, INC		110 W 26th ST			New York	NY	10001	
BARTLIT BECK HERMAN PALENCHAR SCOTT		COURTHOUSE PLACE	54 W HUBBARD ST	Suite 300	Chicago	IL	60610	
Bass, Berry & Sims PLC		150 Third Ave South, Ste 2800			Nashville	TN	37201	
BATCHWORK MANAGEMENT LTD		HOME PARK ESTATE	STATION RD		KINGS LANGLEY		WD4 8DH	United Kingdom
BATEMAN, JACK		Address on File						
Bates Group, LLC		5005 S.W. Meadows Rd, Ste 300			Lake Oswego	OR	97035	
Bates White, LLC	Karen Goldberg, Esq.	Bates White, LLC	2001 K Street NW, North Bldg Suite 500		Washington	DC	20006	
Bates White, LLC		2001 K Street, NW	North Building, Suite 500		Washington	DC	20006	

002332

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BAUER, WILLIAM		Address on File						
Bayard, P.A.		222 Delaware Avenue, 9th Floor			Wilmington	DE	19801	
Baynard, Cameron		Address on File						
Bazooka Search Ltd		115 Coventry Rd			London			United Kingdom
BB&T Securities, LLC		2619 N Oak Street, 3rd Floor			Myrtle Beach	SC	E2 6GG	
BBD, LLP		1835 Market Street	3rd Floor		Philadelphia	PA	19103	
BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206	
BCA Publications Ltd.		1002 Sherbrooke St West Ste 1600			Montreal	QC	H3A 3L6	CANADA
BCA Research Inc		1002 Sherbrooke St. W	Suite 1600		Montreal	QC	H3A 3L6	CANADA
BDC Review, LLC		407 East Maple Street	Ste 305		Cumming	GA	30040	
BDO USA, LLP		700 North Pearl	Suite 2000		Dallas	TX	75201	
BDO USA, LLP		P.O. Box 31001-0860			Pasadena	CA	91110-0860	
BEALL-SARRIS, ASHLEY E.		Address on File						
BEARD, MATTHEW		Address on File						
Beauchamp, Thomas		Address on File						
Becky Bowler		Address on File						
Bedell Cristin		Address on File						
BEEF SLABS OF TEXAS LLC		2000 N HWY 157	STE 112		Mansfield	TX	76063	
Behind the Numbers LLC		8140 Walnut Hill Ln #300			Dallas	TX	75231	
BELINGER & DEWOLF, LLP		10000 N CENTRAL EXPWY	STE 900		Dallas	TX	75231	
Bell Nunnally and Martin, LP	Russell W. Mills	2323 Ross Avenue Suite 1900			Dallas	TX	75201	
Bell, Boyd & Lloyd		Three First National Plaza	70 West Madison S, Ste 3300		Chicago	IL	60602	
Bella Flora of Dallas		118 Oak Lawn Ave.			Dallas	TX	75207	
BEN ASARE		Address on File						
Ben E. Keith		Address on File						
Ben Greenfield, Human Wellness Sol. LLC		8515 N Argonne Rd			Spokane	WA	99217	
BEN VONDERHAAR		Address on File						
Benefit Data		2220 San Jacinto Blvd, Ste 345			Denton	TX	76205	
Benesch	LouAnne Molinaro	222 Delaware Avenue, Suite 801			Wilmington	DE	19801-1611	
BENJAMIN FINGER		Address on File						
Benjamin Sarly		Address on File						
Benson Hlavaty Architects		3141 Hood St Ste 420			Dallas	TX	75219	
Bent Tree Country Club, Inc.		5201 Westgrove Drive			Dallas	TX	75248	
Bent Tree Country Club, Inc.		PO Box 204795			Dallas	TX	75320-4795	
BERIHUN, ELIZABETH		Address on File						
Berkeley Research Group, LLC	Emily Kirksey	1800 M Street NW	Second Floor		Washington	DC	20036	
Berkeley Research Group, LLC	Valerie Riva	2200 Powell Street Suite 1200			Emeryville	CA	94608	

002333

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Berkeley Research Group, LLC	Valerie Riva	2200 Powell Street Suite 1200			Emeryville	CA	94608	
Berkeley Research Group, LLC		2200 Powell Street	Suite 1200		Emeryville	CA	94608	
Berkeley Square Advisors LLC		701 N Green Valley Pkwy Ste 200			Henderson	NV	89074	
Berkshire Capital Securities, LLC		535 Madison Avenue			New York	NY	10022	
Bernard DeMeo		Address on File						
Bernard Peperstraete		Address on File						
Berry Appleman & Leiden LLP		3355 W. Alabama Street	Suite 1050		Houston	TX	77098	
Berry Appleman & Leiden LLP		353 Sacramento Street	Suite 1300		San Francisco	CA	94111	
Berthel Fisher & Company	Attn Connie Allard	701 Tama Street	8090 N 85th Way, Ste 101		Marion	IA	52302	
Berthel Fisher & Company	Attn Dan Barnard	Berthel Fisher & Company			Scottsdale	AZ	85258	
Berthel Fisher & Company		16100 Chesterfield Parkway West	Suite 150		Chesterfield	MO	63017	
Best Companies Group		1500 Paxton Street			Harrisburg	PA	17104	
Beyond		8700 Ambassador Row			Dallas	TX	75247	
Beyond the Box		2544 West Commerce Street			Dallas	TX	75212	
Bhavani Jaroff		Address on File						
BHIL Distributors, Inc.		325 John H. McConnell Blvd	Suite 200		Columbus	OH	43215	
Bickel & Brewer		1717 Main St			Dallas	TX	75201	
Bifferato Gentilotti LLC		100 Biddle Avenue	Springside Plaza	Suite 100	Newark	DE	19702	
Big Brother Big Sister		450 E. John Carpenter Fwy, Ste 300			Irving	TX	75062	
Big Brothers Big Sisters of Mass Bay	Attn Erin DeMarco	75 Federal Street, 8th Floor			Boston	MA	02110	
Big Honkin Ideas		1424 Lincoln Blvd			Santa Monica	CA	90401	
Big Thought		2501 Oak Lawn	Ste 550, LB-42		Dallas	TX	75219	
BILL CRISPIN		Address on File			Chalston	WV	25314	
Bill J Crouch & Associates		210 MacCorkle Ave SE						
BILL MITENBERGER		Address on File						
BILL WALLISCH		Address on File						
Bill Wilton		Address on File						
BILLINGHURST, MINDY		Address on File						
BIMAL KALVANI		Address on File						
Bingham McCutchen LLP		P.O. Box 3486			Boston	MA	02241-3486	
BioCentury Publications		PO Box 1246			San Carlos	CA	94070	
Bison Coolers, LLC		5113 Commercial Drive			North Richland Hills	TX	76180	
BISYS		PO Box 19468A			Newark	NJ	07195-0468	
BKM Total Office of Texas		9755 Clifford Drive #100			Dallas	TX	75220	
Black Box Network Services		PO Box 890699			Dallas	TX	75389-0699	
Black Mountain Systems, LLC		12520 High Bluff Dr	Ste 340		San Diego	CA	92130	
BLACK, WINSTON		Address on File						
Blackberry Wireless		12432 Collections Center Dr			Chicago	IL	60693	

092334

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BLACKBURN, MICHAEL		Address on File			Saint Louis	MO	63179	
BLACKWELL SANDERS PEPER MARTIN LLP		PO BOX 795135						
Blair Roeber		Address on File						
BLAKE DEXTER		Address on File						
Blake Morrell		Address on File						
Blank Rome LLP		Lockbox #8586	PO Box 8500		Philadelphia	PA	19178-8500	
Blast Creative		2703 Poly Drive			Billings	MT	59102	
Blast Creative		3036 Hunters Ridge Loop			Billings	MT	59102	
Block Garden & McNeill, LLP		Sterling Plaza	5949 Sherry Lane, Suite 900		Dallas	TX	75225	
BLOMBERG FINANCE L.P.		731 LEXINGTON AVE			New York	NY	10022	
Blondies Treehouse, Inc.		431 Fayette Avenue			Mamaroneck	NY	10543	
Bloom Strategic Consulting, Inc.		4514 Cole Ave.	Suite 600		Dallas	TX	75205	
Bloomberg		PO Box 30244			Hartford	CT	06150-2044	
Bloomberg Businessweek		PO Box 37531			Boone	IA	50037-0531	
Bloomberg Finance LP		PO BOX 30244			Hartford	CT	06150	
Bloomberg Finance LP		731 Lexington Ave.			New York	NY	10022	
Bloomberg Finance LP		PO Box 416604			Boston	MA	02241-6604	
Blue Cross Blue Shield of Texas		1001 East Lookout Drive			Richardson	TX	75082	
Blue Cross Blue Shield of Texas		PO Box 731428			Dallas	TX	75373-1428	
Blue Ribbon Advantage		7020 Portwest Drive, Suite 150			Houston	TX	77024	
Blue Ribbon Advantage		P.O. Box 79487			Houston	TX	77279-9487	
Blue Ribbon Industries		408 Singleton Blvd			Dallas	TX	75212	
Blue Vault Partners, LLC		407 E Maple St	Suite 305		Cumming	GA	30040	
Blueprint for Prosperity		500 North Akard St, Suite 2600			Dallas	TX	75201	
Blumberg/Excelsior		62 White St			New York	NY	10013	
BLUMER, JENNIFER		Address on File						
BMC Software, Inc.		2101 Citywest Blvd			Houston	TX	77042	
BMC Software, Inc.		PO Box 301165			Dallas	TX	75303-1165	
BMZ Discovery Services LLC		1400 Biscaya Drive			Miami Beach	FL	33154	
BNA		PO BOX 17009			Baltimore	MD	21297-1009	
BNY Mellon		525 Penn Place			Pittsburgh	PA	15219-0000	
Bob Grier		Address on File						
Bob Marx		Address on File						
Bochetto & Lentz, P.C.		1524 Locust Street			Philadelphia	PA	19102	
BOCK, MARIA		Address on File						
BODRON, MICHAEL		Address on File						
Boies, Schiller & Flexner LLP		Boies, Schiller & Flexner LLP NW	5301 Wisconsin Ave.		Washington	DC	20015	
Boies, Schiller & Flexner LLP		5301 Wisconsin Ave NW			Washington	DC	20015-2015	
BOK Financial Asset Management		The Lyric Centre	440 Louisiana, Suite 2500		Houston	TX	77002	

002333

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BOK Financial Asset Management		PO Box 1270			Tulsa	OK	74101-1270	
BOK Financial Securities, Inc.	Attn Leslie Swafford	1 Williams Center, 16th Flr			Tulsa	OK	74172	
Bonahoom & Associates		10850 Switzer Ave #101			Dallas	TX	75238	
Bonnie Murray		Address on File			New York	NY	10007	
Boom Global Media Inc		295 Greenwhich St. # 296			Tulsa	OK	74172	
BOSC, Inc.	Attn Chelle Davidson	One Williams Center, 9 NE						
BOSE, ROHAN		Address on File						
Boston Financial Data Services		PO Box 74008640	Lockbox 008640		Chicago	IL	60674-8640	
Boston Financial Data Services		330 W. 9th Street			Kansas City	MO	64105-1514	
Boston Properties, L.P.		800 Boylston Street	Suite 1900		Boston	MA	02199	
Boston Properties, L.P.		599 Lexington Ave			New York	NY	10022-6004	
Boundless Network		200 E. 6th Street	Suite 300		Austin	TX	78701	
Bow Line Media		1809 Thale Drive			Dallas	TX	75228	
Bowman Dahl, LLC		120 West 28th Street	#3C		New York	NY	10001	
Bowne		PO BOX 6081			Church Street Station	NY	10277-2706	
Bowne		PO Box 951060			Dallas	TX	75247-1060	
BOX.com		900 Jefferson Ave			Redwood City	CA	94063-0000	
BOYCE, PATRICK		Address on File						
Boyce-Field, Mollie		Address on File						
Boys & Girls Clubs of Greater Fort Worth	Attn Christi Langas	3218 East Belknap			Fort Worth	TX	76111	
BRACEWELL & GIULIANI LLP		PO BOX 848566			Dallas	TX	75284-8566	
Bracewell & Patterson		PO Box 848566			Dallas	TX	75284-8566	
Brad Berman		Address on File						
Brad Borud	Daniel P Winikka	Loewinsohn Flegle Deary Simon LLP	12377 Merit Drive, Suite 900		Dallas	TX	75251	
BRAD BORUD		Address on File						
BRAD BORUD		Address on File						
BRAD DAVEY		Address on File						
BRAD GUY		Address on File						
Brad Mendenhall		Address on File						
BRAD VOSS		Address on File						
Braden Bair		Address on File						
Bradfield Elementary	Attn Jackie Tilden, VP of Development	4300 Southern Avenue			Dallas	TX	75205	
Bradford K Borud		Address on File						
BRADLEY MACK		Address on File						
BRADY, CHARLA		Address on File						
Bragalone Conroy PC		Chase Tower	2200 Ross Avenue	Suite 4500W	Dallas	TX	75201-7924	
Branda Fanning		Address on File						
Brandywine Process Servers, Ltd.		PO Box 1360			Wilmington	DE	19899	
BRANER, PHILIP		Address on File						

002338

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BRE/ITZ TX PROPERTIES LP		PO Box 842530			Dallas	TX	75284-2530	
Breault, Evan		Address on File						
Breault, Evan		Address on File						
Breazeale, Sachse & Wilson LLP		One American Place	Suite 2300		Baton Rouge	LA	70821-3197	
Breezy Higa		Address on File						
Brenda Samples, Tax Assessor		Kaufman County Tax Office	PO Box 339		Kaufman	TX	75142	
Brennan, Kieran		Address on File						
Brennan, Michael		Address on File						
Brent Gregoire		Address on File						
Brentwood CLO Ltd., et al.	Joseph E. Bain	Jones Walker LLP	811 Main St. Suite 2900		Houston	TX	77002	
Brentwood CLO Ltd., et al.	Schulte Roth & Zabel LLP	James T. Bentley	919 Third Avenue		New York	NY	10022	Cayman Islands
Brentwood CLO, Ltd.	MaplesFS	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman		KY1-1104	Cayman Islands
Brentwood CLO, Ltd.		Maples Finance Limited, PO Box 1093GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Brentwood CLO, Ltd. Investors Bank & Trust Company	Brentwood CLO, Ltd. c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Brentwood CLO, Ltd. Investors Bank & Trust Company	Investors Bank & Trust Company	200 Claredon Street	CDO Services - Brentwood CLO, Ltd		Boston	MA	02116	
Bressler, Amery & Ross, P.C.		325 Columbia Turnpike			Florham Park	NJ	07932	
Brett Benjamin		Address on File						
Brett H. McCloskey		Address on File						
Brett Hoge		Address on File						
Brett Pope		Address on File						
Bretton Advisors, Inc.		Address on File						
Brian Andrusin		Address on File						
Brian Broadbent		Address on File						
Brian Collins	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
BRIAN COX		Address on File			New York	NY	10004	
Brian D. Glueckstein	Sullivan Cromwell LLP	125 Broad Street						
Brian Fitzsimmons		Address on File						
Brian G Albert Esq.		Address on File						
Brian Goehl		Address on File						
Brian Hochhauser		Address on File						
Brian Home		Address on File						
BRIAN JONES		Address on File						
Brian Jones.		Address on File						
Brian Josephson		Address on File						
Brian Lauten, PC		Address on File						
Brian Li		Address on File						
BRIAN LOHRDING		Address on File						
Brian Malizia		Address on File						

0023309



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Brian P. Shaw		Address on File						
BRIAN PRICE		Address on File						
BRIAN TILTON		Address on File						
Bridge Title Company, LLC		8150 N. Central Expwy	Ste 650		Dallas	TX	75205	
BrightHouse Financial		PO Box 371310			Pittsburgh	PA	15250-7310	
BrightHouse Life Insurance Company		PO Box 371487			Pittsburgh	PA	15250-7487	
Brighton House Associates, LLC		2 Park Central Drive	Suite 300		Southborough	MA	01772	
BRIGHTWORK	ATTN JOYCE WELSH	16 OLDE TAVERNE LANE			Amesbury	MA	01913	
Brian Enterprises, Inc.		1545 Prudential Dr.			Dallas	TX	75235-4111	
Brittain, William		Address on File						
BRITAIN, WILLIAM L.		Address on File						
Brittain, Mark		Address on File						
BRITTNEE WOOLDRIDGE		2201 WOLF ST	#6106		Dallas	TX	75201	
BRITTNEY CUNNINGHAM		Address on File						
BROADCASTING & CABLE		PO BOX 5655			Harlan	IA	51593-1155	
Broadus, Paul		Address on File						
Broadridge Customer Communications		5516 Collection Ctr Dr			Chicago	IL	60693	
Broadridge Customer Communications		2600 Southwest Blvd.			Kansas City	MO	64108	
Broadridge ICS		PO Box 416423			Boston	MA	02241-6423	
Broadridge Investor Communication Soluti		One Park Ave			New York	NY	10016-0000	
Broadridge Output Solutions, Inc.		PO Box 15788			Chicago	IL	60693	
BROADVIEW NETWORKS		PO Box 9242			Uniondale	NY	11555-9242	
Brodeur, Steven		Address on File						
BRODRICK NORMAN		456 9th St	#8		Hoboken	NJ	07030	
Broker Dealer Financial Services Corp.		6775 Booneville Rd			WDM	IA	50266-8093	
Broker Educational Sales Training, Inc.		7137 Congress Street			New Port Richey	FL	34653-6464	
Brook Lane Partners, LLC		330 East 75th Street	Suite 10H		New York	NY	10021	
Brook Lane Partners, LLC		445 Park Avenue	10th Floor		New York	NY	10022	
Brookmont Capital Management, LLC		2000 McKinney Avenue	Suite 1230		Dallas	TX	75201	
Brookover, Steven		Address on File						
Brosier & Buchanan Partners		320 W. 7th			Amarillo	TX	79101	
Brown & Hofmeister LLP		740 E Campbell	Suite 800		Richardson	TX	75081	
Brown & Sikes, Inc.		325 N St Paul St	Ste 1280		Dallas	TX	75201	
Brown Pruitt Peterson & Wambsganss, P.C.		201 Main St			Fort Worth	TX	76102	
Brown Rudnick Berlack Israels LLP		One Financial Center			Boston	MA	02111	
Brown Rudnick LLP	Robert J. Stark	7 Times Square			New York	NY	10036	
Brown, Austin		Address on File						
Brown, Austin		Address on File						
Brown, Austin		Address on File						

092338

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BROWN, BLAKE		Address on File						
BROWN, BRITTON		Address on File						
BROWN, LEE		Address on File						
Brown, Rachel		Address on File						
BROWNELL, JESSE R.		Address on File						
Brownstein Hyatt Farber Schreck LLP		100 City Parkway	suite 1600		Las Vegas	NV	89106	
Brownstein Hyatt Farber Schreck, LLP		100 North City Parkway, Suite 1600			Las Vegas	NV	89106	
Bruce Beetz	Samuel A. Schwartz, Esq.	Address on File						
BRUCE CHAPIN		Address on File						
BrucePac		811 N First St			Silverton	OR	97381	
Bruchou Fernandez Madero & Lombardi		BFM y L S.R.L., Ing. Butty 275, PISO 12			Buenos Aires		C1001AFA	Argentina
BRUMLEY, ANGELA		Address on File						
Brumley, Angela K.		Address on File						
Bryan Cave LLP		PO Box 503089			Saint Louis	MO	63150-3089	
BRYAN CLARK		Address on File						
Brynteson Reporting, Inc.		2404 Belle Haven Meadows Ct			Alexandria	VA	22306	
BT Video Inc		PO Box 540365			Dallas	TX	75354-0365	
Buchhalter Nemer		1000 Wilshire Blvd	Suite 1500		Los Angeles	CA	90017	
BUCKLES BY JIM		PO BOX 1885			Mabank	TX	75147-1885	
Budget Blinds		4012 Daniel Way			Frisco	TX	75035	
Bulk Books		Address on File						
Buntz, Jennifer		Address on File						
BURKE HANSEN LLC		1601 N 7TH ST, STE 200			Phoenix	AZ	85006	
Burkey, John		Address on File						
Burns Transcription Service		11311 N Central Expwy Ste 216			Dallas	TX	75243	
Burns, Nathan		Address on File						
Bury Street Capital Ltd		Devonshire House	1 Devonshire Street		London		W1W 5DR	United Kingdom
BUSH, ALBERT		Address on File						
Business Essentials		PO BOX 37			Grapevine	TX	76099	
Business Essentials		PO Box 292696			Lewisville	TX	75029-2696	
Business Executives National Security		1030 15th Street NW	Suite 200 East		Washington	DC	20005	
Business Flooring Specialists		7341 Dogwood park			Fort Worth	TX	76118	
Business Intelligence Advisors		One Washington Mall One8th Flr			Boston	MA	02108	
Business Real Estate		PO Box 15216			Scottsdale	AZ	85267	
Business Technologies, Inc.		16060 Ventura Blvd Ste 105-505			Encino	CA	91436	
Business Week		PO Box 8419			Red Oak	IA	51591-1419	
Business Wire		Department 34182	PO Box 39000		San Francisco	CA	94139	
Business Wire		PO Box 45348			San Francisco	CA	94145-0348	
Butler Burgher Group		4300 Alexander Dr.	Suite 200		Alpharette	GA	30022	
Byron Wilson		Address on File						

002339

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
C.J. Martin		Address on File			Costa Mesa	CA	92626	
C2 Imaging		3180 Pullman Street			Dallas	TX	75201	
C2 LEGAL OF DALLAS		2001 BRYAN ST	STE 3025		Dallas	TX	75219	
C5 Texas	Attn Rachel Jenkins	PO Box 191129			New York	NY	10281	
Cabot Lodge Securities LLC		200 Vesey St.			Honolulu	HI	96813	
Cades Schutte LLP		1000 Bishop Street, 12th floor			New York	NY	10087-5929	
Cadwalader, Wickersham, & Taft LLP		General Post Office	PO Box 5929		San Francisco	CA	94105	
CALAPRS		575 Market Street	Suite 2125					
Caleb Dorfman		Address on File						
Caleb Moore		Address on File						
Caledonian Directors Limited		PO Box 1043	George Town		Grand Cayman		KY1-1002	Cayman Islands
Caledonian Directors Limited		PO Box 1043			George Town		KY1-1102	Cayman Islands
California Department of Insurance	Attn Name Reservation Unit	45 Fremont Street, 24th Floor			San Francisco	CA	94105	
California Dept. of Business Oversight		Securities Registration Division	1515 K Street, Suite 200		Sacramento	CA	95814	
California Public Employees Retirement System		One Embarcadero Center, 32nd Floor			San Francisco	CA	94111	
CALLAN, BENTLEY	c/o Louis J. Cisz, III	Nixon Peabody LLP						
Cambridge International Partners, Inc.		Address on File			New York	NY	10017	
Cambridge Investment Research, Inc.	c/o Premier Wealth Management	780 Third Ave 25th Flr			Mechanicsburg	PA	17050	
Cambridge Investment Research, Inc.	Przewlocki James, Inc.	5004 Lenker Street, Suite 200			Tucson	AZ	85719	
Cambridge Investment Research, Inc.		2030 E Speedway	Suite 220		Fairfield	IA	52556	
Cambridge Investment Research, Inc.		1776 Pleasant Plain Rd			Fairfield	IA	52556	
Cambridge Investment Research, Inc.		fbo Jimmy J. Williams, Rep #GM6	1776 Pleasant Plain Rd		Wilton	CT	06897-0370	
Cameron Baynard		Address on File						
CAMP CUTHRELL		Address on File						
Campano & Associates		PO Box 370						
CAMPBELL, JIM		Address on File						
CAMPBELL, JIM		Address on File						
Canadian Imperial Bank of Commerce		425 Lexington Avenue			New York	NY	10017	
Candidates on Demand Group, Inc.		433 Fifth Ave, 6th Flr			New York	NY	10016	
Canon Solutions America, Inc		15004 Collections Center Dr			Chicago	IL	60693	
Canteen Vending Services		PO Box 417632			Boston	MA	02241-7632	
Cantor Fitzgerald & Co.	Attn McKenzie Campbell	110 East 59th Street			New York	NY	10022	
CAPE RANKEN		Address on File						
Cape Securities, Inc.		1600 Pennsylvania Ave.			McDonough	GA	30253	
CAPITAL FOR KIDS	ATTN Susan Nichol	2807 Allen St. #816			Dallas	TX	75204	

002380

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Capital Hedge, LLC		145 Washington Street, Suite 16			Norwell	MA	02061	
Capital Investment Group, Inc.		PO Box 32249			Raleigh	NC	27622	
Capital Link Forum, Inc.		230 Park Ave, Ste 1536			New York	NY	10169	
Capital Royalty LP	ATTN Mary Logan	1000 Main St	Suite 2500		Houston	TX	77002	
Capitalize for Kids		01-208-Adelaide Street West			Toronto	ON	M5H 1W7	CANADA
Capitol Service Inc		PO Box 1831			Austin	TX	78767	
CAPITOL SERVICES, INC		PO BOX 1831			Austin	TX	78767	
Caplin Photography		50 W 90th Street	#C6		New York	NY	10024	
Caprock Court Reporting, Inc.		1112 Texas Avenue, Suite 200			Lubbock	TX	79401	
Capstone Advisory Group		Park 80 West	Plaza I-Plaza Level		Saddle Brook	NJ	07663	
Capstone LLC		1400 Eye Street, NW Suite 1115			Washington	DC	20005	
Captain Hopes Kids		10480 Shady Trail	Suite 104		Dallas	TX	75220	
CAREER BLAZERS		PO BOX 414050			Boston	MA	02241-4050	
CAREER BLAZERS		GLOBAL EMPLOYMENT SOLUTIONS, INC	PO BOX 842595		Boston	MA	02284-2595	
Career Group Inc		PO Box 203654			Dallas	TX	75320-3654	
CAREERBUILDER, LLC		200 N. LaSalle St	Suite 1100		Chicago	IL	60601	
CAREERBUILDER, LLC		13047 COLLECTION CTR DR			Chicago	IL	60693-0130	
Carey Holdings, Inc.	Attention General Counsel	4530 Wisconsin Avenue, N.W., 5th Floor			Washington	DC	20016	
Carey International, Inc.	Attn Diane Ennist	7445 New Technology Way			Frederick	MD	21703	
Carey International, Inc.	Attn Thomas McKee, Jr	Greenberg Traurig, LLP	1750 Tysons Blvd., #1000		McLean	VA	22102	
Carey International, Inc.		Billing Department	PO Box 842350		Boston	MA	02284-2350	
Carey International, Inc.	Gary Kessler	4530 Wisconsin Ave. NW	Suite 500		Washington	DC	20016	
Carey Olsen	attn Sam Dawson	Willow House Cricket Square			Grand Cayman		KY1-1001	Cayman Islands
Carey Olsen		Address on File						
Carey Olsen (Guernsey) LLP		PO Box 98, Carey House, Les Banques			St Peter Port	Guernsey	GY1 4BZ	Channel Islands
CARL MOORE		Address on File						
Carl Steigerwald III		Address on File						
CARL WELLMAN		Address on File						
Carla Martin		Address on File						
Carla Siegal Interiors		31 Sturges Hwy			Westport	CT	06880	
CARLSON, STEPHEN		Address on File						
Carmona, Benjamin		Address on File						
CARNEGIE CONSULTING		44 CARNABY ST			London			United Kingdom
Carol Bavousett Mattick PC		919 Congress Ave Suite 919			Austin	TX	WTF 9PP 78701	
CAROLYN SANCHEZ		Address on File						
CARON, JOHN H		Address on File						
Carpenter Lipps & Leland LLP		280 Plaza, Suite 1300	280 North High Street		Columbus	OH	43215	
Carrington Coleman		Address on File						

0023807

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CARROLL, JUSTIN		Address on File						
Carter Ledyard & Milburn LLP		Counsellors at Law 2 Wall St			New York	NY	10005	
CARTER, JEROME		Address on File						
CARTUS CORPORATION PTE LTD		4 SHENTON WAY	#09-01/04 SGX CENTRE 2		Singapore		068807	SINGAPORE
Carwin Advisors		2100 McKinney Ave, Suite 1510			Dallas	TX	75201	
Case Anywhere LLC		21860 Burbank Blvd.	Suite 125		Woodland Hills	CA	91367	
Casepoint, LLC		7900 Tysons One Place, 680			McLean	VA	22102	
Cashier - Texas Workforce Commission		PO Box 149037			Austin	TX	78714-9037	
CASPER COMPANY LLC		830 POST RD E			Westport	CT	06880	
CASTELLA, ANDRES		Address on File						
CASTELLA, ANDRES		Address on File						
Catalyst Financial Partners LLC		118 E 28th Street	Suite 314		New York	NY	10016	
Catapult Systems Inc.		1221 South MoPac Expressway	Ste 350		Austin	TX	78746	
Catherine M. Luvisa, trustee	Cooper Lee Luvisa Educational Trust	Address on File						
Catherine M. Luvisa, trustee		Address on File						
Catherine McCoy		Address on File						
Catherine P. Matthews		Address on File						
Cattle Barons Ball	Attn Underwriting Chairs	3838 Oak Lawn Avenue, Suite 700			Dallas	TX	75219	
Cattle Barons Ball		30 Highland Park Village Ste 216			Dallas	TX	75205	
CATTLE BUYERS WEEKLY		PO BOX 2533			Petaluma	CA	94953-2533	
Cawley, Gillespie & Associates, Inc.		306 West 7th Street, Ste 302			Fort Worth	TX	76102	
Cawley, Keith		Address on File						
CB RICHARD ELLIS		2700 POST OAK BLVD	STE 250		Houston	TX	77056	
CB Richard Ellis, Inc		2700 Post Oak Blvd, Suite 250			Houston	TX	77056	
CB Richard Ellis, Inc		Valuation & Advisory Services	2415 East Camelback Rd		Phoenix	AZ	85016-4290	
Cbeyond		210 Interstate North Pkwy SE Ste 300			Atlanta	GA	30339-2233	
Cbeyond		PO Box 848432			Dallas	TX	75284-8432	
CBIZ Valuation Group, Inc.	ATTN ACCOUNTS RECEIVABLE	PO BOX 849846			Dallas	TX	75284-9846	
CBIZ Valuation Group, Inc.		3030 LBJ Freeway, Ste 1650			Dallas	TX	75234	
CBIZ Valuation Group, Inc.		4851 LBJ Freeway	Suite 800		Dallas	TX	75244	
CBIZ Valuation Group, LLC	Attn Accounts Receivable	4851 LBJ Freeway #800			Dallas	TX	75284	
Cboe LiveVol, Inc.		400 South LaSalle Street			Chicago	IL	60605	
CBRE, Inc.		Location Code 2981	P.O. Box 406588		Atlanta	GA	30384-6588	
CCH		21250 HAWTHORNE BLVD			Torrance	CA	90503-5502	
CCH Incorporated		PO Box 4307			Carol Stream	IL	60197-4307	
CCH Prosystem FX		PO Box 5729			Carol Stream	IL	60197-5729	

092382

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
GCH Prosystem FX		P.O. Box 2701			Torrance	CA	90509-2701	
CCS Medical		1505 LBJ Freeway	Suite 600		Farmers Branch	TX	75234	
CCW Recovery Solutions		4 Mount Ephraim Road	Tunbridge Wells		Kent		TN1 1EE	United Kingdom
CDW	Attn Ronelle Erickson	200 N. Milwaukee Ave			Vernon Hills	IL	60061	
CDW Direct		PO Box 75723			Chicago	IL	60675-5723	
Cecilio Gomez		Address on File						
Cedar Glade LP	Attn Robert K. Minkoff, President	600 Madison Ave, 17th Floor			New York	NY	10022	
Centaurus Financial, Inc.		2300 E. Katella Ave	Suite 200		Anaheim	CA	92806	
Center for Financial Professionals Ltd		The Maitings, Roydon Road			Stanstead Abbots	Herts	SG12 8HG	United Kingdom
Center Street Securities, Inc.	c/o CFP Events, Suite 68	2 International Plz Ste 301			Nashville	TN	37217-2088	
Centerpoint Advisors		301 Commerce St Ste 1750			Fort Worth	TX	76102	
Centerpoint Builders		5339 Alpha Rd Ste 250			Dallas	TX	75240	
CENTRAL REPRODUCTION COMPANY		PO BOX 131971			Dallas	TX	75313	
Centroid		1050 Wilshire Dr.	Ste #170		Troy	MI	48084	
Centroid		900 Wilshire Dr.	Ste. #273		Troy	MI	48084	
CenturyLink		100 CenturyLink Drive			Monroe	LA	71203-0000	
CenturyLink Communications, LLC		1801 California Street			Denver	CO	80202	
CERA	Accounts Receivable	Department 55 Cambridge Pkwy			Cambridge	MA	02142	
Certified Moving & Storage Company		286 Madison Avenue			New York	NY	10017	
Certified Process Servers, Inc.		PO Box 496508			Garland	TX	75049-6508	
Certified Staffing Solutions		66 Orange Street, 3rd FL			Providence	RI	02903	
Cetera Advisor Networks LLC	Attn STS	200 N. Sepulveda Blvd, Ste 1300			El Segundo	CA	90245	
Cetera Advisor Networks LLC	c/o Legacy Advisor, C. Tabaka	2450 Rimrock Rd, Ste 203			Madison	WI	53713	
Cetera Financial Group	c/o Due Diligence Dept	200 N. Sepulveda Blvd, Ste 1200			El Segundo	CA	90245	
Cezar AV, Inc.		393 Upland Avenue			Yonkers	NY	10703	
CFA Society Los Angeles		520 S. Grand Ave	Ste 370		Los Angeles	CA	90071	
CFALA		520 S. Grand Ave.	Ste 655		Los Angeles	CA	90071	
CFA-SW	ATTN Scott Woodward	UHY, LLP	1717 Main Street		Dallas	TX	75201	
CFO & CONTROLLER ALERT		370 TECHNOLOGY DR	PO BOX 3019		Malvern	PA	19355	
Chad Clark	Address on File	Address on File						
CHAD SCHRAMEK	Address on File	Address on File						
Chakheeva, Svetlana	Address on File	Address on File						
CHAMBERS, TRACIE	Address on File	Address on File						
CHAN, WING FUNG WILLY	Address on File	Address on File						
CHANCERY ST JAMES PLC	5 ST JAMESs SQUARE	Address on File			London		SW1Y 4SJ	United Kingdom
Chang, Frederic	Address on File	Address on File						
Chang, Lewis	Address on File	Address on File						

092383

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Chapline, Thomas		Address on File						
Charitable DAF Fund GP, LLC	Grant Scott	4140 Park Lake Avenue	Suite 600		Raleigh	NC	27612	
Charitable DAF Fund, L.P.	Grant Scott	4140 Park Lake Avenue	Suite 600		Raleigh	NC	27612	
Charles Byrne		Address on File						
Charles Geraci		Address on File						
CHARLES GREGOR		Address on File						
Charles Hoedebeck	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Charles River Associates		PO Box 845960			Boston	MA	02284-5960	
Charles Schwab & Co., Inc.		211 Main Street	MS SF-211MN-08-434		San Francisco	CA	94105	
Charley Krause		Address on File						
Charlie Maynard		Address on File						
Charlotte Investor IV LP	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
Charlotte Investor IV, L.P.	Altn Erica Weisgerber Debevoise and Plimpton LLP	919 Third Avenue			New York	NY	10022	
Charlotte Investor IV LP	Charlotte Investor IV LP	c/o HarbourVest Partners, LLC	One Financial Center		Boston	MA	02111	
Charter Finan. Publishing Network, Inc.		PO Box 7550			Shrewsbury	NJ	07702-7550	
Chase Bank of Texas, N.A.		600 Travis Street	8th Floor	Global Trust Services	Houston	TX	77002	
CHASE COURIERS, INC		1220 Champion Circle	#114		Carrollton	TX	75006	
CHASE COURIERS, INC		1002 N. Central Expressway			Richardson	TX	75080	
CHASE COURIERS, INC		1002 N CENTRAL EXPWY, #229			Richardson	TX	75080	
Chase Miller		Address on File						
Chatham Worth		Address on File						
CHAVARRIAGA, MAURICIO		Address on File						
CHEMICAL DATA		2900 N LOOP WEST	STE 830		Houston	TX	77092	
CHEMICAL MARKET ASSOCIATES, INC		PO BOX 974416			Dallas	TX	75397-4416	
Chen, Bryan		Address on File						
Chen, Jonathan C.		Address on File						
Cherith Harrison		Address on File						
Chetan Aras		Address on File						
Chi Un Chun		Address on File						
Chick-til-A		12120 Inwood Road			Dallas	TX	75244	
Chick-til-A		1201 Elm Street	LL06		Dallas	TX	75270	
CHILDRENS SEEK CAMP		Cory Cheat	3624 Long Prairie Rd.		Flower Mound	TX	75022	
CHIRAG PANCHOLI		Address on File	Ste #101					
CHISM, CARTER		Address on File						
Chisum, Naomi		Address on File						
Choi, Jae Young		Address on File						
CHOI, YUN S.		Address on File						
CHOICE INVESTMENTS, INC		4800 BEE CAVE ROAD			Austin	TX	78746	
Chris Carrillo		Address on File						

00230314



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CHRIS COLVIN		Address on File						
CHRIS CRAWSHAW		Address on File						
Chris Hakemack		Address on File						
Chris Hylan		Address on File						
Chris Jackson		Address on File						
Chris Lombardi		Address on File						
Chris Malone		Address on File						
Chris Miller		Address on File						
Chris Saehler		Address on File						
Chris Sullivan		Address on File						
Christian & Small LLP		505 N 20th Street, Suite 1800			Birmingham	AL	35203-2696	
Christian Carrillo		Address on File						
Christian MacCaron		Address on File						
Christina Dandar		Address on File						
Christina Seaman		Address on File						
Christine Hedrick		Address on File						
Christine Ragnauth		Address on File						
Christopher Courbier		Address on File						
CHRISTOPHER EGER		Address on File						
CHRISTOPHER NILSEN		Address on File						
CHRISTOPHER PITTMAN		Address on File						
Christopher Rice	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Christopher Rossi		Address on File						
Chronicle of Higher Education		PO Box 1955			Marion	OH	43306-8055	
Chronicle of Philanthropy	Attn Subscription Department	PO Box 1989			Marion	OH	43306-8089	
Chubb		2001 Bryan St.	Ste. 3600		Dallas	TX	75201-0000	
Chubb National Insurance Company	c/o Chubb	202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
Chuck Hoar		Address on File						
Chuck McQueary		Address on File						
Church, Daniel		Address on File						
CIGNA HEALTHCARE		CGLIC-Chicago	5476 Collections Center Dr		Chicago	IL	60693-0547	
CIRCLE B		3536 MILLER PARK			Garland	TX	75042-7519	
Cisco		170 West Tasman Dr			San Jose	CA	95134-0000	
CISCO Capital		File No. 73226	PO Box 60000		San Francisco	CA	94160-3230	
Cisco Webex Events		170 West Tasman Dr			San Jose	CA	95134-0000	
Cisco WebEx, LLC		16720 Collections Center Dr			Chicago	IL	60693	
Cision US Inc.		PO Box 842869			Boston	MA	02284-2869	
Cision US Inc.		1 Prudential Plaza, 7th floor	130 E Randolph Street		Chicago	IL	60601-0000	
CIT TECHNOLOGY	ATTN CUSTOMER SERVICE	PO BOX 550599			Jacksonville	FL	32255-0599	
Citibank, N.A.	Doug Warren	390 Greenwich Street	4th Floor		New York	NY	10013	
CITICORP VENDOR FINANCE		PO BOX 7247-0118			Philadelphia	PA	19170-0118	

002385

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Citigroup Financial Products Inc. Citigroup Global Markets Inc.	Citigroup Global Markets Inc.	390 Greenwich Street, 4th Floor	Managing Director	Global Structured Credit Products	New York	NY	10013	
Citizens of Georgia Power Citrix Online, LLC	Attn Stephen Kin, Bin #63031	7825 River Road 7414 Hollister Avenue			Waynesboro Goleta	GA CA	30830 93117	
City of Allen	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	76015	
City of Dallas		1500 Marilla Street	2D South		Dallas	TX	75201	
City of Dallas		City Hall 1AN			Dallas	TX	75277	
City of Dallas		City Hall, 2D South			Dallas	TX	75277	
City of Dallas		Security Alarms	P.O. Box 139076		Dallas	TX	75313-9076	
City of Dallas	Linda D. Reece	c/o Perdue Brandon Fielder et al	1919 S. Shiloh Road, Suite 310, LB 40		Garland	TX	75042	
City of Richardson	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair and Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	75207	
City of Surprise		16000 N. Civic Center Plaza	Stormwater Division		Surprise	AZ	85374-7470	
Civic Research Institute		4478 US Route 27 PO Box 585			Kingston	NJ	08528	
CJ Peng		Address on File						
CL McDade & Company		PO Box 702565			Dallas	TX	75370	
Claraphi Advisory Network		25301 Cabot Rd	Suite 203		Laguna Hills	CA	92653	
CLARITY IN NUMBERS, LLC		10 UPENA LN APT 304			KIHEI	HI	96753-5112	
Clark Hill Strasburger		Address on File						
Clark, James		Address on File						
Clark, Stetson		Address on File						
Classic Legal Document Services, Inc.		Address on File						
Claudia C Pleitez		1717 Main Street, Suite 2280			Dallas	TX	75201	
Clay Callan		Address on File						
Clayton Coleman		Address on File						
Cleanwater Analytics LLC		Address on File						
Cleanwell Systems, INC.		777 W Main St	Ste 900		Boise	ID	83702-0000	
Cleary Gottlieb Steen & Hamilton LLP		441 Lounge Ave			Mountain View	CA	94043	
Clerk of the Municipal Courts		One Liberty Plaza			New York	NY	10006-1470	
CLERK, SUPREME COURT		2014 Main Street			Dallas	TX	75201	
		PO BOX 149335			Austin	TX	78714-9335	
ClickDimensions, LLC		5901 Peachtree Dunwoody Rd., Ste B500			Atlanta	GA	30328	
Client One Securities, LLC		11460 Tomahawk Creek Parkway	Suite 100		Leawood	KS	66211	
Clientwise LLC		487 East Main Street	Suite 303		Mount Kisco	NY	10549	
Clifford Chance		Address on File						
Clifford Chance		PO Box 7247-6805			Philadelphia	PA	19170-6805	
Clint Swisher		Address on File						
CLO Holdco, Ltd.	c/o Grant Scott, Esq	Myers Bigel Sibley & Sajovec, P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	Grant Scott, Director	Myers Bigel P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	

0023012

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CLO Holdco, Ltd.	Grant Scott, Director	Myers Bigel P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	Grant Scott, Esq.	Myers Bigel Sibley & Sajovec, P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	John J Kane	Kane Russell Coleman Logan PC	901 Main Street, Suite 5200		Dallas	TX	75202	Cayman Islands
CLO Holdco, Ltd.		190 Elgin Avenue	George Town	Grand Cayman	George Town	KY	19005	United Kingdom
CM Murray LLP		37th Floor	One Canada Square, Canary Wharf		London	TX	E14 5AA	
CMGRP, Inc.		1717 Main St, Ste 1600			Dallas	TX	75201	
CMGRP, Inc.		PO Box 74008263			Chicago	IL	60674-8263	
CMS BondEdge		PO Box 98616			Chicago	IL	60693	
CNBC LLC	c/o Legal Dept, Attn Janet Williams	900 Sylvan Avenue			Englewood Cliffs	NJ	07632	
Coastal Equities Inc.		1201 N. Orange Street	9th Floor		Wilmington	DE	19801	
Coates Analytics		PO Box 371685			Pittsburgh	PA	15251-7685	
COBURN, JASON		Address on File						
COBURN, JASON M		Address on File						
Coch, Trevor		Address on File						
Cockle Printing Co		2311 Douglas St			Omaha	NE	68102	
COCVAC		BOX 399			Clark Mills	NY	13321	
Cohen, Jeffrey		PO BOX 94787			Cleveland	OH	44101-4787	
Coheso, Inc.		Address on File			Pleasanton	CA	94588-8017	
Colbert, Kenneth T.		7083 Commerce Cir Ste 1						
ColdFusion Ice		Address on File			Fort Worth	TX	76103	
Cole Scholtz	Court Plaza North	4901 Saint Lawrence Road	P.O. Box 800		Hackensack	NJ	07602-0800	
Cole Scholtz	Michael D. Warner, Esq.	25 Main Street	301 Commerce Street, Suite 1700		Fort Worth	TX	76102	
Coleman Research Group, Inc.	Attn Legal	1 Glenwood Ave			Raleigh	NC	27603	
Coleman Research Group, Inc.		100 Park Avenue Suite 1600			New York	NY	10017	
Coleman Research Group, Inc.		120 West 45th St	25th Floor		New York	NY	10036	
Coleman, Clayton		Address on File						
Collas Crill	attn Stephen Leontsinis	Floor 2, Willow House	Cricket Square PO Box 709		Grand Cayman		KY1-1107	Cayman Islands
Collas Crill		Floor 2, Willow House, Cricket Square, PO Box 709			Grand Cayman		KY1-1107	Cayman Islands
COLLAS CRILL LLP, ADVOCATES CLIENT ACCOUNT		Glategny Court, PO Box 140, Glategny Esplanade			St Peter Port	Guernsey	GY1 4EW	Channel Islands
Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	1700 Redbud Blvd., Suite 300			McKinney	TX	75069	
Collin County Tax Assessor/Collector		P.O. Box 8046			McKinney	TX	75070	
Collin County Tax Assessor/Collector		P.O. Box 8046			McKinney	TX	75070	

002387

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Collins Building Services, Inc		Court Square Place, 24-01			Long Island City	NY	11101	
Collins Legal Video Service		44th Rd	15th Fl		Dallas	TX	75201	
Collins Realtime Reporting		1700 Pacific Ave	Suite 2410		Dallas	TX	75201	
COLLINS, BRIAN		1700 Pacific Ave	Suite 2410		Dallas	TX	75201	
Colin McDermott		Address on File						
		Address on File						
Colonial Surety Company		123 Tice Boulevard, Suite 250			Woodcliff Lake	NJ	07677	
Colorado Department of Revenue		Colorado Department of Revenue			Denver	CO	80261	
Colorado State Treasurer		Colorado DEPT of Regulatory Agencies	1560 Broadway, Suite 900		Denver	CO	80202-5150	
ColorMark, L.C.		1840 Hutton Dr	Bldg 208		Carrollton	TX	75006	
COLVIN, CHRISTOPHER		Address on File						
COLVIN, MICHAEL		Address on File						
Commissioner of Revenue Services		DEPARTMENT OF REVENUE SERVICES	PO BOX 2936		Hartford	CT	06104-2936	
Commissioner of Securities, State of LA		Office of Financial Institutions	8660 United Plaza Boulevard, 2nd Floor		Baton Rouge	LA	70809	
COMMISSIONER OF TAXATION AND FINANCE		NYS ASSESSMENT RECEIVABLES	PO BOX 4127		Binghamton	NY	13902-4127	
Commodity Futures Trading Commission		Three Lafayette Centre	1155 21st Street, NW		Washington	DC	20581	
COMMONWEALTH OF MASSACHUSETTS		Securities Division	1 Ashburton Place, Room 1701		Boston	MA	02108	
COMMONWEALTH OF MASSACHUSETTS		MASSACHUSETTS DEPT OF REVENUE	PO BOX 7065		Boston	MA	02204-7065	
Communities Foundation of Texas, Inc.	Attn Marcia Godwin 5500	Caruth Haven Lane			Dallas	TX	75225-8146	
Communities in Schools of North Texas		PO Box 295543			Lewisville	TX	75029-5543	
Community Beer Company		1530 Inspiration Drive	Suite 200		Dallas	TX	75207	
Community Partners of Dallas		1215 Skiles Street			Dallas	TX	75204	
Commvault Backup		1 Commvault Way			Tinton Falls	NJ	07724-0000	
COMPASS BANK OPERATING		PO BOX 630020			Dallas	TX	75263-9720	
Compass Lexecon		PO Box 630391			Baltimore	MD	21263-0391	
Compass Lexecon		1244 Dryden Pl			Evanston	IL	60201-3399	
Compass Lexecon LLC		PO Box 418005			Boston	MA	02241-8005	
COMPETITIVE LOGISTICS LLC		53 PERIMETER CENTER E	STE 201		Atlanta	GA	30346	
Complete Coherence Ltd		Newton House, Suite B	Newton Lane		Romsey, Hants		SO51 8LE	United Kingdom
Complete Fitness Outfitters		PO Box 1237			Atoka	OK	74252	
Complete Legal, Ltd		1201 Elm St.	Suite 2560		Dallas	TX	75270	
Compliance Science, Inc.		875 Avenue of the Americas	12th Floor		New York	NY	10001	
Compliance Search Group		1001 Avenue of the Americas	Suite 2401		New York	NY	10018	
Compliance Search Group		450 Seventh Ave	Suite 1409		New York	NY	10123	

09230318

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Comptroller of Maryland		Revenue Administration Division	110 Carroll Street		Annapolis	MD	21411-0001	
Comptroller of Public Accounts		PO Box 149348			Austin	TX	78714	
Compuforms Data Products, Inc.		PO Box 101536			Fort Worth	TX	76185-1536	
CompuLink Technologies, Inc.		214 West 29 Street	Suite 201		New York	NY	10001	
Computershare		250 Royall St #1011			Canton	MA	02021	
Computershare		14257 Collection Ctr Dr			Chicago	IL	60693	
Computershare		16750 Collection Ctr Dr			Chicago	IL	60693	
Computershare Trust Company, N.A.		PO BOX 43078			Providence	RI	02940-3078	
Comsys Services, LLC		PO Box 60260			Charlotte	NC	28260	
Concord Marketing Solutions		2000 Bloomingdale Road			Glendale Heights	IL	60139	
Concorde Holdings, Inc.		1120 East Long Lake Rd	Suite 207		Troy	MI	48085	
Concorde Investment Services		1120 East Long Lake Road	Ste 207		Troy	MI	48085	
Concur Technologies, Inc.		62157 Collections Center Drive			Chicago	IL	60693	
Concur Technologies, Inc.		18400 NE Union Hill Road			Redmond	WA	98052	
Conference Plus, Inc		8153 Solutions Center			Chicago	IL	60677-8001	
Conference Room AV		13601 W McMillan Rd	Suite 102-277		Boise	ID	83713	
Conga		P.O. Box 7839			Broomfield	CO	80021	
ConnectAndSell, Inc		856 Rand St.			San Mateo	CA	94401	
Connected Software		PO Box 29			West Newbury	MA	01985	
Connecticut Department of Banking		Securities & Business Invest Division	260 Constitution Plaza		Hartford	CT	06103	
CONNER, PATRICK		Address on File						
Connex Systems, Inc.		2033 Chenault Drive, Suite 150			Carrollton	TX	75006	
CONNIE MILTENBERGER		127 KENDALL BLUFF COURT			Chesterfield	MO	63017	
Connolly Bove Lodge & Hutz LLP		1007 North Orange St			Wilmington	DE	19899	
Connolly Gallagher LLP		1201 North Market Street	20th Floor		Wilmington	DE	19801	
Connolly, James		Address on File						
Connor White		Address on File						
Conseco Life Insurance Company		PO Box 71214			Charlotte	NC	28272-1214	
CONSOLIDATED GENERAL LIFE INSURANCE CO		4245 N CENTRAL EXPWY	STE 500		Dallas	TX	75205	
Context Summits LLC		401 City Avenue	Suite 815		Bala Cynwyd	PA	19004	
Continental Court Reporters, Inc.		2777 Allen Parkway, Suite 600			Houston	TX	77019-2166	
Continental Office Group, LLC		PO Box 132			Wylie	TX	75098	
Contrarian Funds, LLC		500 Ross St 154-0455			Pittsburgh	PA	15262	
Contrarian Funds, LLC		500 Ross St 154-0455			Pittsburgh	PA	15262	

002385

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Contrarian Funds, LLC	Attn Alpa Jimenez	411 West Putnam Ave., Suite 425			Greenwich	CT	06830	
ConvergeOne, Inc.	Selina Held	10900 Nesbitt Avenue South			Bloomington	MN	55437	
Conway, Jacob		NW 5806	PO Box 1450		Minneapolis	MN	55485-5806	
		Address on File						
CONYERS DILL & PEARMAN		CLARENDON HOUSE 2	CHURCH STREET		Hamilton		0HM11	BERMUDA
Cooke Young Keidan	Phillip Young	21 Lombard St			London		EC3V 9AH	United Kingdom
Cooke, Brad		Address on File						
COOLTECH AIR		530 LONDON ROAD	Stanwell		Ashford		TW15 3AE	United Kingdom
CONDITIONING LTD								
COOPER LEVENSON APRIL NIEDELMAN		1125 ATLANTIC AVE			Atlantic City	NJ	08401	
Copy Sense		121 E. 8th	Ste 100B		Austin	TX	78701	
Copy Solutions		2001 Bryan St	Suite 1935		Dallas	TX	75201	
CopyPLEX		400 Tri-State Bldg 432 Walnut St						
Copyright Clearance Center		222 Rosewood Dr			Cincinnati	OH	45202	
Copyright Clearance Center		PO Box 843006			Danvers	MA	01923	
CORAL EQUITY PARTNERS		28 Innisbrook Ave			Boston	MA	02284-3006	
CORCORAN, KIMBERLY		Address on File			Las Vegas	NV	89113	
CORE Staffing Services, Inc.		463 Fashion Ave Rm 1800			New York	NY	10018-7760	
Corinne Durand		Address on File						
CORNELIUS, WILLIAM		Address on File						
Comer Bakery		CB Catering 91 PO Box 844288			Dallas	TX	75284-4288	
Comerstone Healthcare Group Holding Inc								
Comerstone Healthcare Group Holding, In	David Smith	3030 Ross Avenue	Suite 5400		Dallas	TX	75201	
Comerstone Healthcare Group Holding, Inc.		2200 Ross Ave	Ste. 5400		Dallas	TX	75201-0000	
Comerstone Macro LLC		13455 Noel Road, Suite 1320			Dallas	TX	75240	
Comerstone Restructuring LLC		1330 Avenue of the Americas			New York	NY	10019-5493	
ComerStone Staffing	Attn Michael Brohm	FL5						
CORPORATE COFFEE SYSTEMS		1125 Maxwell Ln	Suite 1010		Hoboken	NJ	07030	
		PO Box 909			Grapevine	TX	76099	
		745 SUMMA AVE			Westbury	NY	11590	
CORPORATE EXPRESS INC		PO BOX 71217			Chicago	IL	71217	
Corporate Expressions		11 Blackberry Ln.			Norwalk	CT	06850	
Corporate Golf		604 West Morgan St Ste 202			Durham	NC	27701	
Corporate Green		PO Box 820725			Dallas	TX	75382	
Corporate Interiors Inc.		PO Box 709			Frisco	TX	75034-0709	
Corporate Montage		9950 Westpark Dr Ste 602			Houston	TX	77063-5196	
Corporate Search Partners		6116 N Central Expwy Ste 406			Dallas	TX	75206	
Corporate Source Ltd		2651 N Harwood Ste 260			Dallas	TX	75201	

0923076

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Corporate Source Ltd		1505 Oak Lawn Ave	Suite 300		Dallas	TX	75207	
Corporate Source Ltd		Lockbox 671236			Dallas	TX	75267-1236	
Corporate Strategies by SkillPath		6900 Squibb Rd			Mission	KS	66202	
Corporate Strategies by SkillPath		PO Box 803839			Kansas City	MO	64180-3839	
Corporate Transportation Group		335 Bond St			Brooklyn	NY	11231	
Corporation Service Company		PO BOX 13397			Philadelphia	PA	19101-3397	
Cory McCallum		Address on File			Edgewater	NJ	07020	
COSMOPOLITAN GLASS		307 DAIBES CT						
CoStar Realty Information, Inc.		PO Box 791123			Baltimore	MD	21279-1123	
Cotton, Austin		Address on File						
Coughlin, William A.		Address on File						
Counsel Press LLC		PO Box 1053			New York	NY	10018-9998	
CounselWorks LLC		477 Madison Avenue	Suite 740		New York	NY	10022	
COURIERS INC		225 MILLWELL DR			Maryland Heights	MO	63043	
Cournoyer, Timothy		Address on File						
Courthouse Digital Video		8848 Twin Pines Ln			Frisco	TX	75036-1427	
Courtlandt Securities Corporation		PO Box 11929			Newport Beach	CA	92658	
Courtroom Intelligence, Inc.		620 N Grant	Suite 512		Odessa	TX	79761	
Courtroom Intelligence, Inc.		1219 West University Blvd			Odessa	TX	79764	
Covenant Review LLC		708 Third Ave	6th Floor		New York	NY	10017	
Covenant Review LLC		230 Park Ave, Suite 812			New York	NY	10169	
COVER INVESTIGATIVE SERVICES		PO BOX 67			Lewisville	TX	75057	
COVITZ, HUNTER		Address on File						
Cowen and Company, LLC		Finance Group - 21st Floor	599 Lexington Avenue		New York	NY	10022	
Cowie, Jason		Address on File						
COX, BRIAN		Address on File						
COZEN O CONNER ATTORNEYS		W1385	PO BOX 7777		Philadelphia	PA	19175-0775	
CP EATON PARTNERS, LLC		131 ROWAYTON AVE			Rowayton	CT	06853	
CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandaneau	452 Fifth Avenue		New York	NY	10018	
CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl Suite 1500		Dallas	TX	75201	
CPCM, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610		Dallas	TX	75201	
CPCM, LLC		6505 W. Park Blvd. Ste. 306	PMB# 352		Plano	TX	75093	
Craig and Macauley Professional Corp.		600 Atlantic Ave			Boston	MA	02210	
Crain Communications Inc.		16309 Collection Center Dr.			Chicago	IL	60693	
Crain Communications Inc.		1155 Gratiot Ave			Detroit	MI	48207-2732	
Cranellis		10047 Park Meadows Dr			Lone Tree	CO	80124	
Crawford Wishnew & Lang	Michael J Lang	1700 Pacific Avenue Suite 2390			Dallas	TX	75201	

0023074



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
GRE ADVISORS, LLC		PO BOX 2302			Addison	TX	75001	
Creative Meetings & Incentives CREATIVE PRINTING		2405 Mill Plain Rd 311 N STEMMONS	STE 400		Fairfield Dallas	CT TX	06824 75207	
CREDIT SUISSE	ATTN JUDY HARNETT	11 MADISON AVE, 11TH FLR 700 College Road East			New York Princeton	NY NJ	10010 08540	
CREDIT SUISSE		11 MADISON AVE, 26TH FLR	AARON OVEDIA		New York	NY	10010	United Kingdom
Crediflux		63 Clerkenwell Rd			London		EC 1M-5NP	
Crescent Asset Management		1440 Broadway	17th flr		New York	NY	10018	
Crescent Partners, LLC		1440 Broadway	17th floor		New York	NY	10018	
Crescent Research		PO Box 64-3622			Vero Beach	FL	32964	
Crescent TC Investors LP		200 Crescent Ct	Suite 250		Dallas	TX	75201	
Crescent TC Investors, L.P.	c/o Michael S. Held	2323 Ross Avenue, Suite 600			Dallas	TX	75201	
Crescent TC Investors, L.P.	Dale Todd, President	277 Park Ave., 36th Floor			New York	NY	10017	
Crescent TC Investors, L.P.	Hien Le	5847 San Felipe St., Suite 150			Houston	TX	77057	
Crescent TC Investors, L.P.	Hien Le	5847 San Felipe St., Suite 150			Houston	TX	77057	
Crescent TC Investors, L.P.	Jackson Walker LLP	Michael S. Held	2323 Ross Ave., Suite 600		Dallas	TX	75201	
Crescent TC Investors, L.P.	Michael S. Held	2323 Ross Ave., Suite 300			Dallas	TX	75201	
Crescent TC Investors, L.P.		Post Office Box 841772			Dallas	TX	75284	
Crescent TC Investors, L.P.		Post Office Box 841772			Dallas	TX	75284	
CREST, DAVID		Address on File						
Cris Rodriguez		Address on File						
Crisostomo, Norm		Address on File						
Critical Electric Systems Group, LLC		704 Central Pkwy East	#1200A		Plano	TX	75074	
CROSS 3 LLC		7324 ELDRED AVE, NE			Rockford	MI	49341	
Crosson Dannis, Inc.		8150 N. Central Expressway, Suite 950			Dallas	TX	75206	
Crossroads Audio, Inc.		2623 Myrtle Springs Avenue			Dallas	TX	75220	
Crowe & Dunlevy, P.C.	Vickie L. Driver	2525 McKinnon Street, Suite 425			Dallas	TX	75201	
Crowe Dunlevy		Address on File						
Crowell & Moring		1001 Pennsylvania Ave NW			Washington	DC	20004-2595	
CROWELL, LEONARD		Address on File						
Crown Capital Securities, L.P.		725 Town & Country Rd	Suite 530		Orange	CA	92868	
CRT CAPITAL GROUP, LLC		262 HARBOR DR			Stamford	CT	06902	
CSC		PO Box 13397			Philadelphia	PA	19101-3397	
CSI e-Discovery Services, LLC		4950 N. OConnor Rd.	Suite 152		Irving	TX	75062	
CSI Global Deposition Services	Accounting Dept-972-719-5000	4950 N. OConnor Rd., 1 st Fl			Irving	TX	75062-2778	

00230718

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CSI Litigation Psychology, LLC		4950 North O'Connor Rd.	Corporate Plaza 1, First Floor		Irving	TX	75062	
CSS Medical Inc.	Steve Saft	14255 49th Street North	Suite 301		Clearwater	FL	33762	
CT Corp		PO Box 4349			Carol Stream	IL	60197-4349	
CT Corporation		1999 Bryan Street	Ste 900		Dallas	TX	75201-0000	
CT Corporation System	ATTN Michael E. Jones	350 N. St. Paul Street, Ste. 2900			Dallas	TX	75201	
CT Corporation System	C/O STEPHANIE WATTS-DARTY	DALLAS CORPORATE TEAM 2	350 North St. Paul St.		Dallas	TX	75201	
CT Corporation System		PO Box 4349			Carol Stream	IL	60197-4349	
CT Lien Solutions		PO Box 301133			Dallas	TX	75303	
CT Lien Solutions		Lockbox 200824			Houston	TX	77216	
CTRL+V Inc.		251 Union St.			Lawrence	NY	11559	
Culhane Meadows PLLC		PO Box 49716			Atlanta	GA	30359	
Culinaire International	Attn Catering Dept	2943 SMU Blvd			Dallas	TX	75205	
CULLEN ESTATE TRUST		601 JEFFERSON ST STE 4000			Houston	TX	77002-7913	
CUNNINGHAM, BRITNEY		Address on File	Suite B102		Princeton	NJ	08540	
CurAlea Associates LLC		12 Roszel Road			Phoenix	AZ	85016	
Cushman & Wakefield of Arizona, Inc.		2555 East Camelback Road, Ste 400			New York	NY	10041	
CUSIP		55 Water Street	43rd Floor		Chicago	IL	60693-0333	
CUSIP Global Services		33356 Collection Center Dr			Chicago	IL	60693	
CUSIP Service Bureau		2542 Collection Center Drive	2542 Collection Center Drive					
CUSIP Service Bureau		Standard and Poors			Chicago	IL	60693	
CUSIP Service Bureau		PO Box 19140A			Newark	NJ	07195-0140	
CUSTOM BOOK BINDERY, INC.		9 SHERIDAN AVE			Clifton	NJ	07011	
Custom Headsets of Dallas		5949 W Hwy/ 175			Kaufman	TX	75142	
CVE Technologies Group Inc.		1414 S. Gustin Rd.			Salt Lake City	UT	84104	
CVE technology		3000 E Plano Pkwy			Plano	TX	75074-0000	
CW PARTNERS LLC		2811 MCKINNEY AVE	STE 214		Dallas	TX	75204	
Cylance		400 Spectrum Center Dr.	Suite 900		Irvine	CA	92618-0000	
CYNTHIA VALLES		Address on File						
CYRUS SPURLINO		7214 N MOBLEY RD			Odessa	FL	33556-2303	
REVOCABLE TRUST		1600 Airport Fwy Ste 501			Bedford	TX	76022-6882	
Cystic Fibrosis Foundation	NE Texas/Fort Worth Chapter	7506 E Independence Blvd #120			Charlotte	NC	28227	
Cystic Fibrosis Foundation		3102 Maple Ave, Ste 120			Dallas	TX	75201	
Cystic Fibrosis Foundation		Northeast Texas Chapter			New York	NY	10122	
CZG Dynamics Associates		14 Penn Plaza, Suite 1712			Dallas	TX	75201	
D Magazine		750 North St. Paul Street	Suite 2100		Dallas	TX	75219-9701	
D Magazine		4311 Oak Lawn Ave Ste 100			Frisco	TX	75035	
D&S Enterprises		10703 Sweetwater Drive			Addison	TX	75001	
D. Alan Bowliby		PO Box 1067						

09230713

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
D. Allan Bowlby & Associates, Inc		PO BOX 1067			Addison	TX	75001	
D.F. King & Co. Inc.		48 Wall Street			New York	NY	10005	
D.H. Hill Securities, LLLP		1543 Green Oak Place	Ste 100		Kingwood	TX	77339	
DAETSCH, MOLLY		Address on File						
DALE BEHM		Address on File						
Dale Frey		Address on File						
Dallas A&M Club	Attn Mike Henderson	4303 Glenwick			Dallas	TX	75205	
Dallas AfterSchool Network		3900 Willow St Ste 110			Dallas	TX	75226-1247	
Dallas Area Habitat for Humanity		House Party	PO Box 700924		Dallas	TX	75370	
Dallas Art & Design		3617 Fairmount St Ste 101			Dallas	TX	75219	
Dallas Bar Association		2101 Ross Ave			Dallas	TX	75201	
Dallas Basketball Ltd.		1333 N Stemmons Fwy	Ste 105		Dallas	TX	75207-3722	
Dallas Business Journal		PO Box 840190			Dallas	TX	75284-0190	
Dallas CASA		2757 Swiss Avenue			Dallas	TX	75204	
Dallas Challenge		7777 Forest Lane	Suite C-410		Dallas	TX	75203	
DALLAS CHAPTER TEI	ATTN Sharon Langlotz	Cash America International, Inc	1600 West 7th St		Ft. Worth	TX	76102-6803	
DALLAS CHAPTER TEI		901 MAIN ST	69TH FLR, BANK AMERICA PLAZA		Dallas	TX	75202	
DALLAS CHAPTER TEI		PO BOX 961101	BNSF RAILWAY COMPANY, SCOTT RYNEARSON		Fort Worth	TX	76161-1101	
Dallas Childrens Advocacy Center	Attn Stepheni Jordan	5351 Samuell Blvd			Dallas	TX	75228	
Dallas Childrens Theater	Attn Michael Gonzales	5938 Skillman			Dallas	TX	75231	
Dallas Committee on Foreign Relations		4925 Greenville Avenue	Suite 1025		Dallas	TX	75206-4092	
Dallas Contemporary, MTV	Attn Hannah Fagadau	161 Glass Street			Dallas	TX	75207	
Dallas County	Attn Elizabeth Weller	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Dallas County	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	75207	
Dallas County Republican Party		10100 N Central Exprwy	Ste 175		Dallas	TX	75231	
Dallas County Tax Assessor	John R. Ames, CTA	1201 Elm Street	Suite 2600		Dallas	TX	75270	
Dallas County Tax Assessor	John R. Ames, CTA	PO Box 139066			Dallas	TX	75313-9066	
Dallas County Tax Office		PO Box 139033			Dallas	TX	75313-9033	
Dallas Courier Service, Inc.		PO Box 833583			Richardson	TX	75083	
DALLAS DUCKS UNLIMITED		400 TURTLE CREEK CENTER BLVD	3811 TURTLE CREEK		Dallas	TX	75219	
Dallas Employment Services		6125 Luther Ln # 299	SCOTT WEBER		Dallas	TX	75225-6202	
Dallas Gigs LLC		PO Box 225423			Dallas	TX	75222	
Dallas Glass & Door Company, Ltd	Attn Eddie Parker	PO Box 440			Fate	TX	75132	
Dallas Hispanic Firefighters Association		703 McKinney Ave	Suite 201		Dallas	TX	75202	
DALLAS HR		4100 SPRING VALLEY RD	STE 300		Dallas	TX	75244	
Dallas Jewish Community Foundation		One Hillcrest Green	12700 Hillcrest Rd, Suite 201		Dallas	TX	75230	

00230720

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Dallas Junior Chamber of Commerce Found.		PO Box 130721			Dallas	TX	75313	
Dallas Kid to Do	Attn Megan Harrison	650 South R.L. Thornton Freeway			Dallas	TX	75203-3013	
Dallas Landscape Lighting		2026 Midlake Rd			Dallas	TX	75205	
Dallas Museum of Art		1717 North Harwood			Dallas	TX	75201	
DALLAS PETROLEUM CLUB		2200 ROSS AVE	LB 171		Dallas	TX	75201-2799	
DALLAS POLICE AND FIRE		THE VICTOR LAZADA MEMORIAL FUND	7474 FERGUSON RD		Dallas	TX	75228	
Dallas Police Department	Alarm Permit Compliance Unit	PO Box 840186			Dallas	TX	75284-0186	
Dallas Producers Club	c/o J. Patrick Collins	PMB 414	3824 Cedar Springs Rd		Dallas	TX	75219-4136	
Dallas Regional Chamber	Attn Finance	500 North Akard St, Suite 2600			Dallas	TX	75201	
Dallas Security Systems, Inc.		PO Box 550939			Dallas	TX	75355-0939	
Dallas Stars		2601 Avenue of the Stars			Frisco	TX	75034-9089	
Dallas Summer Musicals, Inc.		909 1st Ave			Dallas	TX	75210-1042	
Dallas T-Shirt Company		2626 Manana Dr	Suite A		Dallas	TX	75220	
Dallas Urban Debate Alliance		PO Box 670564			Dallas	TX	75367	
Dallas Wildcat Committee	Attn Barbara Johnston	2200 Ross Ave, Suite 4150E			Dallas	TX	75201	
Dallas Womens Foundation		8150 North Central Expwy Suite #110			Dallas	TX	75206	
Dallas Youth Council		PO Box 793604			Dallas	TX	75379	
Dallas Zoological Society		650 South RL Thornton Fwy			Dallas	TX	75203-3013	
Damage Recovery		PO Box 801770			Kansas City	MO	64180	
DAMC	ATTN CARL BAGGETT	NORCOM CAPITAL	15770 N DALLAS PKWY		Dallas	TX	75248	
DAMERIS, THEODORE		Address on File						
DAMEWARE DEVELOPMENT		241 MORNINGSIDE DR			Mandeville	LA	70448	
Dan Drabinski		Address on File						
Dan Subach		Address on File						
Dan Winikka	c/o Loewinsohn Flegle Deary Simon	12377 Merit Drive			Dallas	TX	75251	
Dana Driensky		Address on File						
DANAHY, BRIAN J.		Address on File						
DANDAR, CHRISTINA		Address on File						
Daniel J Edelman, Inc		JPMorgan Chase Bank, NA	21992 Network Place		Chicago	IL	60673	
Daniel Kaplan Associates LLC		55 Madison Ave, 4th Fir			Morristown	NJ	07960	
Daniel Moisis		Address on File						
Daniel N. Shaviro		Address on File						
Daniel P Winikka	Loewinsohn Flegle Deary Simon LLP	12377 Merit Drive, Suite 900			Dallas	TX	75251	
Daniel Ranson		Address on File						
Daniel Riedler		Address on File						
Daniel Sexton		Address on File						

0023073

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Daniel Sharvit		Address on File						
Daniel Sheehan & Associates, PLLC	Daniel J Sheehan, Jr	8150 N. Central Expressway Suite 100			Dallas	TX	75206	
Daniels & Erickson, PC		Address on File	Suite 760		Dallas	TX	75251	
Dansby White		12221 Merit Dr.						
Darby Dunn Communications		Address on File						
Darla M Chavez		461 Manor Lane			Peiham	NY	10803	
Daryl's By Design		Address on File						
DATAACARE SOFTWARE GROUP INC		1801 N Griffin Street			Dallas	TX	75202	
Datamax		445 PARK AVE	10TH FLR		New York	NY	10022	
DataPlus Consulting Incorporated		PO Box 20527			Saint Louis	MO	63139	
DataPlus Consulting Incorporated		750 North St Paul St. Suite 1225			Dallas	TX	75201	
DataPlus Consulting Incorporated		PO Box 190634			Dallas	TX	75219	
DataPlus Consulting, Incorporated		750 North St Paul	Suite 1225		Dallas	TX	75201	
Datapoint Management		210 Empire House	1 Empire Way		Wembley		HA9 OEW	United Kingdom
DAUGHERTY, PATRICK		Address on File						
DAUM, KURT		Address on File						
Dave Barnett		Address on File						
DAVE WALLS		Address on File						
DAVID BLANKS		Address on File						
DAVID BLANKS		Address on File						
David Boguslawski		Address on File						
David C. Smith		Address on File						
DAVID CALLAHAN		Address on File						
David Childs Tax Assessor-Collector		PO Box 620088			Dallas	TX	75262-0088	
David Childs Tax Assessor-Collector			DALLAS COUNTY TAX ASSESSOR-COLLECTOR					
David Culley		PO BOX 139066			Dallas	TX	75313-9066	
David Feldman Worldwide, Inc		Address on File						
David Fraiberg		PO Box 2392			New York	NY	10116-2392	
DAVID FULLERTON		Address on File						
David Geneson		Address on File						
David Hill		Address on File						
David Huff Photography LLC		Address on File						
DAVID LANCELOT		22022 N 119th Drive			Sun City	AZ	85373	
DAVID LEE		Address on File						
DAVID LEHUQUET		Address on File						
David M. Cooper		Address on File						
DAVID MARTIN		Address on File						
David Ourlicht		Address on File						
DAVID POWERS		Address on File						

0023072

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
DAVID R HOLBROOKE ROTH IRA		120 BULKLEY AVE APT 405			Sausalito	CA	94965-2149	
DAVID SALYER		Address on File						
DAVID SMITH		Address on File						
David Smith		Address on File						
David Spiegel		Address on File						
David Tomek PLLC		325 N St Paul Street	Suite 3300		Dallas	TX	75201	
David W. Langford, CSR, CRR, RDR	Official Court Reporter	101st Judicial District Court	George L. Allen Courts Building		Dallas	TX	75202-4631	
David Walls		Address on File						
DAVID WEISBACH		Address on File						
DAVID WARD PHILLIPS & VINEBERG LLP		44TH FLR	1 FIRST CANADIAN PLACE		TORONTO	ON	M5X 1B1	CANADA
Davis Deadman	Jason P. Kathman	2701 Dallas Parkway, Suite 590			Plano	TX	75093	
Davis Deadman		Address on File						
DAVIS FORESTRY		PO BOX 24633			Little Rock	AR	72221	
Davis Polk & Wardwell	Attn Andrew Dean	450 Lexington Ave			New York	NY	10017	
Davis R. Deadman		Address on File						
Davis Wright Tremaine LLP		2600 Century Square 1501 Fourth Ave			Seattle	WA	98101-1688	
DAVIS, MARY M.		Address on File						
DAVIS, MARY MARTHA		Address on File						
Dawn ORourke		Address on File						
Day Pitney LLP		PO Box 416234			Boston	MA	02241-6234	CZECH REPUBLIC
DDC Financial Group s.r.o.		Bohusovicka 230-12	190 00 Prague		Praha 9			
DEADMAN, DAVIS		Address on File						
DealFlow Media, Inc		PO Box 122			Syosset	NY	11791	
Deana K. Adams	Official Court Reporter	600 Commerce, 630 C	6th Floor, East Tower		Dallas	TX	75202	
Deanne Engle		Address on File						
Debevoise & Plimpton		919 Third Ave			New York	NY	10022	
Debevoise & Plimpton LLC	M. Natasha Labovitz, Erica S. Weisgerber, Daniel E. Stroik c/o Accounting Dept. 28th Floor	919 Third Avenue			New York	NY	10022	
Debevoise & Plimpton LLP	Attn Christopher K. Tahbaz, Esq.	909 Third Ave			New York	NY	10022	
Debevoise and Plimpton LLP	Baker & McKenzie LLP	919 Third Avenue			New York	NY	10022	
Debra A. Dandeneau		452 Fifth Avenue			New York	NY	10018	
Debt Domain		295 Madison Ave	Ste 24		New York	NY	10017-0000	
Debtomain (USA) Inc.		295 Madison Ave	Suite 924		New York	NY	10017	
DECHERT LLP		PO BOX 7247-6643			Philadelphia	PA	19170-6643	United Kingdom
Dechert UK		160 Queen Victoria Street			London	England	EC4V 4QQ	
DEDYO, STEPHEN J.		Address on File						
DeGolyer & MacNaughton		5001 Spring Valley Rd	Suite 800 east		Dallas	TX	75244	
Del Vecchio Reporting Services, LLC		117 Randi Drive			Madison	CT	06443	
DELAROSA, STEVEN		Address on File						

00230729

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
DELAWARE DIVISION OF CORPORATIONS	Division of Corporations	401 FEDERAL ST	STE 4		Dover	DE	19901	
Delaware Secretary of State	DIVISION OF CORPORATIONS	401 Federal St. Suite 4			Dover	DE	19901	
Delaware Secretary of State	Division of Corporations	PO BOX 11728			Newark	NJ	07101-4728	
Delaware Secretary of State	Division of Corporations	PO Box 5509			Binghamton	NY	13902-5509	
DELAWARE SECRETARY OF STATE # 51-6000279	Division of Corporations	PO Box 74072			Baltimore	MD	22174-4072	
DELAWARE SECRETARY OF STATE # 51-6000279		1209 Orange St			Wilmington	DE	19801	
DELAWARE SECRETARY OF STATE # 51-6000279	DELAWARE SECRETARY OF STATE # 51-6000279	State of Delaware Division of Corp	PO Box 5509		Binghamton	NY	13902-5509	
DELGADO, MAURICIO		Address on File						
Dell Business Credit		Payment Processing Center	PO Box 5275		Carol Stream	IL	60197-5275	
Dell Commercial Credit		Dept. 50-0049055190 PO BOX 689020			Des Moines	IA	50368-9020	
Dell Financial Services		Payment Processing Center	4307 Collection Center Dr.		Chicago	IL	60693	
Dell Financial Services L.L.C.	DFS-Bankruptcy	PO Box 81577			Austin	TX	78708	
Dell Marketing LP	c/o Dell USA LP	PO Box 676021			Dallas	TX	75267-6021	
DELOITTE & TOUCHE	ATTN KILEY RODEN	10 WESTPORT RD			Wilton	CT	06897	
Deloitte Financial Advisory Services LLP		4022 Sells Drive			Hermitage	TN	37076	
Deloitte Financial Advisory Services LLP		2200 Ross Ave			Dallas	TX	75201	
Deloitte Financial Advisory Services LLP		PO Box 2062			Carol Stream	IL	60132-2062	
Deloitte Tax LLP		4022 Sells Drive			Hermitage	TN	37076	
Deloitte Tax LLP		PO BOX 2079			Carol Stream	IL	60132-2079	
Deloitte Tax LLP		PO Box 844736			Dallas	TX	75284-4736	
Delphi Legal Technologies		350 N. Saint Paul Suite 275			Dallas	TX	75201	
Delphi Legal Technologies		PO Box 133026			Dallas	TX	75313-3026	
Delta Dallas Staffing, LP		15950 N. Dallas Pkwy, Ste 500			Dallas	TX	75248	
Deluxe Business Forms		Tollway Plaza II			Dallas	TX	75248	
Denison Glass & Mirror		PO Box 742572			Cincinnati	OH	45274-2572	
Dennis Sugino		4231 S State Highway 91			Denison	TX	75020-8115	
DENNIS WINTER IRA		Address on File						
Denton County		Address on File						
Denton County Tax Assessor		PO Box 90223			Denton	TX	76202	
Denton US LLP		Dept. 894579			Denton	TX	76202	
Dentons US LLP	Attn Lauren Macksoud, Esq. and Patrick Maxcy, Esq.	1221 Avenue of the Americas			Los Angeles	CA	90189-4579	
Dentons US LLP	Casey Doherty	1221 McKinney Street, Suite 1900			New York	NY	10020	
Denver Daughtry		Address on File			Houston	TX	77010-2006	
Department of Business Oversight		1515 K St #200			Sacramento	CA	95814	

002373



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Department of Corporations (CA)		Securities Regulations Div.	320 W 4th St, Ste 750		Los Angeles	CA	90013-1105	
Department of Finance, State of Idaho		Securities Bureau	800 Park Boulevard, Suite 200		Boise	ID	83712	
Department of State	Division of Corporations	99 Washington Ave.			Albany	NY	12231-0001	
DEPARTMENT OF TAX AND REVENUE	WV STATE TAX DEPT	PO BOX 2745	INTERNAL AUDITING DIVISION		Charleston	WV	25330-2745	
Department of Taxation and finance		Dept of Labor-Unemp Insurance Div	PO Box 15012		Albany	NY	12212	
DEPARTMENT OF THE TREASURY	INTERNAL REVENUE SERVICE	ACS SUPPORT	PO BOX 57		Bensalem	PA	19020-8514	
DEPARTMENT OF THE TREASURY	IRS	STOP 5107 NWSAT	4050 ALPHA RD		Farmers Branch	TX	75244-4201	
DEPARTMENT OF THE TREASURY		Internal Revenue Service			Cincinnati	OH	45999-0009	
Department of the Treasury		4050 Alpha Road	Suite 517, MC 8000NDAL		Dallas	TX	75201-7849	
Department of the Treasury - Internal Revenue Service	Internal Revenue Service	1100 Commerce St	M/S MC5027DAL		Dallas	TX	75242	
Department of the Treasury - Internal Revenue Service	Internal Revenue Service	P. O. Box 7346			Philadelphia	PA	19101-7346	
Dept. of Licensing & Regulatory Affairs	Corp. Securities & Comm Licensing Bureau	525 W. Allegan Street - Audit & Exam Div			Lansing	MI	48909	
DERRICK PITTS		Address on File						
Desai, Neil		Address on File						
Dessaint, Louis C.		Address on File						
DEWITT, AUDREY		Address on File						
DFPG Investments, Inc.		9017 S. Riverside Dr.	Ste 210		Sandy	UT	84070	
DFW Ice Cream		10198 Western Hills Dr.			Frisco	TX	75034	
DFW MULTIMEDIA INC		1330 RIVER BEND DR	SUITE 850		Dallas	TX	75247	
DFW Private Equity Forum	Attn Amy Thompson	2323 Victory Avenue	Suite 2000		Dallas	TX	75219	
DFW VIDEO		DFW Multimedia, Inc.	13300 River Bend Drive, Ste. 850		Dallas	TX	75247	
DGHS Holdings, LLC		5949 Sherry Lane	Suite 750		Dallas	TX	75225	
Dhamodharan Srinivasan		583 Jeremy Drive			Bourbonnais	IL	60606	
Dhamidharka, Kerry		Address on File						
DHL EXPRESS		PO BOX 4723			Houston	TX	77210-4723	
DHR INTERNATIONAL, INC		10 South Riverside Plaza	Suite 2220		Chicago	IL	60606	
Dice Holdings, Inc.		4939 COLLECTIONS CENTER DR.			Chicago	IL	60693	
DICE INC					Chicago	IL	60693	
Dickman Davenport, Inc.		3131 Turtle Creek Blvd	Suite 320		Dallas	TX	75219	
DIECKHAUS, SCOTT		Address on File						
DIECKHAUS, SCOTT		Address on File						
DIFC Global		11-12 St. James Square			London			United Kingdom
DIFFA/Dallas		2050 Stemmons Fwy	Mail Unit 262		Dallas	TX	75207	
Diffenderfer, Claude A.		Address on File						
Digital Copy LLC		500 N Akard St, Suite 250			Dallas	TX	75201	
Digital Legal LLC		1001 Jefferson Plaza	Suite 100		Wilmington	DE	19801	

0023073

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Digital Marketing and Print Solutions		3305 Wiley Post			Carrollton	TX	75006	
Digital Mountain		5050 El Camino Real	Suite 205		Los Altos	CA	94022	
Digital Telefonos		PO Box 852184			Richardson	TX	75085-2184	
Digital Verdict, Inc.		750 N. St. Paul Street	Suite 1225		Dallas	TX	75201	
Digital Works		6606 LBJ Fwy	Suite 240		Dallas	TX	75240	
DingIn LLC		50 Milk St Ste 110			Boston	MA	02109-5004	
DiningIn Out in Dallas		3030 Olive Street	Ste 400		Dallas	TX	75219	
Dinoto Inc.		535 Dean Street	PH 102		Brooklyn	NY	11217	
DiOrto, Matthew		Address on File						
Direct Corporate Resources, Inc.		Freedom Center 10203 Koitzebue Ste 114			San Antonio	TX	78217	
Director of Compliance	Re Prime Brokerage Services	Jefferies LLC	520 Madison Avenue, 16th Floor		New York	NY	10022	
Directors Desk LLC		Lockbox 50200	PO Box 8500		Philadelphia	PA	19178-0200	
DirectTV		208 South Akard Street			Dallas	TX	75202-0000	
Directv, LLC		PO Box 60036			Los Angeles	CA	90060-0036	
DISCOVERY BENEFITS		3216 13TH AVE S			Fargo	ND	58103	
DISCOVERY BENEFITS		PO BOX 869	COBRA DEPT		Fargo	ND	58107	
DISCOVERY BENEFITS		PO BOX 9528			Fargo	ND	58107-0869	
DISCOVERY BENEFITS		PO BOX 2079			Omaha	NE	68108-2079	
Discovery Benefits Inc		4321 20th Ave. S.			Fargo	ND	58103-0000	
Discovery Data		12 Christopher Way, Ste 202			Eatontown	NJ	07724	
Displays Unlimited, Inc.		626 106th Street			Arlington	TX	76011	
District Director	Attn Insolvency	Internal Revenue Service	31 Hopkins Plaza, Room 1150		Baltimore	MD	21201	
Diversus Investment Advisers (Asia) Ltd		410 Oxford Street			Bondi Junction	NSW	02022	AUSTRALIA
DIVYASH PATEL		Address on File						
Dixon Hughes Goodman LLP		4350 Congress Street	Suite 900		Charlotte	NC	28209	
Dixon Hughes Goodman LLP		PO Box 602828			Charlotte	NC	28260-2828	
DKW Law Group LLC		600 Grant St, 58th Flr			Pittsburgh	PA	15219	
DLA Piper LLP (US)	Marc D. Katz, Esq.	DLA Piper LLP (US)	1900 N Pearl St, Suite 2200		Dallas	TX	75201	
DLA Piper LLP (US)		1900 N Pearl St, Suite 2200			Dallas	TX	75201	
DLA Piper LLP US		6225 Smith Avenue			Baltimore	MD	21209	
DOAR Communications, Inc.		170 Earle Ave			Lynbrook	NY	11563	
Document Technologies, Inc.		PO Box 933435			Atlanta	GA	31193-3435	
Don Bryant		Address on File						
Don Drive Interiors		8408 Chancellor Row			Dallas	TX	75247	
Don Netzer Photography		2510 Southwell Rd.	#107		Dallas	TX	75229	
Don Netzer Photography		2510 Southwell Rd. # 107			Dallas	TX	75229	
DONALD OSBORNE		Address on File						
Donald Salvino		Address on File						
DONALDSON, MICHEAL		Address on File						
Donaldson, Steven		Address on File						
DONDERO, JAMES		Address on File						
Donggeng Gong		Address on File						
Donnelley Financial Solutions		PO Box 842282			Boston	MA	02284-2282	

002380

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Donnelley Financial, LLC		35 W Wacker Drive			Chicago	IL	60601	
Donnelley Financial, LLC		20 Commerce Way, Ste 800	Lockbox #842282		Woburn	MA	01801-1057	
Donnelley Financial, LLC		PO Box 842282			Boston	MA	02284-2282	
Donnelley Financial, LLC		PO Box 531832			Atlanta	GA	30353-1832	
DOREBAUM, ANDREI		Address on File						
DOUG MEYER		Address on File						
DOUGHERTY, RAYMOND		Address on File						
DOUGHERTY, RAYMOND		Address on File						
Douglas Wade Carvell		Address on File						
Dow Jones & Company, Inc.	ATTN PAUL CHAMPIGNY	8251 PRESIDENTS DR	BARRON/CUSTOMER SERVICE		Orlando	FL	32809	
Dow Jones & Company, Inc.		84 Second Ave.			Chicopee	MA	01020	
Dow Jones & Company, Inc.		Subscriptions Dept.	200 Burnett Rd		Chicopee	MA	01020	
Dow Jones & Company, Inc.		1211 Avenue of the Americas			New York	NY	10036	
Dow Jones & Company, Inc.		BOX 4137			New York	NY	10261-4137	
Dow Jones & Company, Inc.		WALL ST JRNL OR BARRONS	PO Box 4137		New York	NY	10261-4137	
Dow Jones Reuters Business Interactive		PO Box 7247-0237			Philadelphia	PA	19170-0237	
Dozai, Ana		Address on File						
DRABINSKI, DANIEL J.		Address on File						
Dravis, Samantha		Address on File						
Drew Dedelow		Address on File						
Drew Thomas		Address on File						
DREW, RICHARD		Address on File						
Drilling Info, Inc.		PO Box 679093			Dallas	TX	75267-9093	
DrillingInfo		PO Box 5545			Austin	TX	78763	
Drinker Biddle & Reath LLP		One Logan Square, Ste 2000			Philadelphia	PA	19103-6996	
DRINNON, KASEY		Address on File						
DRONOV, ALEXEY		Address on File						
Dropoff, Inc.		Dept 3696	PO Box 123696		Dallas	TX	75312-3696	
DSFOP		PO Box 36023			Dallas	TX	75235-1023	
DSHS		Mail Code 2003	PO Box 149347		Austin	TX	78714-9347	
DST Asset Manager Solutions		330 W. 9th	Ste 219230		Kansas City	MO	64105	
DST RESEARCH ANALYTICS & CONSULTING, LLC		DST TECHNOLOGIES, INC	5523 Collections Center Drive		Chicago	IL	60693	
DST Systems, Inc.		2454 Collections Center Dr			Chicago	IL	60693-0024	
DST Technologies, Inc.		2454 Collections Center Drive			Chicago	IL	60693-0024	
DTCC ITP LLC		PO Box 27590			New York	NY	10087-7590	
Duane Morris LLP		30 South 17th St			Philadelphia	PA	19103-4196	
DUBOSE FUNERAL HOME		703 SOUTH ROCKWALL ST			Terrell	TX	75160	
Ducera Partners LLC		499 Park Ave, 16th Floor			New York	NY	10022	
Duff & Phelps, LLC		Benesch, Friedlander, Coplan & Aronoff	200 Public Square, Suite 2300		Cleveland	OH	44114-2378	
Duff & Phelps, LLC		2397 Paysphere Circle			Chicago	IL	60674	

0923827

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Duff & Phelps, LLC		DUFF & PHELPS, LLC	12595 Collection Center Drive		Chicago	IL	60693	
Duff & Phelps, LLP	Benesch	LouAnne Molinaro	222 Delaware Avenue, Suite 801		Wilmington	DE	19801-1611	
Duff & Phelps, LLP	David A. Landman	200 Public Square, Ste. 2300			Cleveland	OH	44114	
Duff & Phelps, LLP	Richard G. Hardy, Esq.	1660 West 2nd Street, Suite 1100			Cleveland	OH	44113	
Duffy, James B.		Address on File						
Duffy, William		Address on File						
Dun & Bradstreet	Dun & Bradstreet Inc.	PO Box 75434			Chicago	IL	60675-5434	
Dun & Bradstreet	The Rowland Law Firm	PO Box 3108			Crofton	MD	21114	
Dun & Bradstreet	The Rowland Law Firm	Ronald L. Rowland, Authorized Agent	2453 Vineyard Lane		Crofton	MD	21114	
DUNN, CHRISTOPHER		Address on File						
Dunn, John		Address on File						
DUO Security		170 West Tasman Dr			San Jose	CA	95134	
Dustin Schneider		Address on File						
DUSTIN WORLEY		Address on File						
DuWest Realty		3319 Darmouth Ave.			Dallas	TX	75205	
DuWest Realty		4403 N Central Expy			Dallas	TX	75205	
DuWest Realty		4514 Cole Avenue	Suite 1100		Dallas	TX	75205	
Dykema Gossett, PLLC		400 Renaissance Center			Detroit	MI	48243-1668	
Dynamex		Greeley Square Station	PO Box 20284		New York	NY	10001	
Dynamex		PO BOX 20284 GREELEY SQ STATION			New York	NY	10001	
Dynamex		PO Box 842304			Dallas	TX	75284-2304	
E Gallery Studios		1330 Motor Circle			Dallas	TX	75207	
eA Data Automation Services, LLC								
EA Electric		5000 Olde Towne Parkway	Suite 100		Marietta	GA	30068	
EAB HealthWorks LLC		2941 Trade Center Drive	#200		Carrollton	TX	75007-4647	
Eagle Software		400 West End Ave	Suite 8A		New York	NY	10024	
Earl F. Hale, Jr.		124 Indiana Ave			Salina	KS	67401	
EarthColor Houston Inc.		Address on File						
Earthstream Global Inc.		PO Box 840578			Dallas	TX	75284-0578	
EASLEY & MARQUIS, PLLC		800 Town & Country Blvd	Suite 300		Houston	TX	77024	
Eastern Point Trust Company		5000 LEGACY DR	STE 400		Plano	TX	75024	
Eastern Point Trust Company, Inc.	Attn Accounts Receivable	PO Box 3322			Warrenton	VA	20188-3322	
Eastland CLO Ltd.	George S. Robinson, IV	4685 Millennium Drive			Belcamp	MD	21017	
Eastland CLO, Ltd.	c/o Ogier Fiduciary Services (Cayman) Limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Eastland CLO, Ltd.	Eastland CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Eastland CLO, Ltd.		P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town, Grand Cayman		KY1-1108	Cayman Islands

092382

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Eastland CLO, Ltd. and Investors Bank and Trust Company	Eastland CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1234	Queensgate House	The Directors-Eastland CLO, Ltd.	George Town, Grand Cayman		KY1-1108	Cayman Islands
Eastland CLO, Ltd. and Investors Bank and Trust Company	Investors Bank and Trust Company Attn CDO Services Group Ref Eastland CLO	200 Clarendon St 3637 Temecula Creek Trail	Mail Code EUC 108		Boston McKinney	MA TX	02116 75070	
Eckelkamp Retirement Planning		5550 S. Ft. Apache Rd 6850 Manhattan Blvd.	Suite 101 Suite 300		Las Vegas Fort Worth	NV TX	89148-7667 76120	
Eclipse Entertainment, LLC		PO Box 110849 Address on File			Carrollton	TX	75011-0849	
EcoSystems Environmental, Inc.		701 Central Plaza	18 Harbour Road	Wan Chai	HONG KONG			HONG KONG
Ed Trampolski		18th Flr Ferrum Tower 66 Address on File	Suite 900		Seoul		100210	South Korea
Edelman Pub Relations Worldwide (HK) Ltd		3900 Essex 50 Washington St 9th Flr			Houston Norwalk	TX CT	77027 06854	
Edelman Pub Relations Worldwide Korea Ltd		11200 Rockville Pike, Ste. 310 88747 Expedite Way			Rockville Chicago	MD IL	20852 60695-1700	
Eden, Hugh B.		5950 Berkshire Ln 807 West Lynn Ste 218	Suite 200		Dallas Austin	TX TX	75225 78703	
EDGAR filings, Ltd	c/o Michael D Breen	Address on File			Edina	MN	55424	
Edgar Online		5100 Wooddale Ave 2711 N. Haskell Ave.	Suite 2070, LB 18		Dallas	TX	75201	
Edgar Online		Address on File						
Edge Realty Partners		Address on File						
Edgewater Financial LLC		Address on File						
Edjie Fox		1 Thronal Circle			Darien	CT	06820	
Edina Country Club		1040 Avenue of the Americas 4939 Collections Center Dr	8th Floor		New York Chicago	NY IL	10018 60693	
Education is Freedom		Address on File						
Edward A Barber		Address on File			New York Dallas	NY TX	10022 75230	
Edward Lin		Address on File						
Edward McRedmond		Address on File						
Effort Group, LLC		Address on File						
efinancialcareers		Address on File						
efinancialcareers		Address on File						
Eftekhari, Cyrus		Address on File						
EGON ZEHNDER INTERNATIONAL		350 PARK AVE 10515 Egret Lane			New York Dallas	NY TX	10022 75230	
Egret Management, Inc.		Address on File						
EIDSON, ALLISON		Address on File						
EIMEN, CATHERINE		Address on File						
EIMER STAHL KLEVORN & SOLBERG LLP		224 SOUTH MICHIGAN AVE 225 Park Avenue South, 7th Floor	STE 1100		Chicago	IL	60604	
EIMN, LLC	Attn Accounting Department	1000 EL CONQUISTADOR AVE			New York	NY	10003	
EL CONQUISTADOR GOLF RESORT CASINO		Address on File			Fajardo	PR	00738	
Eliatia Abate		Address on File						
Eleanor Munson, PhD		Address on File						
Electra Cruises, Inc.		3439 Via Oporto			Newport Beach	CA	92663	
Elektronik Devices Company		1712 Poinciana Ln			Plano	TX	75075	

002383

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ELGIN CAPITAL		130 JERMYN ST			London		SW1Y 4UR	United Kingdom
Eliason, Hayley		Address on File						
Eliot Weissberg	The Investors Center, Inc.	70 East Main St, POB 1447			Avon	CT	06001	
Elisa Dreier Reporting		950 Third Avenue 5th Floor			New York	NY	10022	
ELISABETH LEIDERMAN		780 Third Ave, 7th Flr			New York	NY	10017	
Elite Casino Events		Address on File						
		P.O. Box 6755			Fort Worth	TX	76115	
Elite Copy Solutions, Inc.		403 N Stemmons Freeway Ste 100			Dallas	TX	75207	
Elite Deposition Technologies		400 N. St Paul St, 13th Floor, Ste 1340			Dallas	TX	75201	
Elite Document Technology-Dallas		400 N. Saint Paul St.	Suite 1300		Dallas	TX	75201	
Elite Document Technology-Dallas		403 North Stemmons Freeway Suite 100			Dallas	TX	75207	
Elite Scheduling Services, LLC		8442 S. Union Lake Dr. SE			Alexandria	MN	56308	
Elkins McSherry		225 Liberty St	24th floor		New York	NY	10281-0000	
ELKINS/MCSHERRY, LLC	ATTN FINANCE	2 WFC	225 LIBERTY ST, 24TH FLR		New York	NY	10281	
ELKINS/MCSHERRY, LLC		1290 Avenue of the Americas	22nd Floor		New York	NY	10104	
Ellen W. Slight, Esq.	United States Attorney s Office	District of Delaware	1007 N. Orange Street, Suite 700		Wilmington	DE	19801	
Ellington, Scott	c/o Frances A Smith	Ross & Smith PC	Plaza of the Americas	700 N Pearl Street, Suite 1610	Dallas	TX	75201	
Ellington, Scott		Address on File						
EMC Integrated Systems Group		121 Central Ave	Suite 200		Grapevine	TX	76051	
Emerald City Management		4688 Reunion Dr.			Plano	TX	75024	
Emerging Portfolio Fund Research, Inc.		PO Box 417184			Boston	MA	02241-7184	
Emerson Network Power		PO BOX 70474			Chicago	IL	60673-0001	
Emert, Craig		Address on File						
EMI Environmental Group		14850 Montfort Dr Ste 205			Dallas	TX	75254	
Emma Crutenden		Address on File						
EMMANUEL, ARTHUR		Address on File						
Emmet, Marvin & Martin, LLP		120 Broadway	32nd Floor		New York	NY	10271	
Employer Compliance Service		611 Pennsylvania Ave SE #4000			Washington	DC	20003-4303	
Employment Security Division		500 East Third Street			Carson City	NV	89713-0030	
EMSI-Examination Mgmt Services, Inc		Health Service Division	PO Box 910465		Dallas	TX	75391-0465	
ENA Capital, LLC	Attn Steve Eliman and Bob Kauffman	Eliman Management Group, Inc.	4040 E. Camelback Road, Suite 250		Phoenix	AZ	85018	
Encore Discovery Solutions		Dept 2651	PO Box 122651		Dallas	TX	75312-2651	
Encore Live, LLC		600 E Exchange Ave			Fort Worth	TX	76164-8246	
Encore Productions		2012 Greenbriar Lane			Plano	TX	75074	

092384

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
EnerCom, Inc.		800 18th Street	Suite 200		Denver	CO	80202	
Energy Search Associates, LLC		7709 San Jacinto Place	Ste 206		Plano	TX	75024	
EnergyNet Services, Inc.		7201 W. Interstate 40	Suite 319		Amarillo	TX	79106	
ENGSTROM, DONNA		Address on File						
EnMark Services, Inc.		1700 Pacific Avenue	Suite 2660		Dallas	TX	75201	
ENOCH, KEVIN		Address on File						
Entwistle & Cappucci LLP		280 Park Ave	26th Floor West		New York	NY	10017	
Envestnet Tamarac		701 5th Ave, Ste 1400			Seattle	WA	98104	
Envoy Data Corporation		1310 W. Boxwood Ave			Gilbert	AZ	85233	
EPFR Global		PO Box 417184			Boston	MA	02241-7184	
Epiq eDiscovery Solutions		Dept 2651	PO Box 122651		Dallas	TX	75312-2651	
Episcopal School of Dallas	Karla Wigley	ESD Development Office	4100 Merrell Rd.		Dallas	TX	75229	
Episcopal School of Dallas		4100 Merrell Rd			Dallas	TX	75229	
Epocal		2060 Walkley Rd.			Ottawa	ON	K1G 3P5	CANADA
Equest		PO Box 2109			Wylie	TX	75098	
Equest		PO Box 171779			Dallas	TX	75217	
Equity Search Partners		200 Crescent Court, Ste 1300			Dallas	TX	75201	
Equivalent Data		4809 Westway Park Blvd.	Payment Center		Houston	TX	77041	
eRevival LLC		141 Lanza Ave	Bldg 5		Garfield	NJ	07026	
Eric Girard		Address on File						
ERIC KEPHART		Address on File						
ERIC MARK		Address on File						
Eric Pearson		Address on File						
Eric Reynolds		Address on File						
Eric Thayer		Address on File						
Erick Rawlings		Address on File						
Erin Sheehan		Address on File						
Ernst & Young		200 Plaza Drive			Secaucus	NJ	07094	
ERS		101 S Coit Rd Bldg 36, Ste 297			Richardson	TX	75080	
Ersine Chambers - Andrew Blake		33 Chancery Lane			London		WC2A 1EN	United Kingdom
Ersine Chambers - Michael Todd		33 Chancery Lane			London		WC2A 1EN	United Kingdom
Escudero, Gaston		Address on File						
ESD	ATTN SARA CAMPBELL	EPISCOPAL SCHOOL OF DALLAS	4100 MERRELL RD		Dallas	TX	75229	
Esquire Deposition Services, LLC		PO Box 827829			Philadelphia	PA	19182-7829	
Esquire Deposition Solutions, LLC		PO Box 846099			Dallas	TX	75284	
Esquire Litigation Solutions, LLC		PO Box 785751			Philadelphia	PA	19178-5756	
Estevez, Jaime		Address on File						
Estudio ROVIRA		Address on File						
ETCI		1850 North Greenville Ave #158			Richardson	TX	75081	
ETrade Financial	Altn AR/Mutual Funds	PO Box 3512			Arlington	VA	22203	

002383



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
EUROMONEY								
INSTITUTIONAL INVESTOR		PO Box 4009			Chesterfield	MO	63006-4009	
EuroUSA Shipping Inc.		1826 Hollars Place			Middleburg	FL	32068	
Evans & McFarland, LLC		4643 S. Ulster, Suite 800			Denver	CO	80237	
Evans, Christian		Address on File						
EventWork Photography, LLC		1712 Midcrest Dr			Plano	TX	75075	
Evercore Restructuring LLC		55 East 52 St			New York	NY	10055	
eVestment		5000 Ole Towne Parkway	Suite 100		Marietta	GA	30068	
Evoque Data Center		250 Vesey Street 15th Floor			New York	NY	10281-0000	
EWIRE Inc		One Lincoln Centre	Suite 1060		Dallas	TX	75240	
EWING, LEAH		Address on File						
Exagere LLC		227 Dauphine			New Orleans	LA	70112	
Exclaimer Ltd.		445 Park Avenue	9th Floor		New York	NY	10022	
EXECUTIVE BEVERAGE SERVICE		PO BOX 850783			Richardson	TX	75081	
EXECUTIVE BEVERAGE SERVICE		5032 DICKENS LN			CARROLLTON	TX	75010-4915	
Executive Charge, Inc.		1440 39th St			Brooklyn	NY	11218	
Executive Liquidation		100 Redneck Avenue			Moonachie	NJ	07074	United Kingdom
Executive Office Group Limited		23 Berkeley Square			London		W1J 6HE	
Executive Scheduling Associates, Inc.		215 Lake Blvd. Ste 367			Redding	CA	96003	
Experience, Inc.		2 Faneuil Hall Marketplace	3 rd Floor		Boston	MA	02109	
Experis Finance US, LLC		PO Box 905378			Charlotte	NC	28290-5378	
EXPERT PAY		PO BOX 659791			San Antonio	TX	78265-9791	
Exterior Consulting Innovations, Inc.		1406 S Clark Rd			Duncanville	TX	75137-2811	
F5		801 5th Ave			Seattle	WA	98104-0000	
Fabriclean, Inc.		11-39 50th Ave			Long Island City	NY	11101	
Factiva		PO BOX 30994			New York	NY	10261	
Factiva Factory Builder Stores		DJRBI, LLC	PO Box 7247-0237		Philadelphia	PA	19170-0237	
FACTSET RESEARCH SYSTEMS, INC.		512 E Dallas Rd	Ste 500		Grapevine	TX	76051	
FACTSET RESEARCH SYSTEMS, INC.		301 Merritt 7, 3rd Floor			Norwalk	CT	06851	
Fafinski Mark & Johnson, P.A.		PO BOX 414756			Boston	MA	02241-4756	
Fair Harbor Capital, LLC		775 Prairie Center Drive, Suite 400			Eden Prairie	MN	55344	
Fair Harbor Capital, LLC	As Assignee of Action Shred of Texas	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	As Assignee of CVE Technologies Group Inc.	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	As Assignee of Daniel Sheehan & Associates, PLLC	Ansonia Finance Station	PO Box 237037		New York	NY	10023	

002388

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Fair Harbor Capital, LLC	As Assignee of Vengroff Williams Inc as Authorized Agent of American Arbitration Association	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	Frederick Glass	130 West 57th Street, 5th Floor			New York	NY	10019	
Fair Market Life Settlements Corporation		435 Ford Rd	Suite 120		St. Louis Park	MN	55426	
FAIRMONT DALLAS		1717 N AKARD ST	COLIZ BAKER, GROUP BILLING COORDINATOR		Dallas	TX	75201	
Faith Petersen		Address on File						
Falcon E&P Opportunities GP, LLC	c/o PetroCap LLC	Marc Manzo	2602 McKinney Avenue	Suite 400	Dallas	TX	75204	
Family Compass		4210 Junius Street			Dallas	TX	75246	
Family Office Association		500 West Putnam Ave.	Suite 400		Greenwich	CT	06830	
Fanning & Associates		PO Box 37			Denton	TX	76202	
Fanning & Associates		226 Sanders Rd			Denton	TX	76210	
FARIA, RICHARD		Address on File						
Farouk Z Lajji		Address on File						
FASKEN MARTINEAU DUMOULIN		STE 4200 TORONTO DOMINION BANK TOWER	BOX 20 TORONTO-DOMINION CENTRE		TORONTO	ON	M5K 1N6	CANADA
FASTFRAME		3001 Knox Street	#105		Dallas	TX	75205	
FASTFRAME		11107 Sesame Street			Dallas	TX	75238	
Fat Ox		7715 E Montebello Avenue			Scottsdale	AZ	85250	
Fauxcades, Inc.		8888 Governors Row			Dallas	TX	75247	
Feast of Sain Arnold		8 Fourth Street			Colorado Springs	CO	80906	
Federal Insurance Company	Federal Insurance Company	202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
Federal Insurance Company	c/o Chubb	202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
FedEx		4103 COLLECTION CENTER						
FedEx		DR			Chicago	IL	60693	
FedEx		Dept CH PO Box 10306			Palatine	IL	60055-0306	
FedEx		PO Box 94515			Palatine1	IL	60094-4515	
FedEx		PO Box 660481			Dallas	TX	75266-0481	
FEDORYSHYN, ERIC		Address on File						
FEHLIG, STACEY		Address on File						
Felhaber Larson Fenlon & Vogt		220 Southy 6th Street	Ste 2200		Minneapolis	MN	55402-4504	
Felicity Toube QC		3-4 South Square	Grays Inn		London		WC1R 5HP	United Kingdom
Ferguson, Misty		Address on File						
FERRELL, JOHN		Address on File						
Fetzer Architectural Woodwork		6223 West Double Eagle Circle			West Valley City	UT	84118	
Fidelity Information Services		PO Box 911653			Dallas	TX	75391-1653	
Fidelity Information Services Inc		PO Box 18012			Ashburn	VA	20146	

092387

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Fidelity Information Services Inc		Payment Processing Center	PO Box 4535		Carol Stream	IL	60197-4535	
Fidelity Investments Institutional		Operations Company, Inc.	PO Box 73307		Chicago	IL	60673-7307	
Fidelity National Information Services		Payment Processing Center	PO Box 18012		Ashburn	VA	20146	
FIGARI & DAVENPORT LLP		901 MAIN ST	3400 BANK OF AMERICA PLAZA		Dallas	TX	75202-3796	
FINANCIAL ACCOUNTING STANDARDS BOARD		PO BOX 630420			Baltimore	MD	21263-0420	
FINANCIAL AGENT		FEDERAL TAX DEPOSIT PROCESSING	PO BOX 970030		Saint Louis	MO	63197	
Financial Data Services, Inc.	Cash Management	4800 Deer Lake East Dr, 2nd Flr			Jackson	FL	32246-6484	
Financial Fineprint, Inc		1619 3rd Ave Apt 7K			New York	NY	10128-3036	
FINANCIAL GRAPHIC SERVICE, INC.		2910 S 18th AVE			Broadview	IL	60155-4727	
Financial Graphic Services		PO Box 85090			Chicago	IL	60680-0851	
Financial Industry Regulatory Authority		15200 Omega Drive, Suite 210			Rockville	MD	20850	
Financial Investment News		41 Union Square West	Suite 1021		New York	NY	10003	
Financial Investment News		267 Fifth Avenue	Suite 1010		New York	NY	10016	
Financial Media Group, LLC		9635 Maroon Circle	Ste 150		Englewood	CO	80112	
Financial Planning Association		1290 N Broadway # 1625			Denver	CO	80203-2122	
Financial Planning Association of Iowa	Attn Erin Ramsey	914 NE 53rd Court			Ankeny	IA	50021	
Financial Research Associates	ATTN Teri Lewis	18705 NE Cedar Drive			Battle Ground	WA	98604	
Financial Research Associates, LLC	Attn Teri Lewis	18705 NE Cedar Drive			Battle Ground	WA	98604	
Financial Research Associates, LLC		200 Washington Street	Suite 201		Santa Cruz	CA	95060	
Financial Risk Management		888 Seventh Ave			New York	NY	10019	
Financial Services Institute		607 14th St, NW	Suite 750		Washington	DC	20005	
Financial Services Institute		PO Box 116730			Atlanta	GA	30368-6730	
Financial Times		PO Box 1627			Newburgh	NY	12551-9976	
Financial Tracking		1111 East Putnam Ave	Ste 304		Riverside	CT	06878-0000	
Financial Tracking Technologies LLC		2 Soundview Dr, Ste 100			Greenwich	CT	06830	
Financial Tracking Technologies LLC		1111 E Putnam Ave.	Suite 304		Riverside	CT	06878	
Financial West Group	Attn Nicole White	4510 E. Thousand Oaks Blvd.			Westlake Village	CA	91362	
Fink, Jason		Address on File						
FINRA		1735 K Street, NW			Washington	DC	20006	
Fire Works Media Productions		2440 Pebblebrook Ct.			Grand Prairie	TX	75050	
First Allied Securities	Attn Commission Accounting	655 W. Broadway, 11th Flr			San Diego	CA	92101	

092388

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
First American Title Insurance Company		8311 W. Sunset Road	Suite 100		Las Vegas	NV	89113	
First Financial Network, Inc.		14000 Quail Springs Pkwy, Ste 200			Oklahoma City	OK	73134	
First Foundation Advisers		18101 Von Karman Avenue	Suite 750		Irvine	CA	92612	
First Foundation Inc.		18101 Van Karman Avenue	Ste 700		Irvine	CA	92612	
First Page Management LLC dba StatusLabs		151 South 1st	Ste 100		Austin	TX	78704-0000	
First Presbyterian Church		One West Putnam Ave			Greenwich	CT	06830	
First Southwest		325 North St. Paul St	Suite 800		Dallas	TX	75201	
First Trust Highland Floating Rate Fund		330 Bay St Ste 1300			Toronto	ON	M5H2S8	CANADA
FIS Brokerage & Securities Services LLC		62446 Collections Center Drive			Chicago	IL	60693-0624	
FIS Investment Systems LLC		601 Riverside Ave			Jacksonville	FL	32204	
Fischer Porter & Thomas, PC		440 Sylvan Avenue, Suite 130			Englewood Cliffs	NJ	07632-2700	
FISH & RICHARDSON P.C.		PO BOX 3295			Boston	MA	02110	
FITEH, STEPHANIE		Address on File						
FITEH ZEGEYE		Address on File						
FITZSIMMONS, BRIAN		Address on File						
Five Blocks, Inc.		5967 West 3rd Street	Suite 307		Los Angeles	CA	90036	
FJJ INTERNATIONAL		858 TOWER VIEW CIRCLE			New Hope	PA	18938	
Flagship Cruises & Events		PO Box 120751			San Diego	CA	92112	
Flaherty, Sensabaught, & Bonasso, PLLC		200 Capital St	PO Box 3843		Charleston	WV	25338-3843	
Fleming Zulack Williamson Zauderer LLP		One Liberty Plaza	35th Floor		New York	NY	10006-1404	
Flexential		11900 East Cornell Avenue	Building B, 3rd Floor		Aurora	CO	80014-0000	
Flexential Colorado Corp.		8809 Lenox Point Drive	Suite G		Charlotte	NC	28273	
Flexential Colorado Corp.		PO Box 732368			Dallas	TX	75373-2368	
Flink, Robert		Address on File						
Fiorance & Associates Consulting		1475 Richardson Dr.	Suite 270		Richardson	TX	75080	
Florida Department of Banking & Finance		200 East Gaines Street			Tallahassee	FL	32399-6502	
FLORIDA DEPARTMENT OF REVENUE		5050 W TENNESSEE ST			Tallahassee	FL	32399-0135	
Florissant Geological, LLC		5214 Vanderbilt Ave.			Dallas	TX	75206	
Flossie ORiley Photography		701 Woodcrest Dr			Hurst	TX	76053-4921	
Foley Gardere		Foley & Lardner LLP	2021 McKinney Avenue Suite 1600		Dallas	TX	75201	
FOLLEY GARDERE		2021 MCKINNEY AVENUE	SUITE 1600		Dallas	TX	75201	
Foley Gardere, Foley Lardner LLP		2021 McKinney Avenue, Ste. 1600			Dallas	TX	75201	
Folks & Associates		PO Box 851168			Mesquite	TX	75185-1168	
Forbes		PO BOX 5468			Harlan	IA	51593-0968	
Forbes		PO Box 5474			Harlan	IA	51593-0974	
Fordham, Michael		Address on File						

0923835

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Forensic Risk Alliance		Third Floor, Audrey House	Ely Place		London		EC IN- 6SN	United Kingdom
Forside Consulting Services, LLC		3 Canal Plaza	Suite 100		Portland	ME	04101	
Forside Consulting Services, LLC		PO Box 7556			Portland	ME	04112-7556	
Forside Financial Services, LLC		3 Canal Plaza	Suite 100		Portland	ME	04101	
Forest Resource Consultants, Inc		964 Georgia Ave Ste 100			Macon	GA	31201-6766	
Forest2Market, Inc.	ATTN Accounts Receivable	10030 Park Cedar Drive	Suite 201		Charlotte	NC	28210-8902	
Forney & Terrell Alarm Systems, LLC		P.O. Box 341			Terrell	TX	75160	
Forns, Alison		Address on File						
Forrest A. Garb & Associates, Inc.		5310 Harvest Hill, Ste 130			Dallas	TX	75230	
Forshey & Prostok, L.L.P. - IOLTA		777 Main St, Ste 1290			Fort Worth	TX	76102	
FORSIGHT Resources, LLC		8761 Dorchester Rd	Suite 102		North Charleston	SC	29420	
Fort Worth Stock Show Syndicate		PO Box 17005			Fort Worth	TX	76102	
Fort Worth Wildcaters		777 Main Street #800			Fort Worth	TX	76102	
Fortune		PO Box 60400			Tampa	FL	33660-0400	
Fortune		PO BOX 61460			Tampa	FL	33661-1460	
FORTUNE Personnel Consultants of Troy		560 Kirts Blvd	Suite 102		Troy	MI	48084	
Foundation for BrainHealth Advances	Center for BrainHealth	2200 West Mockingbird Lane			Dallas	TX	75235	
Four Seasons Plantscaping, LLC		139 Turtle Creek Blvd.			Dallas	TX	75207-6807	
Four Seasons Plantscaping, LLC		PO Box 793429			Dallas	TX	75379-0000	
FOWLER HATLEY		Address on File			Philadelphia	PA	19103-3222	
Fox Rothschild LLP	Attn Accounts Receivable-60	2000 Market St, 20th Floor			Philadelphia	PA	19103-3222	
FOX, SEAN		Address on File						
FPA Connecticut State Conference		95 West St			Rocky Hill	CT	06067	
FPA of Middle Tennessee	Patricia Fisher, Chapter Exec	PO Box 150608			Nashville	TN	37215	
FPA South Florida		8930 State Rd. 84, Ste 316			Davie	FL	33324	
FPA NJ		551 Valley Rd #365			Upper Montclair	NJ	07043	
FPC	FORTUNE Personnel Consultants of Troy	560 Kirts Blvd.	Suite 102		Troy	MI	48084	
FPC OF SAVANNAH, INC.		PO BOX 8846			Savannah	GA	31412	
FPG CT Owner LP		PO Box 5297	Lockbox 305297		New York	NY	10008-5297	
FPG Galleria Two Owner, LP		PO Box 3085			Hicksville	NY	11802-3085	
FRAGOMEN, DEL REY, BERNSEN & LOEWY LLP		99 WOOD AVE SOUTH	10TH FLR		ISELIN	NJ	08830	
Frances Wildhaber		Address on File						

002390

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Franchise Tax Board	Bankruptcy Section MS A340	PO Box 2952			Sacramento	CA	95812-2952	
FRANCHISE TAX BOARD		PO BOX 942857			Sacramento	CA	94257-0511	
FRANCIS X GRAY & CO		122 W 26TH ST	STE 1101		New York	NY	10001	
Frank Cunningham		Address on File						
Frank Russell Company		NW 6327	PO Box 1450		Minneapolis	MN	55485-6327	
Frank Waterhouse	c/o David Neier	Winston Strawn LLP	200 Park Avenue		New York	NY	10166	
Frank Waterhouse	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue		New York	NY	10018	
Frank Waterhouse	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Frank Waterhouse	Ross & Smith, PC	Plaza of the Americas	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
Frank Waterhouse		Address on File						
Franke Foodservice Solutions		3149 Paysphere Circle			Chicago	IL	60674-0031	
Frederick C. Moss		Address on File						
FreedomPark LP		7501 Esters Blvd	Ste. 130		Irving	TX	75063	
FreeMotion Fitness		PO Box 99661			Chicago	IL	60690	
FRICK, TINA		Address on File						
FridsonVision		54 W 21st ST	STE 1007		New York	NY	10010	
Fried Frank Harris Shriver & Jacobson		1 Penn Plaza Ste 3600			New York	NY	10119	
Fried, Frank, Harris, Shriver & Jacobson		One New York Plaza			New York	NY	10004-1980	
Friedman Kaplan Seiler & Adelman LLP		One New York Plaza			New York	NY	10004-1980	
Friedreichs Ataxia Research Alliance		1633 BROADWAY			New York	NY	10019-6708	
Friends of the Dallas Fire Dept.		533 W. Uwachlan Avenue			Downington	PA	19335	
Friends of the Dallas Police	c/o Ray Cheery	Dallas Security Systems PO Box 550939			Dallas	TX	75355-0939	
Friends of the IDF		3232 McKinney Ave	#855		Dallas	TX	75204	
FRITZ, ERIC		29 E MADISON ST			Chicago	IL	60602	
Frizell, Madeline		Address on File						
Frizell, Madeline		Address on File						
Front Sight Focus	Attn Tamera Watt	PO Box 12292			Raleigh	NC	27605	
Frontier State Bank	Attn Mr Steve Elliott	5100 South I-35 Service Road			Oklahoma City	OK	73129	
Frontline Source Group, Inc.		901 Main Street	Suite 4010		Dallas	TX	75202	
FSC Securities Corporation	Attn Reimbursement Processing	Lockbox 101092	3585 Atlanta Ave		Hapeville	GA	30354	
FSC Securities Corporation	Attn Shelly Kooiker	3737 Woodland Ave, Ste 500			West Des Moines	IA	50266	
FT Interactive Data		32 CROSBY DR			Bedford	MA	01730	
FT Interactive Data Corporation		PO Box 98616			Chicago	IL	60693	
FTI CONSULTING		22 Crosby Drive			Bedford	MA	01730-0000	
FTI CONSULTING		2001 Ross Ave	Suite 400		Dallas	TX	75201	
FTI CONSULTING		PO BOX 630391			Baltimore	MD	21263-0391	

0023937

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
FTI Consulting, Inc.		Three Times Square	10th floor		New York	NY	10036-0000	
Fuentes, Brian		Address on File						
Fulbright & Jaworski		2200 Ross Ave Ste 2800			Dallas	TX	75201-2784	
Fulbright & Jaworski		FULBRIGHT TOWER	1301 MCKINNEY	SUITE 5100	Houston	TX	77010-3095	
Fullmer, Kevin		Address on File						
Fullmer, Kevin		Address on File						
Fun Time Faces TX		417 Parkhurst Drive			Dallas	TX	75218	
FUNDFIRE	Money-Media, Inc.	1430 Broadway, 12th Flr	Suite 1208		New York	NY	10018	
FURNITURE FOR BUSINESS		14 CARLSON COURT			London			United Kingdom
Furniture Solutions Now Ltd.		1505 Oak Lawn Ave	Suite 300		Dallas	TX	SW15 2NQ 75207	
FUSE Research Network, LLC		200 Highland Avenue	Suite 403		Needham	MA	02494	
Fusion GPS		2122 P Street NW	Suite 202		Washington	DC	20037	
G.L. Seaman & Company		4201 International Parkway			Carrollton	TX	75007	
G.Neil Corporation		PO Box 451179			Sunrise	FL	33345-1179	
Gabriel Moss QC					London			United Kingdom
GAGE, CASEY S		3-4 South Square, Grays Inn						
Gail Davis & Associates, Inc.		Address on File	Suite 740		Dallas	TX	75219	
Gail Spurgeon		Address on File						
Gallop, Johnson & Neuman, L.C.		101 S Hanley Ste 1600			Saint Louis	MO	63105	
Game On!		502 South 2nd Avenue			Dallas	TX	75226	
Gaming Today		PO Box 93116			Las Vegas	NV	89193	
Garcia & Associates Security		Two Penn Plaza Ste 1500			New York	NY	10121	
GARCIA, ERICKA		Address on File						
GARDERE WYNNE SEWELL LLP		1000 LOUISIANA	STE 3400		Houston	TX	77002-5011	
Gardner Haas PLLC		2501 N. Harwood Street	Suite 1250		Dallas	TX	75201	
Gardner, William		Address on File						
Garland Independent School District		c/o Perdue Brandon Fielder et al	1919 S. Shiloh Road, Suite 310, LB 40		Garland	TX	75042	
Garman Turner Gordon	Linda D. Reece	Address on File						
Garman Turner Gordon	William M. Noall	7251 Amigo St Ste 210			Las Vegas	NV	89119-4302	
Gartner Inc		PO BOX 911319			Dallas	TX	75391-1319	
Gary Cao		Address on File						
Gary Durham Consulting, LLC		200 Crescent Court	Suite 1414		Dallas	TX	75201	
Gary Fitzsimmons, District Clerk		600 COMMERCE ST	STE 716		Dallas	TX	75202-4606	
Gary L. Gardner		Address on File						
Gary Sinsie Foundation		PO Box 368			Woodland Hls	CA	91365-0368	
Gary V McGowan		Address on File						
GARZA, LAUREN		Address on File						
Gateway Financial Advisors, Inc.		4101 Dublin Blvd.	Suite F, PMB 57		Dublin	CA	94568	
GATHINGS, SALLY		Address on File						
GATZKI, KENT		Address on File						

09/23/22



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
GAUNTT, AMANDA		Address on File						
Gaurav Singhal		Address on File						
Gautier, Chris		Address on File						
Gazelle Court Reporting Services, LLC		2807 Allen Street, No 727			Dallas	TX	75204	
GDHCC		4622 MAPLE AVE	STE 207		Dallas	TX	75219	
Geeks Who Drink LLC		9450 SW Gemini Dr # 84921			Beaverton	OR	97008-7105	
General American Life Insurance		PO Box 790201			Saint Louis	MO	63179-0196	
General Information Services	ATTN Sara Leslie	12770 Coit Rd, Ste 300			Dallas	TX	75251	
General Information Services		PO Box 538450			Atlanta	GA	30353-8450	
Geomap Company		PO Box 671077			Dallas	TX	75267-1077	
George Bates		Address on File						
George Catering		PO Box 140537			Dallas	TX	75214	
GEORGE FEIGER IRA		Address on File						
George Mathew		Address on File						
George W. Bush Foundation		2943 SMU Blvd	Leslie Cravens, Catering		Dallas	TX	75205	
George W. Bush Foundation		PO Box 600610			Dallas	TX	75360	
George W. Bush Presidential Center		Library and Museum	2943 SMU Boulevard		Dallas	TX	75205	
GEORGIA DEPARTMENT OF REVENUE		2943 SMU Boulevard			Dallas	TX	75205	
GEORGIA DEPARTMENT OF REVENUE		TAXPAYER SERVICES DIVISION	PO BOX 105499		Atlanta	GA	30348-5499	
GEORGIA DEPARTMENT OF REVENUE		Processing Center	PO Box 740239		Atlanta	GA	30374-0239	
GEORGIA DEPARTMENT OF REVENUE		PROCESSING CENTER	PO BOX 740320		Atlanta	GA	30374-0320	
Georgia Secretary of State		2 Martin Luther King Jr. Drive	Suite 820 West Tower		Atlanta	GA	30334	
Geraghty, Dougherty and Edwards		1531 Hendry St, PO Box 1605			Ft. Myers	FL	33902	
Gerry Gartenberg Productions, Inc.		3 New York Avenue			White Plains	NY	10606	
Gerson Lehman Group		850 Third Ave	9th Floor		New York	NY	10022	
Gerson Lehman Group		BOX 200589			Pittsburgh	PA	15251-0589	
Getty Images US Inc.		PO Box 84434			Seattle	WA	98124-5734	
GHV Settlement Fund		920 N Stone Ave			Lagrange Park	IL	60526	
Gianna Cerullo	C/O Richard Haskell	Address on File						
GIBB, ALLISON		Address on File						
Gibbs & Bruns LLP		1100 Louisiana Street	Suite 5300		Houston	TX	77002	
GIBBPRODUCTIONS		2429 Connecticut Lane			Dallas	TX	75214	
Gibson, Dunn & Crutcher LLP		333 South Grand Ave			Los Angeles	CA	90071	
Gifford Fong Associates		3658 Mt. Diablo Boulevard	Suite 200		Lafayette	CA	94549-4751	
Gigantic Color		PO Box 740209, Dept# 7052			Atlanta	GA	30374	
Gilbert Bromley		Address on File						
Gilbert Martinez Jr.		Address on File						
GILCHRIST, CLINT		Address on File						
GILL, NICOLE		Address on File						
GILLES, ERIN		Address on File						

0923939

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Gillian C. Sartini		Address on File						
GILLIAN, KATIE		Address on File						
Gils Elegant Catering		Address on File						
GIMBEL, JESSICA D.		1001 MacArthur Blvd			Grand Prairie	TX	75050	
Girard Securities, Inc.		Address on File						
GIRARD, ERIC	Attn Connie Goodell	5405 Morehouse Dr Ste 135			San Diego	CA	92121-4767	
		Address on File						
Girard, Kovarik & Associates	Attn Robert Danion	101 N. Clematis St, Ste 200			West Palm Beach	FL	33401	
GLASGOW, SAMUEL		Address on File						
Glassdoor		1 Harbor Drive	Suite 300		Sausalito	CA	94965	
Glassdoor		Dept 3436	PO Box 123436		Dallas	TX	75312-3436	
Glast, Phillips, & Murray		2200 One Galleria Tower	13355 Noel Rd, LB 48		Dallas	TX	75240-1518	
GLC Advisors & Co., LLC		451 Jackson Street	2nd Floor		San Francisco	CA	94111	
Gleneagles CLO, Ltd	The Directors	PO Box 1093 GT	Queensgate House, South Church Street		Grand Cayman		KY1-11-8	Cayman Islands
Gleneagles CLO, Ltd.		PO Box 1093 GT, Queensgate House	South Church Street		Grand Cayman			Cayman Islands
Gleneagles CLO, Ltd.								
JPMorgan Chase Bank, National Association	JPMorgan Chase Bank, National Association	600 Travis 50th Floor	Worldwide Securities Service	Gleneagles CLO, Ltd. Telecopy	Houston	TX	77002	
GLENN KIM		Address on File						
Glenn Morrison		Address on File						
Global Alpha Forum, LLC		30 Old Kings Hwy South			Darien	CT	06820	
Global Experience Specialists, Inc.		Bank of America, PO Box 96174			Chicago	IL	60693	
GLOBAL FINANCIAL SERVICES		PO BOX 856460			Louisville	KY	40285-6460	
Global Recruiters of Mid-Cities		PO Box 2165			Bedford Park	IL	60499-2165	
Global Shares Inc.		111 Town Square Place	Suite 1401		Jersey City	NJ	07310	
Global Shares Ireland Ltd		Unit 2, Building D,	West Cork Technology Park Clonkality Co. Ste 100		Cork		P85 EY90	IRELAND
GlobalMacro Partners, LLC		1755 S. Naperville Rd			Wheaton	IL	60189	
GLOBE STORAGE & MOVING CO. INC		36 BLEECKER ST						
Glocap Search LLC		156 W 56th St.	4th Floor		New York	NY	10012	
Gloss Luxury Event Rentals		6525 Briarhaven Drive			New York	NY	10019	
GM SNYDER AND ASSOCIATES					Dallas	TX	75240	
GoDaddy		300 Ozark Trail Drive	Suite 104		Saint Louis	MO	63011	
Godfrey		14455 N. Hayden Rd.	Ste. 219		Scottsdale	AZ	85260	
Godier, Lindsey		1000 Louisiana	Suite 5100		Houston	TX	77002-5096	
Goetz, Matthew X.		Address on File						
Goetz, Matthew X.		Address on File						
Goglia PLLC		Address on File						
		4519 Melissa Lane			Dallas	TX	75229	
Gold Crown Valet Parking, Inc.		901 Waterfall Way	Suite 107		Richardson	TX	75080	
GOLD LION		8043 Abramshire Ave			Dallas	TX	75231	

002394

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Gold Medal Strategies, Inc.		319 1st Street West			Tierra Verde	FL	33715	
Gold Star Distributors, Inc.		PO Box 831150			Richardson	TX	75083-1150	
Golds Gym International	Altn Corporate Billing	125 E John Carpenter Frwy	Suite 1300		Irving	TX	75062	
Golds Texas Holdings Group, Inc		4001 Maple Avenue	Suite 200		Dallas	TX	75219	
Goldsmith Associates, PLLC		4001 Maples Avenue Ste 200			Dallas	TX	75219-0000	
GOLDSMITH, JASON		6540 Highgate Lane			Dallas	TX	75214	
GOLDSMITH, SARAH B.		Address on File						
Golf Balls Galore, Inc.		Address on File						
GONZAGA, GABRIELLA		2181 J and C Blvd			Naples	FL	34109	
GONZALEZ, EVAN		Address on File						
GOOD FULTON & FARRELL		Address on File						
Goodwin and Marshall, Inc.		2808 FAIRMOUNT ST	STE 300		Dallas	TX	75201	
GOODWIN PROCTER LLP		2405 Mustang Drive			Grapevine	TX	76051	
Gordon, Fournaris & Mammarella, P.A.		EXCHANGE PLACE	53 STATE STREET		Boston	MA	02109	
Gosserand, Boyd		1925 Lovering Avenue			Wilmington	DE	19806	
Gotham Promotions		Address on File						
GourmeATS - Kevin Ashade		67 Sullivan St			New York	NY	10012	
Governance Re Ltd.		1407 Main St.	Apt 1703		Dallas	TX	75202	
Governance Re Ltd.		Wellesley House North	2nd Floor, 90 Pitts Bay Road		Pembroke		HM 08	Bermuda
Governance RE Ltd.		Wellesley House North, 2nd Floor	90 Pitts Bay Road		Pembroke		HM 08	Bermuda
GP Industries, Inc.		Clarendon House	2 Church St		Hamilton		HM 11	Bermuda
GPI Lee Parkway, LP		3230 Riverside Ave #110-A			Paso Robles	CA	93446	
Grace Chang		3333 Lee Parkway			Dallas	TX	75219	
Grafton Hospitality		Address on File						
Graham, Jacquelyn		340 South US Highway 1 Ste 306			Jupiter	FL	33477	
Grand Street Settlement		Address on File						
Grant Thornton LLP		80 Pitt Street			New York	NY	10002	
Grant, Jennifer		33570 Treasury Center			Chicago	IL	60694-3500	
Grants Interest Rate Observer		Address on File						
Grapevine Consultants		233 Broadway Fl 24			New York	NY	10279-2502	
Grasshopper Lawn & Patio, LLC		3003 Double Creek Drive			Grapevine	TX	76051	
GRATEKE, RYAN		1002 Ashby Dr			Allen	TX	75002	
Graubard Miller		Address on File						
Graves, Vanessa		Address on File						
Gray Reed & McGraw LLP	Jason S. Brookner	Address on File						
GRAY, MATTHEW	Mark Gargiulo - CFO	1601 Elm Street, Suite 4600			Dallas	TX	75201	
Grayson CLO Corp., et al		1300 Post Oak Blvd., Suite 2000			Houston	TX	77056	
Grayson CLO Ltd.		Address on File						
		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
	c/o Ogler Fiduciary Services (Cayman) Limited	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands

002394

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Grayson CLO Ltd.	Grayson CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Grayson CLO, Ltd.	Investors Bank and Trust Company c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town, Grand Cayman			Cayman Islands
Grayson CLO, Ltd. Investors Bank & Trust Company	Elizabeth Weller	P.O. Box 1234	Queensgate House South Church Street	The Directors - Grayson CLO, Ltd.	George Town, Grand Cayman	KY	1-1108	Cayman Islands
Grayson County		Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
Great American Photo Booths		3525 Melanie Ln			Plano	TX	75023	
Great Investors Best Ideas Foundation		3879 Maple Avenue	Ste 350		Dallas	TX	75219	
Great Northern Insurance Company, Chubb National Insurance Company and Federal Insurance Company		202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
Great Performances	c/o Chubb	2417 3rd Ave Fl 3			Bronx	NY	10451-6339	
Great Point Capital LLC		200 W Jackson #1000			Chicago	IL	60606	
Great Southern Bank		8201 Preston Road	Suite 305		Dallas	TX	75225	
Great Value Storage		9530 Skillman Street			Dallas	TX	75243	
Great Value Storage		401 Congress Ave, 33rd Flr			Austin	TX	78701	
Greater Talent Network, Inc.		437 Fifth Avenue			New York	NY	10016	
Green, Allison		Address on File						
GREEN, JASON		Address on File						
Greenberg Traurig		2200 Ross Avenue	Suite 5200		Dallas	TX	75201	
Greenberg Traurig		1000 LOUISIANA ST	STE 1800		Houston	TX	77002	
Greenbriar CLO, Ltd.	c/o Maples Finance Limited	PO Box 1093GT	Boundary Hall, Cricket Square	George Town	Grand Cayman		KY1-11-8	Cayman Islands
Greenbriar CLO, Ltd.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Greenbriar CLO, Ltd. and State Street Bank and Trust Company	Greenbriar CLO, Ltd. c/o Maples Finance Limited	P.O.Box 1093GT	Boundary Hall Cricket Square		George Town, Grand Cayman	KY	1-9902	Cayman Islands
Greenbriar CLO, Ltd. and State Street Bank and Trust Company	Company Attn CDO Services Group	200 Clarendon St	Mail Code EUC 108		Boston	MA	02116	
Greenway - 4641 Production, L.P.	c/o Robert Lynn Management	4851 LBJ Freeway	Suite 1000		Dallas	TX	75244	
Greenway - 4641 Production, L.P.	c/o Trinity Interests, Inc.	12750 Merit Dr Ste 1300			Dallas	TX	75251	
Greenway - 4641 Production, L.P.		2808 Fairmount Street	Ste 100		Dallas	TX	75201	
Greenway - 4641 Production, L.P.		5924 ROYAL LANE	STE 250		Dallas	TX	75230	
GREENWICH STRATEGIC ADVISORS LLC		42 CARY ROAD			Riverside	CT	06878	
Greenwood Office Outfitters		2951 Suffolk Drive	Suite 640		Fort Worth	TX	76133-1149	
Greg Campbell		Address on File						

002398

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Greg Jackson		Address on File						
Greg Lussen		Address on File						
GREGG IMAMOTO		Address on File						
Gregory C. Bussey		Address on File						
Gregory Chang		Address on File						
Gregory FCA Communications		27 West Athens Avenue			Ardmore	PA	19003	
Gregory Polsen		Address on File						
Gregory Webster		Address on File						
GREGORY, MICHAEL		Address on File						
GREGORY, MICHAEL		Address on File						
Greig Sagers		Address on File						
Greylane Partners, LLC		P.O. Box 733976			Dallas	TX	75373-3976	
Greylane Solutions		PO Box 733976			Dallas	TX	75373-3976	
Greylane Solutions LLC		1 Sansome Street, Ste 1895			San Francisco	CA	94104-4432	
GRIFFITH, CANDICE		Address on File						
GRIFFITH, CANDICE C.		Address on File						
GRIFFITH, MATTHEW		Address on File						
GRO Designs, LLC		3500 Commerce St. #100			Dallas	TX	75226	
GROFF, SCOTT		Address on File						
Groom Law Group		1701 Pennsylvania Ave NW	Ste 1200		Washington	DC	20006	
GROS EXECUTIVE RECRUITERS, INC		1616 WESTGATE CIRCLE			Brentwood	TN	37027-8019	
Group Services Inc		Condominium San Alberto,						
GROVES, SHAWN		Suite 721	605 Conado Ave		San Juan	PR	00907	
Gruber Hurst Johansen Hail		Address on File						
Shank LLP		PO Box 600041			Dallas	TX	75360-0041	
GRUBHUB for Work		PO Box 748570			Los Angeles	CA	90074-8570	
GrubHub Holdings Inc.		111 W. Washington Street	Ste 2100		Chicago	IL	60602-0000	
Grubhub Holdings Inc.		5050 Capitol Ave Apt 252			Dallas	TX	75206-7724	
GSB Digital		30-30 47th Avenue	Suite 5500		Long Island City	NY	11101	
GT Dallas Properties LLC		PO Box 3085			Hicksville	NY	11802-3085	
G-TEXAS MANAGEMENT, INC.		ATTN BARBARA BOURMAN			Dallas	TX	75215	
Guardian Performance Solutions LLC		1135 SOUTH LAMAR ST	Suite 408		Sacramento	CA	95819	
Guggenheim Strategic Opportunities Fund		836 57th Street						
		330 Madison Ave, 11th Floor			New York	NY	10017	
		675 Avenue of The Americas						
Guidepoint Global		Fl 2						
Guidepost Solutions, LLC		415 Madison Ave	11th Floor		New York	NY	10010-5117	
Guild Associates		153 Mitchell Hill Rd			New York	NY	10017	
Gulati, Sanjay		Address on File			Lyme	CT	06371-3021	
GUNNERSON, ERIK		Address on File						
GUSTAVO PRILICK		Address on File						
Guy J. Renzi & Associates		2277 State Hwy 33,			Trenton	NJ	08690	
H.I.S. BridgeBuilders		Golden Crest Corporate Center	Suite 410		Dallas	TX	75208	
		2705 West Commerce St						

0023949

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Haas Petroleum Engineering Svcs, Inc.		750 N Saint Paul St Ste 1750			Dallas	TX	75201-3288	
Hagar Restaurant Service LLC		1229 West Main St.			Oklahoma City	OK	73106	
Hain Capital Investors Master Fund, Ltd		301 Route 17, 7th Floor			Rutherford	NJ	07070	
Hakemack, Christopher		Address on File						
Hal Whalen		Address on File						
Hale, Sarah		Address on File						
HALL, PHIL		Address on File						
Halloran & Sage LLP		225 Asylum Street	One Goodwin Square		Hartford	CT	06103	
HALPIN, CHRISTOPHER		Address on File						
Haltorn, Steven		Address on File						
Hamilton	PRICKETT, JONES & ELLIOTT, P.A.	Marcus E. Montejo	Kevin H. Davenport	1310 King Street	Wilmington	DE	19801	
Hamilton Communications		PO Box 555			Westbrook	CT	06498	
HAMILTON, TODD		Address on File						
Hand Securities Inc.		820 Gessner Rd	Suite 1250		Houston	TX	77024	
Hansen, Jessica		Address on File						
Hanson, Adam		Address on File						
HARBOR GROUP LTD		70 E SUNRISE HWY	#411		Valley Streram	NY	11581	
Harbor Yacht Clubs, LLC		1880 Harbor Island Drive			San Diego	CA	92101	
HarbourVest 2017 Global AIF L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest 2017 Global AIF L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HARBURVEST 2017 GLOBAL AIF L.P.		One Financial Centre, 44th Floor			Boston	MA	02111	
HarbourVest 2017 Global Fund L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest 2017 Global Fund L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HARBURVEST 2017 GLOBAL FUND L.P.		One Financial Centre, 44th Floor			Boston	MA	02111	
HarbourVest Dover Street IX Investment L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Dover Street IX Investment L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
Harbourvest Dover Street IX Investment, LP		One Financial Centre, 44th Floor			Boston	MA	02111	
HarbourVest Partners L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HarbourVest Partners L.P. on behalf of funds and accounts under management	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Skew Base AIF L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Skew Base AIF L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	

002394

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
HARBOURVEST SKEW BASE AIF L.P.		One Financial Centre, 44th Floor			Boston	MA	02111	
Harder LLP		132 S. RODEO DRIVE	FOURTH FLOOR		BEVERLY HILLS	CA	90212	
HARIKRISHAN NAIR		8734 SHADY SHORE DR			FRISCO	TX	75034	
Harlem Lacrosse		PO Box 708			New York	NY	10030	
Harper & Peterson, P.L.L.C		3040 Woodbury Drive			Woodbury	MN	55129	
Harris Hilburn & Sherer		1111 Rosalie			Houston	TX	77004	
HARRIS, WILTSHIRE & GRANNIS LLP		1200 EIGHTEENTH ST, NW			Washington	DC	20036	
HARRISON, MATTHEW		Address on File						
Harsha Patwardhan		Address on File						
Hart Energy Publishing, L.P.		4545 Post Oak Pl Ste 210			Houston	TX	77027	
Hart Energy Publishing, L.P.		1616 S. Voss Rd	Suite 1000		Houston	TX	77057	
Hart Energy, LP		1616 S. Voss Street	Suite 1000		Houston	TX	77057	
Hartford CFA Society		PO Box 266			Granby	CT	06035	
Hartford Life Insurance Company		777 Main Street			Hartford	CT	06115	
Hartline Dacus Barger Dreyer LLP		6688 N. Central Expwy, #1000			Dallas	TX	75206	
Hartman Wanzor LLP	Kenneth Cantrell	6050 Southwest Blvd Suite 150			Fort Worth	TX	76109	
Hartman Wanzor LLP		6050 Southwest Blvd	Suite 200		Fort Worth	TX	76109	
Harvard Club of Dallas		5706 E Mockingbird Ln Ste 115			Dallas	TX	75206-5461	
Harvard Club of New York City		35 West 44th Street			New York	NY	10036	
Harvest Exchange Corp		PMB 245	516 N Ogden Ave		Chicago	IL	60642-6421	
Haselroth, Matthew		Address on File						
HASENAUER, MICHAEL		Address on File						
HASENAUER, MICHAEL		Address on File						
Haven Search Group, LLC		3303 Lee Parkway	Suite 400		Dallas	TX	75219	
Hawaii State Tax Collector		PO Box 1530			Honolulu	HI	96806-1530	
HAWK Network Defense, Inc.		5057 Keller Springs Road	Suite 300		Addison	TX	75001	
Hayes, Christopher		Address on File						
Hayley Eliason	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
HAYMARKET MEDIA LIMITED		2371, The Centrium, 60 Wyndham St	Central		HONG KONG			HONG KONG
Haynes and Boone, LLP	ATTN Cari Peretzman	901 Main St # 3100			Dallas	TX	75202	
Haynes and Boone, LLP		2323 Victory Ave	Suite 700		Dallas	TX	75219	
Haynes and Boone, LLP		PO Box 841399			Dallas	TX	75284-1399	
Hazen, Anthony		Address on File						
HCM Market Letter, LLC		Harch Capital Management, LLC	621 NW 53rd Street, Suite 400		Boca Raton	FL	33487	
HCRE Partner, LLC	Wick Phillips Gould & Martin, LLP	Jason M. Rudd, Lauren K. Drawhorn	3131 McKinney Avenue, Suite 500		Dallas	TX	75204	
HEAD, ALAN		Address on File						
Health Strategy Consulting		46 Kilvert St			Warwick	RI	02886	

002395



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Health Texas Provider Network		PO Box 844128			Dallas	TX	75284	
Heat Software USA Inc		PO Box #204375			Dallas	TX	75320-4375	
HEATHER BROWN		Address on File						
HEATHERINGTON, MELINDA		Address on File						
HEBERT, ERIC		Address on File						
Hedge Connection, Inc.		141 Parkway Rd	Suite 15		Bronxville	NY	10708	
Hedge Fund Alert		5 Marine View Plaza #400			Hoboken	NJ	07030-5795	
Hedge Fund Research, Inc.		10 South Riverside Plaza	Suite 700		Chicago	IL	60606	
Hedgebay Securities, LLC		62 Post Road West			Westport	CT	06880	
HEDGEFUND INTELLIGENCE LTD		NESTOR HOUSE, PLAYHOUSE YARD	ACCOUNT DEPT		London		EC4V 5EX	United Kingdom
Hedgeye Risk Management, LLC	Legal Department	1 High Ridge Park 3rd Floor			Stamford	CT	06905-0000	
HEIN ONKENHOUT		Address on File						
HEISS, BRADFORD		Address on File						
Heider Melendez		Address on File						
Helen Kim	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Helicopters for Heroes	c/o Jeff Davis	9219 Viscount Row			Dallas	TX	75247	
HELLER EHRMAN LLP		FILE NO 73536	PO BOX 60000		San Francisco	CA	94160-3536	
Helping Our Heroes Foundation		6505 W. Park Blvd	Ste 306-165		Plano	TX	75093	
Helwig, Kevin		Address on File						
HENDERSHOT, PAUL		Address on File						
HENDRIX, KRISTIN		Address on File						
Henjum Goucher		Address on File						
Henjum Goucher		Address on File						
HENNINGAN, BENNETT & DORMAN LLP		865 S FIGUEROA ST			Los Angeles	CA	90017	
Henry Chang		Address on File						
Herbert A. Rosenthal, Chartered		1020-19th St, NW, #400			Washington	DC	20036-6101	
HEROES FOR CHILDREN	ATTN LARISSA LINTON & JENNY SCOTT	3411 PRESTON RD, STE C-13						
HERREN, CASEY		227			Frisco	TX	75034	
HERRICK, KATHRYN D.		Address on File						
Hersey, William		Address on File						
Hess, Zachary		Address on File						
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800	Wilmington	DE	19801	
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Harwood Street, Suite 500	Dallas	TX	75201	
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
HFF SECURITIES LP		10100 SANTA MONICA BLVD	STE 1400		Los Angeles	CA	90067	

002400

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HFP GP, LLC	Attn Highland Capital Management, L.P. as sole member	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
HG Deposition and Litigation Services		2777 N. Stemmons Freeway, Ste 1025			Dallas	TX	75207	
Higdon Barrett		Address on File			New York	NY	10169	
HIGDON PARTNERS		230 PARK AVE			Dallas	TX	75243	
High Bandwidth		10107 Candlebrook Drive						
High Profile, Inc.		4851 LBJ Freeway, Suite 500			Dallas	TX	75244	
High Road Touring		Jackson Haring	751 Bridgeway, 3rd Flr		Sausalito	CA	94965	
High Tower	Attn GIS	505 5th Ave, 14th Flr			New York	NY	10017	
High Tower	Attn Klaris Tamazian	200 W. Madison, Ste 2500			Chicago	IL	60606	
Highland Builders, Inc.		2342 Fabens Road	Ste 100		Dallas	TX	75229	
Highland Capital Insurance Solutions GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Capital Loan Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Capital Loan GP, LLC	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	Attn Davor Rukavina, Esq. and Julian P. Vasek, Esq.	Munsch Hardt Kopf & Harr, P.C.	3800 Ross Tower	500 N. Akard Street	Dallas	TX	75202-2790	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	A. Lee Hogewood, III	4350 Lassiter at North Hills Ave., Suite 300		Raleigh	NC	27609	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	Attn Artoush Varshosaz	1717 Main Street, Suite 2800		Dallas	TX	75201	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	Attn Stephen G. Topetzes	1601 K Street, NW		Washington	DC	20006-1600	
Highland Capital Management Services, Inc.	c/o The Corporation Trust Company	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Capital Multi-Strategy Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland CDO and Structured Products Fund, Ltd. Citigroup Financial Products Inc.	Citigroup Financial Products Inc.	390 Greenwich Street	Doug Warren		New York	NY	10013	
Highland CDO and Structured Products Fund, Ltd. Citigroup Financial Products Inc.	JPMorgan Chase Bank	600 Travis Street	50th Floor	ITS-Greg Sheehan	Houston	TX	77002	
JPMorgan Chase Bank	JPMorgan Chase Bank	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland CDO Opportunity Fund GP, LLC								

0024047

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Highland CDO Opportunity Fund, Ltd. IXIS Financial Products Inc. JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	600 Travis Street	50th Floor 500 West 2nd St., Suite 1800	WSS-Greg Sheehan	Houston	TX	77002	
Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette First Floor, Dorey Court, Admiral Park	St Peter Port		Austin	TX	78701-4684	Channel Islands
Highland CLO Funding, Ltd Highland CLO Management Ltd.		PO Box 309	Ugland House		Guernsey Grand Cayman		GY1 6HJ KY1-1104	Cayman Islands Cayman Islands
Highland Credit Opportunities	Japanese Feeder Sub-Trust	c/o Intertrust (Cayman) Limited	190 Elgin Avenue	George Town	Grand Cayman		KY1-9005	Cayman Islands
Highland Credit Opportunities Highland Credit Opportunities CDO GP, LLC	Japanese Unit Trust	c/o Intertrust (Cayman) Limited	190 Elgin Avenue 13455 Noel Road, Suite 1300	George Town	Grand Cayman		KY1-9005	Cayman Islands
Highland Credit Opportunities CDO, Ltd.	c/o Walkers SPV Limited	Walker House 87 Mary Street	George Town		Dallas	TX	75240	Cayman Islands
Highland Crusader Offshore Partners, L.P., et al.	Michael A. Rosenthal, Gibson, Dunn and Crutcher LLP	200 Park Avenue			New York	NY	10166	
Highland Dallas Foundation Inc.	c/o CT Corporation, Registered Agent	1209 Orange St			Wilmington	DE	19801	
Highland Dynamic Income Fund GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Employee Retention Assets, LLC	Attn James Dondero	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Fund Holdings, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland GP Holdings LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Legacy Limited	c/o Maples & Calder/ Graham Lockington	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Legacy Limited	c/o Queensgate SPV Services Limited	PO Box 1093GT / Suzanne St. Thomas	Compass Center, 2nd Flr, Crewe Road	George Town	Grand Cayman			Cayman Islands
Highland Loan Fund, Ltd. et al		PO Box 309	Ugland House South Church Street	Grand Cayman	Cayman Island		KY1-1104	Cayman Islands
Highland Loan Funding V, Ltd.	c/o Maples & Calder/ F.O.E.	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Loan Funding V, Ltd. Highland Loan Master Fund, L.P.	c/o QSPV Limited c/o Maples Corporate Services Limited	PO Box 1093 GT, Queensgate House PO Box 309	South Church Street Ugland House 13455 Noel Road, Suite 1300	George Town	Grand Cayman			Cayman Islands Cayman Islands
Highland Multi Strategy Credit Fund GP, L.P.	c/o The Corporation Trust Company	Two Galleria Tower			Dallas	TX	75240	
Highland Multi-Strategy Credit Fund GP, L.P.	c/o The Corporation Trust	1209 Orange St			Wilmington	DE	19801	
Highland Multi-Strategy Credit Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	

0024048

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Highland Multi-Strategy Fund GP, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Multi-Strategy Master Fund, L.P.	c/o MQ Services Ltd.	Victoria House	31 Victoria Street		Hamilton		0HM10	Bermuda
Highland Multi-Strategy Master Fund, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Park CDO I, Ltd.	Moody's Investors Service, Inc. Standard & Poors Ratings Services	99 Church Street	Commercial Mortgage Surveillance Group	CDO Surveillance	New York	NY	10041	
Highland Park CDO I, Ltd.		55 Water Street, 41 st Floor			New York	NY	10041	
Highland Park CDO I, Ltd. The Bank of New York Trust Company, National Association	Highland Park CDO I, Ltd. c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House, South Church Street	George Town, The Directors	George Town			Cayman Islands
Highland Park CDO I, Ltd. The Bank of New York Trust Company, National Association		601 Travis	16th Fl		Houston	TX	77002	Cayman Islands
Highland Park CDO I, Ltd. The Bank of New York Trust Company, National Association	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Principal Opportunities GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Prometheus Feeder Fund I, L.P.	c/o Maples Corporate Services Limited	PO Box 309	Ugland House		Grand Cayman		KY1-1104	Cayman Islands
Highland Prometheus Feeder Fund II, L.P.	c/o Maples Corporate Services Limited	PO Box 309	Ugland House		Grand Cayman		KY1-1104	Cayman Islands
Highland Prometheus Mast Fund, L.P.	c/o Maples Corporate Services Limited	PO Box 309	Ugland House		Grand Cayman		KY1-1104	Cayman Islands
Highland Restoration Capital Partners GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Restoration Capital Partners Master, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	Cayman Islands
Highland Restoration Capital Partners Offshore, L.P.	c/o Interttrust Cayman	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Highland Restoration Capital Partners, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	Cayman Islands
Highland Select Equity Fund GP	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	Cayman Islands
Highland Select Equity Fund GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Select Equity Master Fund, GP	c/o MQ Services Ltd.	Victoria House	31 Victoria Street		Hamilton		0HM10	Bermuda
Highland SunBridge GP, LLC	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	Cayman Islands
HighTower Advisors	Attn GIS	505 5th Ave, 14th Floor			New York	NY	10017	
HighTower Advisors		200 West Madison	Suite 2500		Chicago	IL	60606	
Sarian Group		656 East Swedesford Road	Suite 360		Wayne	PA	19087	
HighTower Holding LLC		200 W. Madison	Ste 2500		Chicago	IL	60606	
Hilary Adams		Address on File						

00240349

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HILGENBRINK, ANDREW		Address on File						
Hilgenbrink, Andrew		Address on File						
HILL, OWEN		Address on File						
Hill, Robert		Address on File						
Hillcrest Athletic Association	HHS Athletics c/o Andy Todd	9924 Hillcrest Rd			Dallas	TX	75230-5309	
Hillis, Blair		Address on File						
Hines REIT 2200 Ross Avenue LP		PO Box 841147			Dallas	TX	75284-1147	
Hines REIT 2200 Ross Avenue LP		PO Box 841197			Dallas	TX	75284-1197	
Hitchcock, Daniel		Address on File						
HM Life Insurance Company		PO Box 382229			Pittsburgh	PA	15250-8229	
Hoedebeck, Charlie		Address on File						
Hoermann, Richard		Address on File						
Hoge & Gameros, LLP		4311 Oak Lawn Ave Ste 600			Dallas	TX	75219	
Holland & Knight, LLP		PO Box 864084			Orlando	FL	32886-4084	
Hollister, Michael J.		Address on File						
Holloway, Travis		Address on File						
Holly Church Communications		3730 Pinebrook Cir Apt 606			Bradenton	FL	34209-8073	
Holmes Detective Bureau, Inc.		1270 Avenue of the Americas	Suite 1906		New York	NY	10020	
Holt, Eric		Address on File						
Home Health Service		2400 Dallas Parkway	STE 440		Plano	TX	75093	
Home Health Services		3333 Earheart Drive	Suite 210		Carrollton	TX	75006	
HOME, BRIAN		Address on File						
HONEYCUTT, JOHN BROOKS		Address on File						
HONEYCUTT, JOHN BROOKS		Address on File						
HONIS, JOHN		Address on File						
HONIS, JOHN		Address on File						
Honyaku Center Inc.		3-13-12 Mita			Minato-ku	Tokyo	109-0073	JAPAN
HOOVER HULL LLP		PO BOX 44989			Indianapolis	IN	46244-0989	
Hopes Door Inc.		860 F Ave	Suite 100		Plano	TX	75074	
HOPSON, STUART		Address on File						
Hotel Crescent Court		400 Crescent Court			Dallas	TX	75201	
Hotel Zaza		2332 Leonard Street			Dallas	TX	75201	
Houlihan Lokey	Attn Accounts Receivable	10250 Constellation Blvd, 5th Floor			Los Angeles	CA	90067-6802	
HOUSE OF BLUES	ATTN BARBARA BOUMAN	2200 N LAMAR ST			Dallas	TX	75202	
Housing Crisis Center		Megan Singleton, Development Manager	4210 Junius Street		Dallas	TX	75246	
How Handy Is That		21650 Oxnard Street	Suite 1530		Woodland Hills	CA	91367	
Howard B. Wiener		Address on File						
HOWARD DRANSFIELD IRA		Address on File						
Howle, Ian		Address on File						
hr-Q-Dallas.LLC		2859 Umatilla St			Denver	CO	80211	
HSIEH, ADA		Address on File						

0024054

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HTH Worldwide Insurance Services	c/o Travel Accounting	One Radnor Corporate Center Address on File	933 1st Ave		King of Prussia	PA	19406-1342	
HUBBLE, JONATHAN		75 Remittance Drive, Suite 6465			Chicago	IL	60675-6465	
HUDSON GLOBAL RESOURCES		2124 Oak Tree Rd One Battery Park Plaza			New Jersey	NJ	08820	
Hudson Reporting & Video, Inc	A DEPOSITION CENTER	1717 Main St Ste 2800			New York	NY	10006	
HUGHES & HUBBARD		Address on File			Dallas	TX	75201	
Hughes & Luce LLP		Address on File						
Hughes, Alex		Address on File						
HUKILL, NATHAN		Address on File						
HULL, CYNTHIA		PO Box 8500-3885			Philadelphia	PA	19178-3885	
Hummingbird		703 McKinney Ave, Ste 405			Dallas	TX	75202	
Hundt Reporting, L.L.C.		Address on File						
Hunt, Brandon		Address on File						
HUNT, HEATHER		Address on File						
Hunter Covitz	c/o David Neier, Winston Strawn LLP	6612 Sondra Dr.			Dallas	TX	75214	
Hunter Covitz		Address on File						
HUNTER COVITZ		Address on File						
Hunter Donaldson		Address on File						
Hunter Mountain Investment Trust		Address on File						
	c/o Rand Advisors LLC	John Honis	87 Railroad Place Site 403		Saratoga Springs	NY	12866	
Hunter Mountain Trust		Rochelle McCullough LLP	325 N Saint Paul St Site 4500		Dallas	TX	75201-3827	
Hunter Mountain Trust	c/o E. P. Keiffer	John Honis, Trustee for Hunter Mountain Trust	87 Railroad Place, Suite 403		Saratoga Springs	NE	12866	
Hunting & Fishing for ALS Research								
HUNTINGTON, JOHN		2525 Fairmont St			Dallas	TX	75201	
		Address on File						
Hunton & Williams LLP		RIVERFRONT PLAZA, EAST TOWER			Richmond	VA	23219	
Hunton & Williams LLP		PO BOX 840686	951 EAST BYRD ST		Dallas	TX	75284-0686	
Hunton Andrews Kurth LLP	Alexander G. McGeoch	1445 Ross Avenue Suite 3700			Dallas	TX	75202	
Hunton Andrews Kurth, LLP		1445 Ross Avenue	Suite 3700		Dallas	TX	75202-2799	
Hurley, Leslie		Address on File						
HURLEY, MICHIEL		Address on File						
Huron Consulting Group		4795 Paysphere Circle			Chicago	IL	60674	
Hutcherson Law		10000 N. Central Expressway	Suite 800		Dallas	TX	75231	
Hutchison & Steffen, PLLC		10080 W Alta Drive	Ste 200		Las Vegas	NV	89145	
HV International VIII								
Secondary L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HV International VIII								
Secondary L.P.	c/o HarbourVest	One Financial Center			Boston	MA	02111	
HV INTERNATIONAL VIII		One Financial Centre, 44th Floor			Boston	MA	02111	
SECONDARY L.P.								
Hyatt Regency Lost Pines Resort and Spa		575 Hyatt Lost Pines Road			Lost Pines	TX	78612	

0024051

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Hyatt Regency Scottsdale Resort & Spa		7500 E Doubletree Ranch Road			Scottsdale	AZ	85258	
I & A INTERNATIONAL		1717 MAIN ST	SUITE 4800		Dallas	TX	75201	
i Entertainment		2409 Avenue J	Suite D		Arlington	TX	76006	
I.M.S. Relocation		2005 McDaniel Drive	Ste 150		Carrollton	TX	75006	
IA Watch		PO Box 9407			Gaithersburg	MD	20897-9824	
IAN FARRAND		100 Winners Circle, Ste 300	PO Box 5094		Brentwood	TN	37024-5094	
IBM Websphere		Address on File						
ICAA		1 New Orchard Road			Armonk	NY	10504-0000	
Ice Bro Promos		1050 17th St, NW Ste 725			Washington	DC	20036-5503	
ICE Data Indices, LLC		1007 East Levee			Dallas	TX	75207	
ICE Data Pricing & Reference Data, LLC		PO Box 74008873			Chicago	IL	60693-8873	
ICE Systems, Inc.		PO Box 98616			Chicago	IL	60693	
ICI Mutual Insurance Brokers, Inc.		PO Box 11126			Hauptpaugue	NY	11788-0934	
IDAHO STATE TAX COMMISSION	REVENUE OPERATIONS DIVISION	1401 H Street NW	Suite 1000		Washington	DC	20005	
IDAHO STATE TAX COMMISSION		IDAHO STATE TAX COMMISSION	PO BOX 36		Boise	ID	83722-0410	
IDC.SERVCO Business Services		PO Box 83784			Boise	ID	83707-3784	
iDiscover, LLC	Attn Accounts Receivable	PO Box 1925			Culver City	CA	90232-1925	
IFG Project Resourcing		2049 Century Park East, Ste 4370			Los Angeles	CA	90067	
IFP Securities, LLC		1560 Sawgrass Corporate Pkwy 4th Flr			Sunrise	FL	33323	
IHS Global Inc.		3030 N Rocky Point Dr W	Suite 700		Tampa	FL	33607	
IHS Markit	Michelle Searles	PO Box 847193			Dallas	TX	75284-7193	
II Magazines	Absolute Return & Alpha	15 Inverness Way East			Englewood	CO	80112	
II Magazines		225 Park Ave - South			New York	NY	10003	
IInews		PO Box 4009	Subscriptions		Chesterfield	MO	63006-4009	
IJC Partners LLC		PO Box 5018			Brentwood	TN	37024-9552	
Ikon Office Solutions		20 East 46th St	Suite 901		New York	NY	10017	
Ikon Office Solutions		DALLAS DISTRICT-DAT	PO BOX 676466		Dallas	TX	75267	
Ikon Office Solutions		Northeast District-NYG	PO BOX 827164		Philadelphia	PA	19182-7164	
Ikon Office Solutions		LDS Southeast District -FTL	PO Box 532545		Atlanta	GA	30353-2545	
Ikon Office Solutions		LDS DALLAS DISTRICT -DAL	PO BOX 676466		Dallas	TX	75267-6466	
ILLINOIS DEPARTMENT OF REVENUE		National Accounts	PO Box 676466		Dallas	TX	75267-6466	
ILLINOIS DEPARTMENT OF REVENUE		PO BOX 19009			SPRINGFIELD	IL	62794-9009	
Illinois Secretary of State		PO Box 19045			Springfield	IL	62794-9045	
Illinois Securities Department		Department of Business Services			Springfield	IL	62756	
Illumant LLC		Securities Division	421 E. Capital Ave., 2nd Fl.		Springfield	IL	62701	
		431 Florence Street	Suite 210		Palo Alto	CA	94301	

0024052



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ImageMAKER Development, Inc		Suite 102-416, 6th St			New Westminster	BC	V3L 3B2	CANADA
ImageMAKER Development Inc		Ste 102,416 - 6th Street PO Box 613310			New Westminster	BC	V3L 3B2	Canada
ImageNet		2633 McKinney Ave			Dallas	TX	75261-3310	
Imaginity Interactive, Inc.		Address on File		Ste 130-377	Dallas	TX	75204	
IMAMOTO, GREGG								
IMCA	Altn Lara Davies	5619 DTC Pkwy, Suite 500			Greenwood Village	CO	80111	
Imran Hussain		Address on File						
IMRE		210 W PENNSYLVANIA AVE STE 700			TOWSON	MD	21204-4532	
In Time Communications		9137 Loma Vista Dr			Dallas	TX	75243	
INCORPORATING SERVICES, LTD		3500 S DUPONT HWY			Dover	DE	19901	
Independence Capital Co., Inc.		5579 Pearl Road		Suite 100	Parma	OH	44129	
Independent Financial Group LLC		12671 High Bluff Drive		Suite 200	San Diego	CA	92130	
Independent Petroleum Assoc. of America		1201 15th St, NW		Ste 300	Washington	DC	20005	
Independent Petroleum Assoc. of America		PO Box 79584		Suite 720	Baltimore	MD	21279-0584	
IndexUniverse LLC		201 Mission Street		Suite 1520	San Francisco	CA	94105	
IndexUniverse LLC		353 Sacramento Street			San Francisco	CA	94111	
INDIANA DEPARTMENT OF REVENUE		PO BOX 1028			Indianapolis	IN	46206-1028	
Indiana Securities Division		Securities Division		302 West Washington Street, Room E-111	Indianapolis	IN	46204	
Infinity Litigation		3141 Hood St, #103			Dallas	TX	75219	
Informa Investment Solutions		PO Box 416014			Boston	MA	02241-6014	
Informa Investment Solutions		4 Westchester Park Drive			White Plain	NY	10604-0000	
Informa UK Ltd.		PO Box 32794			Hartford	CT	06150-2794	
Information Management Network		225 Park Avenue South, 7th Fl			New York	NY	10003	
INFOTECH		92 CORPORATE PARK		STE C703	Irvine	CA	92606	
INNES, JOHN		Address on File						
Innovative Legal Solutions, Inc.		440 Louisiana, Suite 1100			Houston	TX	77002	
INSIDE CMS		PO BOX 7167		BEN FRANKLIN STATION	Washington	DC	20044-7167	
INSIDE HEALTH POLICY.COM		PO BOX 7167		BEN FRANKLIN STATION	Washington	DC	20044-7167	
Insider Score		254 Witherspoon St			Princeton	NJ	08542	
InsiderScore, LLC		254 Witherspoon Street			Princeton	NJ	08542	
InsiderScore, LLC		100 Thanet Circle		Suite 300	Princeton	NJ	08540-0000	
Insight		PO Box 78825			Phoenix	AZ	78825	
Insight Direct USA, Inc.		PO Box 731069			Dallas	TX	75373	
Insight Investments		611 Anton Blvd		Suite 700	Costa Mesa	CA	92626	
Instant Technologies		54 Ross Road			Durham	NH	03824	

0024059

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Institute for International Research		PO BOX 3685			Boston	MA	02241-3685	
Institute for Portfolio Alternatives		PO Box 480			Ellicott City	MD	21041-0480	
Institute for Private Investors		17 State Street	5th Floor		New York	NY	10004	
Institutional Investor News	Attn Andrew Levin	225 Park Ave South, 8th Flr			New York	NY	10003	
Institutional Investor News	ATTN Jeff Schilling	225 Park Ave. South	7th Floor		New York	NY	10003	
Institutional Investor News	Attn Mutual Fund Industry Awards	PO Box 1575			New York	NY	10008	
Institutional Investor News		PO BOX 5034			Brentwood	TN	37024	
Institutional Investor News		PO Box 417611			Boston	MA	02241-7611	
Institutional Investor News		PO BOX 1575			New York	NY	10008-1575	
Institutional Investor News		PO Box 4009			Chesterfield	MO	63003-4009	
Institutional Investor Newsletters		PO BOX 5016			Brentwood	TN	37024-9549	
Institutional Investor Newsletters		PO Box 5018			Brentwood	TN	37024-9552	
Institutional Investor Newsletters		PO BOX 5030			Brentwood	TN	37024-9555	
Institutional Investor, LLC		PO Box 417611			Boston	MA	02241-7611	
Institutional Recovery Solutions, Inc.		626 RXR Plaza	601 Locust Street, 4th Floor		Uniondale	NY	11556	
Insurance Commissioner of Iowa		Securities Bureau			Des Moines	IA	50309-3738	
INSYNC ELECTRONIC MEDIA DESIGN, LLC		33 FELWAY DR			Coram	NY	11727	
Integra FEC LLC		1801 Lavaca Street, Suite 101			Austin	TX	78701	
Integrated Financial Associates, Inc.		265 E. Warm Springs Road, Suite 1-7			Las Vegas	NV	89119	
Integrated Financial Associates, Inc.	Carlyon Cica Chtd	3111 S. Rainbow Blvd., Suite 209			Las Vegas	NV	89146	
Integrated Solutions		425 Gotham Pkwy			Carlstadt	NJ	07072	
Interactive Data Pricing & Reference		PO BOX 98616			Chicago	IL	60693	
Interactive Data Pricing and Reference D		32 Crosby Drive			Bedford	MA	01730-0000	
InterDyn BMI		3001 Broadway St NE, #320			Minneapolis	MN	55413	
Interfor		575 Madison Avenue, Suite 1006			New York	NY	10022	
Internal Revenue Service	Attn Insolvency	1352 Marrows Road, 2nd Floor			Newark	DE	19711-5445	
Internal Revenue Service	Attn Linda Yao	4050 Alpha Road	MC 4505 NDAL		Farmers Branch	TX	75244	
Internal Revenue Service	Faye Coppel, Bankruptcy Specialist	1100 Commerce St	M/S MC5027DAL		Dallas	TX	75242	
Internal Revenue Service		P.O. BOX 21126			Philadelphia	PA	19114	
Internal Revenue Service		STOP 5107 NWSAT	4050 ALPHA RD		Farmers Branch	TX	75244-4201	
Internal Revenue Service		Ogden			Ogden	UT	84201-0039	
International Assets Advisory, LLC		390 North Orange Ave	Ste 750		Orlando	FL	32801	

0024054

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
International Bar Association International Foundation		10th Flr 1 Stephen St 18700 W. Bluemound Rd	PO Box 69		London Brookfield	WI	WI T 1AT 53008-0069	United Kingdom
Intertrust	Accounts Receivable	190 Elgin Ave 110 A St	George Town		Grand Cayman Needham	MA	KY1-9000 02494-2807	Cayman Islands
Intex Solutions, Inc.		P.O. Box 10259			New York	NY	10259	
Intralinks Inc.		150 East 42nd St	8th floor		New York	NY	10017-0000	
Intuit		PO Box 30860			Los Angeles	CA	90030-0860	
INVeSHARE, Inc.		P.O. Box 130114			Dallas	TX	75313	
Investigative Management Group		PO Box 568			Alpharetta	GA	30009-0568	
Investment Company Institute		825 Third Avenue	18th Floor		New York	NY	10022	
Investment Company Institute		PO Box 759456			Baltimore	MD	21275	
Investment Management Advisors, LLC		Dept. 3077			Washington	DC	20061-3077	
Investment Management Institute		3131 Maple Ave., Suite 7E			Dallas	TX	75201	
Investment Management Institute		123 Mason St			Greenwich	CT	06830	
Investment Planners, Inc.		165 W. Putnam Avenue PO Box 170	2nd Floor		Greenwich	CT	06830	
Investment Professionals Conference Investment Program Association	Altn Rachel Christensen	470 Tanner Building			Provo	UT	84602	
InvestorWires, Inc.		PO Box 480			Ellicott City	MD	21042-0480	
Investors Bank & Trust Company		14 Wall Street	20th Floor		New York	NY	10005	
Investors Business Daily		Lockbox # 415926			Boston	MA	02241-5926	
IPC Information Systems, Inc.		200 Clarendon Street	Mail Code EUC 108		Boston	MA	02116	
IPC Network Services, Inc.		12655 Beatrice St.			Los Angeles	CA	90066	
Ipitomi Limited		PO Box 26644	15th Floor		New York	NY	10087	
Ipree Data Inc.		1500 Plaza 10			Jersey City	NJ	07311	
IRELL & MANELLA LLP		3rd Floor 421 Fayetteville Street 840 NEWPORT CENTER DR	125 Wood Street Suite 900 STE 450		London Raleigh Newport Beach	NC CA	EC2V 7AN 27601 92660-6324	United Kingdom
IRENE KUBERT	LASC	600 SOUTH COMMONWEALTH AVE, DEPT 316			Los Angeles	CA	90005	
Iron Mountain - Off-Site Data Protection		PO Box 915026			Dallas	TX	75391-5026	
Iron Mountain Records Management	Whitelaw House	Alderstone House Business Park	MacMillan Rd		Livington	TX	EH54 7DF	United Kingdom
Iron Mountain Records Management		PO Box 915004			Dallas	TX	75391-5004	

002405

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Ironwood Legal Solutions		Level 8, South Wing			Colombo	NV	2	Sri Lanka
IRR - Las Vegas		Millennium House, 46/58, Nawam Mawatha	Suite 100		Las Vegas	NV	89147	
IRS		8367 West Flamingo Road	1100 Commerce St #121		Dallas	TX	75242	
Irving ISD	Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
Irving, Katie		Address on File						
Isaac D. Leventon	c/o David Neier	Winston Strawn LLP	200 Park Avenue		New York	NY	10166	
Isaac Leventon	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue		New York	NY	10018	
Isaac Leventon	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Island Love Rebuilding Fund		PO Box 53412			Lafayette	LA	70505-3412	
Itech Inc.		6230 Wilshire Blvd, # 145			Los Angeles	CA	90048	
ITG Investment Research, Inc.	Attn Chris Stilo	380 Madison Ave			New York	NY	10017	
ITG Investment Research, Inc.		1270 Avenue of the Americas			New York	NY	10020	
ITG Investment Research, Inc.		PO Box 30270			New York	NY	10087-0270	
Ivanti Security		698 West 10000 South			Jordan	UT	84095-0000	
Ivins, Phillips & Barker Chartered		1700 Pennsylvania Avenue, NW			Washington	DC	20006	
J Gregory Stone		Address on File						
J. Sagar Associates		Vakils House	18 Sprout Road	Ballard Estate	Mumbai		400 001	India
J.C. Trident, Inc.		9035 Orlando Ave			Navarre	FL	32566	
Jack Boles Parking		PO Box 190326			Dallas	TX	75219-0326	
Jack Takacs		Address on File						
JACK YANG		Address on File						
Jackson Walker		PO Box 130989			Dallas	TX	75313-0989	
Jackson Walker LLP	Michael S. Held	2323 Ross Ave., Suite 600			Dallas	TX	75201	
Jackson Walker LLP		PO BOX 130989			Dallas	TX	75313-0989	
Jackson, Jesse		Address on File						
JACOBS ENGINEERING GROUP		PO BOX 651063			Charlotte	NC	28265	
JAGADEESH REDDY		Address on File						
Jain, Ajit		Address on File						
Jain, Ajit		Address on File						
Jain, Bhawika		Address on File						
Jain, Bhawika		Address on File						
JAKE AMBROSE		Address on File						
JAKE AMBROSE		Address on File						
Jake Istnick		Address on File						
JAMAL CARTY		Address on File						
James A Shilkett		Address on File						
James C. Merrill & Associates, Inc.		14677 Midway Rd, Ste 203			Addison	TX	75001	
James D. Calver		Address on File						
James D. Dondero	D. Michael Lynn	Address on File						
James D. Dondero		Address on File						
James D. Dondero		Address on File						

002410

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
James Dondero, as the successor-in-interest to the Canis Major Trust	James D. Dondero	D. Michael Lynn Address on File	420 Throckmorton Street, Suite 1000		Fort Worth	TX	76102	
James Edward		Address on File						
James Klein		Address on File						
James Lamar		Address on File						
James Love		Address on File						
James Mathis Consulting LLC		3701 Braewood Circle			Plano	TX	75093	
James McCaffrey		Bank of Marshall Islands Building, 2nd Floor, PO Box 509			Majuro		96960	Marshall Islands
JAMES PAGLIAROLI		Address on File						
James Palmer		Address on File						
James Peterson		Address on File						
James R. Thompson		Address on File						
James T. Bentley		Address on File						
James, Carter & Coulter, P.L.C.	Schulte Roth & Zabel LLP	919 Third Avenue			New York	NY	10022	
JAMESON, MATTHEW		500 Broadway	Suite 400		Little Rock	AR	72203	
JAMS, Inc.		Address on File						
Jane Rose Reporting Inc.		PO Box 512850			Los Angeles	CA	90051-0850	
Janet McGreal		2547 State Hwy. 35	Suites 1&2		Luck	WI	54853	
JANIS ROGERS & ASSOCIATES		Address on File						
Jansen & Palmer, LLC		1545 W MOCKINGBIRD LN	STE 1032		Dallas	TX	75235	
JANULESKI, GEOFFREY J		4746 Elliot Avenue South			Minneapolis	MN	55407	
Japan Alternative Investment Co Ltd		Address on File						
Japanese Evangelical Missionary Society		19th Floor, KDDI Otemachi Bldg	1-8-1 Otemachi, Chiyoda-ku		Tokyo		100-0004	JAPAN
Jardine, Jeffrey		948 East Second St			Los Angeles	CA	90012-4382	
Jardine, Jordan		Address on File						
Jaron Stern		Address on File						
Jason Chang		Address on File						
Jason Goldsmith		Address on File						
Jason Hoarell		Address on File						
Jason Kathman		Address on File						
JASON KIRSCHNER		Address on File						
Jason L. Janik		Address on File						
Jason Post		Address on File						
Jason Rothstein		Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
JASON SANTAMARIA	Michael P. Hutchens, Esq.	Address on File						
Jason Vanacour		Address on File						
Jason Vanacour		Address on File						
Jasper CLO Ltd MMP-5 Funding, LLC and IXIS Financial Products Inc.	Jasper CLO Ltd.	PO Box 1234 Queengate House	South Church Street	The Directors	Grand Cayman			Cayman Islands

0924157

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Jasper CLO Ltd.	JPMorgan Chase Bank	600 Travis Street	50th Floor	Worldwide Securities Services - Jasper CLO Ltd.	Houston	TX	77002	Cayman Islands
Jasper CLO Ltd.	JPMorgan Chase Bank, National Association	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Jasper CLO Ltd.	JPMorgan Chase Bank, National Association	Queensgate House, South Church Street, George Town		P.O. Box 1093GT	Grand Cayman			Cayman Islands
Jasper CLO, Ltd.	c/o Ogier Fiduciary Services (Cayman) Limited	PO Box 1234	Queensgate House, South Church Street		Grand Cayman			Cayman Islands
Jay Angotti		Address on File						
Jay Borikar		Address on File						
Jay Gierak		Address on File						
Jay M Cohen, PA		PO Box 2210			Winter Park	FL	32790	
Jay Slulis		Address on File						
Jay Steigenwald		Address on File						
JB Sigmon		Address on File						
JDRF Greater Dallas Chapter		9400 N Central Expressway	Suite 1201		Dallas	TX	75231	
Jean Paul Sevilla	Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Avenue		New York	NY	10018	
Jean Paul Sevilla	c/o David Neier, Winston Strawn LLP	200 Park Avenue			New York	NY	10166	
Jean Paul Sevilla	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Jean Paul Sevilla		Address on File						
Jean-Francois Lemay		Address on File						
Jeff Cohen		Address on File						
Jeff Damec		Address on File						
Jeff Gilbert		Address on File						
Jeff Graham		Address on File						
Jeff Habicht		Address on File						
Jeff Seaver		Address on File						
Jeff Turner		Address on File						
Jefferies	Ronald Wong	101 California Street	Suite 3100		San Francisco	CA	94111	
Jefferies LLC	Attn Casey Doherty	c/o Dentons US LLP	1221 McKinney Street, Suite 1900		Houston	TX	77010-2006	
Jefferies LLC	Attn Christopher Bianchi	Prime Brokerage Services	520 Madison Avenue		New York	NY	10022	
Jefferies LLC	Christopher Bianchi	520 Madison Avenue, 2nd Floor			New York	NY	10022	
Jefferies LLC	Dentons US LLP	Attn Lauren Macksoud, Esq. and Patrick Maxcy, Esq.	1221 Avenue of the Americas		New York	NY	10020	
Jefferies LLC		520 Madison Avenue, 12th Floor			New York	NY	10022	
Jeffrey Dutton		Address on File						
Jeffrey Rose		Address on File						
Jehyun Law		11st Floor, Samsung Life East Yeouido Bldg, 25	Yeouido-Dong	2Gili 17, International Financial-Ro	Yeongdeungpo-Gu	Seoul	150-878	South Korea
JEMS		948 EAST 2ND ST			Los Angeles	CA	90012-4317	
Jenifer Jurius		Address on File						
JENKINS, AMY		Address on File						
JENNA BRIDGES		Address on File						

002412

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
JENNER & BLOCK LLP		353 N CLARK ST			Chicago	IL	60654-3456	
Jenni Logan		Address on File						
Jennifer Buntz		Address on File						
JENNIFER LYNN HUNTSMAN TRUST	ATTN BRIAN SHRUM	1 S MAIN ST 12TH FLR			Salt Lake City	UT	84111-1904	
Jennifer Ricci		Address on File						
Jennifer Wootton		Address on File						
JENSEN, ASTRID		Address on File						
JENSEN, MARTY		Address on File						
Jeong, Sang K.		Address on File						
Jeremy Kross		Address on File						
Jeremy Simpson		Address on File						
JERICO SERVICES		2571 MERRELL RD			Dallas	TX	75229	
Jerome Carter	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76012-4135	
Jessica Gimbel		Address on File						
Jessica Hoskings		Address on File						
Jessica Nalder		Address on File						
Jessica Ogle		Address on File						
Jessup Holdings LLC	Attn John Mandler	c/o Mandel, Katz and Brosnan LLP	100 Dutch Hill Road, Suite 390		Orangeburg	NY	10962	
Jesuit Alumni Homecoming		12345 Inwood Rd			Dallas	TX	75244	
Jeti, Vikram		Address on File						
JEWISH FEDERATION OF GREATER DALLAS	ATTN KAREN HANEY	JACOB FELDMAN BUILDING	7800 NORTHAVEN RD		Dallas	TX	75230	
JHAWER, SHANTANU		Address on File						
JHT Holdings, Inc.	Attn Christopher Reehl	10801 Corporate Drive	PO Box 58 1025		Pleasant Prairie	WI	53158	
Jillian Ashenbrenner		Address on File						
Jim Pagliaroli		Address on File						
Jinny Ch'a		Address on File						
JJB Hilliard, WL Lyons LLC	Attn Mac Thomas	500 West Jefferson Street			Louisville	KY	40202	
JOCELYN FRANK FABIANCIC		Address on File						
Jocoy, Laura C.		Address on File						
JOE DOUGHERTY		Address on File						
JOE DOUGHERTY		Address on File						
JOE EMMANUEL		Address on File						
Joe Farach		Address on File						
Joe Foster Company LLC		25 Highland Park Village	Suite 100-880		Dallas	TX	75205	
Joe Joyner		Address on File						
Joe Kingsley		Address on File						
Joe Laganza		Address on File						
Joe Norton		Address on File						
Joe Scanton		CRT Capital Holdings LLC	262 Harbor Drive		Stamford	CT	06902	
JOEL ESHBAUGH		Address on File						
Joel Zeff Creative		PO Box 979			Coppell	TX	75019	
Johanna McBroom		Address on File						
JOHN A TOWNSEND, IOLTA	TAX PROCEDURE GROUP	5615 KIRBY DR, STE 830			Houston	TX	77005	
John Burer		Address on File						

002413



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
John Caron		Address on File						
John Chant		Address on File						
John Crocker		Address on File						
John Duval Associates		400 East 56th St Ste 10-S			New York	NY	10022	
John Duval Associates		446 Milan Hill Rd			Red Hook	NY	12571	
John F. Yang	KLS Financial Advisors	127 Main Street, Suite A			Chatham	NJ	07928	
John F. Jack Yang	Daniel P. Wmikka	Loewinsohn Flegle Deary Simon LLP	12377 Merit Drive, Suite 900		Dallas	TX	75251	
John F. Jack Yang		Address on File						
John F. Warren, Dallas County Clerk	Attn Central Records	600 Commerce St--B1			Dallas	TX	75202	
John Fink		Address on File						
JOHN FRUSHA		Address on File						
JOHN GALANTE		Address on File						
John Gavih		Address on File						
John Guagliardo		Address on File						
John Hancock Life Insurance		PO Box 894764			Los Angeles	CA	90189-4764	
John Hare		Address on File						
JOHN HENNEGAN		Address on File						
John Holmes		Address on File						
John Honis		Address on File						
John Howard		Address on File						
JOHN HUNTINGTON		Address on File						
John Ly		Address on File						
John Martin		Address on File						
JOHN MELTON		Address on File						
John Morgan		Address on File						
JOHN MORRIS		Address on File						
John Partchenko		Address on File						
John Paul Raffo		Address on File						
John Perkins		Address on File						
John R. Ames, CTA		Records Bldg, 500 Elm St	PO Box 139033		Dallas	TX	75313-9033	
John R. Ames, CTA		PO Box 139066			Dallas	TX	75313-9066	
John R. Watkins		Address on File						
John Reineberg		Address on File						
John Seng		Address on File						
John Yang		Address on File						
JOHN, KYLE		Address on File						
Johnston Tobey Baruch, P.C.		3308 Oak Grove Avenue			Dallas	TX	75204	
Jolles Associates, Inc.		PO Box 930			Great Falls	VA	22066	
JON BURKE		Address on File						
JON MARTIN		Address on File						
JON TAYLOR		Address on File						
Jones Day		Address on File						
Jones Reporting Company Inc		Two Oliver Street			Boston	MA	02109	
Jones Roach & Caringella, Inc.		10920 Via Frontera Ste 440			San Diego	CA	92127-1732	
JONES, DAVID		Address on File						

0024060

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Jones, Michael		Address on File						
Jones, Owen		Address on File						
JONES, ROBERT		Address on File						
Jones, Terrence O.		Address on File						
Jordan Fraker Photography		8806 San Fernando Way			Dallas	TX	75218	
Jordan Kahn Music Company		3941 Legacy Drive	#204 A-225		Plano	TX	75023	
Jordan Malouf		Address on File						
Jordan Thompson		Address on File						
Jordan, Hyden, Womble & Culbreth P.C.		500 N Shoreline, Ste 900N			Corpus Christi	TX	78471	
Jordan, Micah		Address on File						
JORDEN BURT		Address on File						
JORGE JARAMILLO		Address on File						
Jose Antonio Blanco & Asociados		Valentin Vergara 1675	1602 Florida		Buenos Aires			ARGENTINA
Jose Ontiveros		Address on File						
Josef Yehia		Address on File						
JOSEPH BIDJOKA		Address on File						
Joseph Kevin Ciavarra		Address on File						
Joseph R Pinkston III		Address on File						
Josh Bock		Address on File						
Josh Phillips		Address on File						
Josh Terry	Attn Rakhee V. Patel, Winstead PC	Address on File						
Josh Terry		Address on File						
Joshua & Jennifer Terry	c/o Brian P. Shaw, Esq.	Rogge Dunn Group, PC	500 N. Akard Street, Suite 1900		Dallas	TX	75201	
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan	Brian P. Shaw	500 N. Akard St. Suite 1900			Dallas	TX	75201	
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan		Address on File						
Joshua Tree Feeding Program Inc		1601 W Indian School Rd			Phoenix	AZ	85015	
Joy Squad Dallas		1725 Prescott Drive			Flower Mound	TX	75028	
JP Morgan		WSS GLOBAL FEE BILLING	PO BOX 26040		New York	NY	10087-6040	
JP Morgan		ITS Fee Billing	PO Box 911953		Dallas	TX	75391-1953	
JP MORGAN HEDGE FUND SERVICES		ONE BEACON ST., 19TH FLR			Boston	MA	02108	
JP Sevilla		Address on File						
JPMorgan Chase Bank	Worldwide Securities Services	600 Travis Street, 50th Floor			Houston	TX	77002	
JPMorgan Clearing Corp	ATTN Metrotech Center North	1 MetroTech Center # 1			Brooklyn	NY	11201	

002403

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
JPMORGAN FCS		13455 Noel Rd, Ste 1150			Dallas	TX	75240	
JPMORGAN FCS		WSS GLOBAL FEE BILLING	PO BOX 26040		New York	NY	10087-6040	
JT Magen & Company Inc		44 West 28th Street	11 th floor		New York	NY	10001	
Judy Chamberlin Entertainment		2604 Medline Ct			Southlake	TX	76092	
Jumpline, Inc. Web Hosting		PO Box 8789			St Petersburg	FL	33738-8789	
JUN HONG HENG		Address on File						
JUNG, KEVIN		Address on File						
Junior Achievement of Dallas	Altn Shelley Strickland	1201 W Executive Dr			Richardson	TX	75081	
JUNIOR LEAGUE OF DALLAS		8003 INWOOD RD			Dallas	TX	75209	
Justin Carfora		Address on File						
Justin Gould		Address on File						
Justin Nabours		Address on File						
Justin Smith		Address on File						
Juvenile Diabetes Research Foundation		200 Vesey St Frnt			New York	NY	10281-8000	
JW Cole Financial, Inc.		11811 N. Tatum Blvd	Ste 3055		Phoenix	AZ	85028	
JW Marriott Essex House NY		160 Central Park South			New York	NY	10019	
K & L Gates LLP		Suite 2800	1717 Main Street		Dallas	TX	75201	
K&L Gates LLP	A. Lee Hogewood, III	4350 Lassiter at North Hills Ave., Suite 300			Raleigh	NC	27609	
K&L Gates LLP	Altn Artouh Varshosaz	1717 Main Street, Suite 2800			Dallas	TX	75201	
K&L Gates LLP	James A. Wright III	State Street Financial Center	One Lincoln Street		Boston	MA	02111-2950	
Kadlack & Associates	Stephen G. Topetzes	1601 K Street, NW			Washington	DC	20006	
KAHR REAL ESTATE SERVICES LLC		555 Republic Dr, suite 115			Plano	TX	75074	
KAI CHEN		139 FULTON ST	STE 319		New York	NY	10038	
Kane Environmental Engineering, Inc.		Address on File						
KANE RUSSELL COLEMAN & LOGAN PC		8816 Big View Dr			Austin	TX	78730	
Kansas Corporate Tax Association		901 MAIN ST STE 5200			DALLAS	TX	75202-3705	
Kapil Mathur		Department of Revenue	915 SW Harrison Street		Topeka	KS	66612-1588	
Kaplan Voekler Cunningham & Frank PLC		229 E. William	Suite 211		Wichita	KS	67202-4027	
KAREL, TRAVIS		Address on File						
Karen Weiss		PO Box 2470			Richmond	VA	23218-2470	
Kari Kovelan	Michael P. Hutchens, Esq.	Address on File						
Karl Eisleben		Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Karthik Bhavaraju		Address on File						
Kase Kinney		Address on File						
kasina, LLC		581 Avenue of the Americas	5th Floor		New York	NY	10011	

002418

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP		1633 BROADWAY			New York	NY	10019-6799	
Kastle Systems		PO BOX 75160			Baltimore	MD	21275-5160	
Kathryn Plouff		Address on File						
Katten Muchin Rosenman LLP		600 Madison Avenue, 17th Floor			New York	NY	10022	
KattenMuchinRosenman LLP		525 W Monroe St			Chicago	IL	60661-3693	
Kathik Bhavaraju		Address on File						
KAUFFMAN, PAUL		Address on File						
Kaufman County		2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Kaufman County		Lineberger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
Kavita Naik		Address on File						
KCD Financial		3061 Allied St, Ste B	Suite B		Green Bay	WI	54304	
KCD Financial, Inc.		3061 Allied St.			Green Bay	WI	54304	
KEARNEY, JOSEPH		Address on File						
KEARNEY, JOSEPH D.		Address on File						
KEITH BECKMAN		Address on File						
Keith Bowers		Address on File						
Keith Dunlap		Address on File						
Keith Gorman		Address on File						
Keith Schneider		Address on File						
Kelan Advisors		PO Box 122			Lexington	MA	02420	
Keller Williams		Address on File						
Kellie Stevens		Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
KELLOGG		KELLOGG ALUMNI CLUB	7040 BROOKSHIRE DR.		Dallas	TX	75230	
Kellogg Huber Hansen Todd Evans		1615 M Street N.W.	Ste 400		Washington	DC	20036-3209	
Kelly Bennett		Address on File						
Kelly Correll		Address on File						
Kelly Hart & Halliman		201 Main Street, Suite 2500			Fort Worth	TX	76102	
Kelly Hart & Pitre		301 Main Street, Suite 1600			Baton Rouge	LA	70801	
Kelly Hart Pitre		400 Poydras Street, Suite 1812			New Orleans	LA	70130	
Kelsey Ellenberg		17510 West Grand Parkway South	Suite 510		Sugarland	TX	77479	
KEN KUNIMOTO		Address on File						
Ken Owen & Associates		801 West Ave			Austin	TX	78701-2207	
Ken Paxton Campaign		1505 Elm Street, #1601			Dallas	TX	75201	
Kendall + Landscape Architecture		6976 Santa Barbara Dr			Dallas	TX	75214-2561	
Kendall Best		Address on File						
Kennecott Funding Ltd		330 Madison Ave, 11th Floor			New York	NY	10017	
Kennedy DMC Austin		5810 Trade Center Dr	Suite 500		Austin	TX	78744	
KENNETH BELLAIRE		Address on File						

0924169

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kenneth Daewoo Park		Address on File						
Kenneth L Maun	Tax Assessor Collector	Collin County	PO Box 8046		McKinney	TX	75070	
Kenneth L. Maun		PO Box 8046			McKinney	TX	75070-8046	
Kenneth Tharp		Address on File						
Kenny Juarez		Address on File						
Kensho Technologies, Inc.		17 Dunster St	Suite 300		Cambridge	MA	02138	
KENT CAPPS		Address on File						
Kent Gatzki		Address on File						
Kentucky State Treasurer	Division of Securities	1025 Capital Center Drive, Suite 200						
KERA		3000 Harry Hines Blvd			Frankfort	KY	40601	
Kercsmar & Feltus PLLC		6263 N. Scottsdale Rd.	Suite 320		Dallas	TX	75201	
Kerns, Brian		Address on File			Scottsdale	AZ	85250	
Kerri Keamey		Address on File						
KEVIN CLEARY		Address on File						
Kevin Dowd		Address on File						
Kevin Dunwoodie		Address on File						
KEVIN ETHRIDGE		Address on File						
KEVIN LATIMER		Address on File						
Kevin Messerle		Address on File						
Kevin Potts		Address on File						
Kevin Price		Address on File						
KEVIN SHAHBAZ		Address on File						
KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110	
KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114	
Keybank National Association	ATTN KREC Loan Services	4910 Tiedman Road	3rd Floor		Brooklyn	OH	44144	
KFORCE PROFESSIONAL STAFFING		PO BOX 2277997						
KidLinks		6387B Camp Bowie Blvd	#278		Atlanta	GA	30384-7997	
KidLinks Foundation		5485 Belt Line Rd	Suite 400		Fort Worth	TX	76116	
Kiely, Thomas		Address on File			Dallas	TX	75254-7604	
Kicullen & Company		150 N. Radnor Chester Rd.	Suite C210		Radnor	PA	19087	
KILLEBREW, MATT		Address on File						
Kim & Chang		Seyang Building, 223 Naeja-dong	Jongno-gu		Seoul		110-720	South Korea
Kim Dawson Agency		1645 Stemmons Freeway	Suite #B		Dallas	TX	75207	
Kim Leslie Shafer		Address on File						
Kim R. Kunz		Address on File						
Kim, Austen		Address on File						
KIM, HELEN		Address on File						
Kinder, Travis		Address on File						
KING & SPALDING LLP		1180 Peachtree St NE			Atlanta	GA	30309-3521	
KING & SPALDING LLP		PO Box 116133			Atlanta	GA	30368-6133	
King & Wood Mallesons LLP		10 Queen Street Place			London		EC4R 1BE	United Kingdom
Kingwood Administrative Services		15 Golf Linds Ct			Kinwood	TX	77339	

002418

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kingwood Forestry Service, Inc		PO Box 1290			Monticello	AR	71657	
Kingwood Forestry Services, Inc		145 Greenfield Drive			Monticello	AR	71655	
Kinney Recruiting LP		106 E 6th St Ste 300			Austin	TX	78701	
Kinsley & Associates, LLC		6732 West Coal Mine Avenue	#500		Littleton	CO	80123	
Kirkland & Ellis		777 S Figueroa St Ste 3700			Los Angeles	CA	90017	
Kirkland & Ellis		153 E 53RD ST	CITIGROUP CENTER		New York	NY	10022-4611	
Kirkpatrick Lockhart Preston		SUITE 2800	1717 MAIN ST		Dallas	TX	75201	
Gates Ellis		1601 K Street NW			Washington	DC	20006-1600	
Gates Ellis		2121 Ave of the Stars, Flr 33			Los Angeles	CA	90067	
Klee, Tuchin, Bogdanoff & Stern		551 Fifth Ave 18th Flr			New York	NY	10176	
Kleinberg, Kaplan, Wolff & Cohen		8117 Preston Rd, Ste 300			Dallas	TX	75225	
Kline & Kline		Address on File						
Klisares, Michael		Address on File						
KLOS, DAVID		61 Heather Lane			Williston	VT	05495	
Klosters Trading Corporation								
KMS Financial Services, Inc.	Attn Megan Slater	2001 Sixth Avenue, Suite 280			Seattle	WA	98121-9833	
Knecht365 US, Inc.		PO Box 3685			Boston	MA	02241-3685	
KNIGHT ELECTRICAL SERVICES CORP		599 11th Avenue			New York	NY	10036	
KNIGHT ELECTRICAL SERVICES CORP		111 8TH AVE	STE 526		New York	NY	10011-5298	
Knights of Columbus		2280 Springlake Road			Dallas	TX	75234	
Knott, Brandon		Address on File						
Knott, Brandon		Address on File						
Knox, Haley		Address on File						
KNUTSON, DEREK		Address on File						
Koch Companies Public Sector, LLC		PO Box 93901			Chicago	IL	60673	
Kody Krause		Address on File						
Komen Dallas Race for the Cure	ATTN GARI PHILLIPS	12820 HILLCREST	STE C105		Dallas	TX	75230	
Komen Dallas Race for the Cure		765 NorthPark Center			Dallas	TX	75225	
Korea Chontha Translation Co., Ltd.		1024 Manhattan Bldg. 36-2	Yeungdeungpo-gu		Seoul		150-746	South Korea
Korea Standard Transl Center Co. Ltd.		S-701, Garden 5 Works	Munjeong-dong Songpa-gu		Seoul		138-200	South Korea
KORNGUT, BRYAN		Address on File						
KORTLANDER, MATTHEW		Address on File						
KORTLANDER, MATTHEW A.		Address on File						
Kouzmenko, Svetlana		Address on File						
Kovack Securities Inc.		6451 N. Federal Hwy	Suite 1201		Ft. Lauderdale	FL	33308	

0024085

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kovelan, Kari		Address on File			Monvale	NJ	07645	
KPMG LLP		3 Chesnut Ridge Rd						
KRAMER LEVIN NAFTALIS & FRANKEL LLP		1177 AVENUE OF THE AMERICAS			New York	NY	10036-2714	
Krishnan, Prasad		Address on File						
Kroll Associates, Inc.		475 Sansome Street	Suite 510		San Francisco	CA	94104	DENMARK
Kromann Reumert		Sundkrogsgade 5			Copenhagen		DK-2100	
Kruse & Associates, Ltd.		180 North LaSalle Street, Ste 3700			Chicago	IL	60601	
Krytzer, Damon		Address on File						
KUCHLER, TOM		Address on File						
Kuehn, Richard		Address on File						
KULWICH, STEPHANIE		Address on File						
Kuperman, Orr & Albers PC		2801 Via Fortuna	Suite 430		Austin	TX	78746	
KURATTI, MOHAN		Address on File						
KURT DAUM		Address on File						
KURT DAUM		Address on File						
KURT PLUMER		Address on File						
Kurtosis Systems Inc.		Address on File	3rd Floor		New York	NY	10011	
KWOK, NAM		Address on File						
L.A. Fuess Partners		3333 Lee Pkwy, Ste 300			Dallas	TX	75219	
L.C. Kirk & Co		101 W Argonne	Ste 16		Saint Louis	MO	63122	
LABADIE, MICHAEL		Address on File						
Lackey Hershman LLP	Paul Lackey, Esq.	Stinson LLP	3102 Oak Lawn Avenue, Ste 777		Dallas	TX	75219	
Lackey Hershman LLP		3102 Oak Lawn, Ste 777			Dallas	TX	75219-4241	
LAFFER ASSOCIATES		103 Murphy Court			Nashville	TN	37203	
LAH Investments, LLC		4 Circle Drive			Rumson	NJ	07660	
Lamba, Menka		Address on File						
LAMENSDORF, JONATHAN		Address on File						
Lamplighters Parents Association		Address on File						
Landmark Graphics Corp		11611 Inwood Road			Dallas	TX	75229	
Landmark Graphics Corp		PO Box 301341			Dallas	TX	75303-1341	
Landmark Graphics Corporation		2107 CityWest Blvd	Building 2		Houston	TX	77042-2827	
Landon Patterson		10200 Bellaire Blvd			Houston	TX	77072-5299	
Landpro Corporation		Address on File						
Landry, John		21755 I-45 North	Building 7		Spring	TX	77388	
Lanier Worldwide, Inc.		Address on File						
Larkin, William		PO Box 105533			Atlanta	GA	30348-5533	
LAROCHE PETROLEUM CONSULTANTS, LTD		Address on File						
LaRoche Petroleum Consultants, Ltd.		4600 GREENVILLE AVE	STE 160		Dallas	TX	75206	
LARRY LINDSEY		2435 N. Central Expwy	Suite 1500		Richardson	TX	75080	
Lars Enstrom		Address on File						
LARSEN, JESS S.		Address on File						
LARSON & MCGOWIN INC.		254 NORTH JACKSON ST	PO BOX 2143		Mobile	AL	36652	

0024206



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Laser App		222 Valley Creek Blvd, Ste 300			Exton	PA	19341	
Laser App		3190 Shelby Street	Suite D-100		Ontario	CA	91764	
LATENTZERO INC		160 Federal Street	16 th Floor		Boston	MA	02110	
LATENTZERO INC		PO BOX 415437	16TH FLR		Boston	MA	02241	
LATENTZERO INC		Dept CH 16755			Palatine	IL	60055-6755	
Lateral Group NA, LLC		5516 Collection Ctr Drive			Chicago	IL	60693	
Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000			Washington New York	DC NY	20004 10022-4834	
Latham & Watkins LLP	Jamie Wine	885 Third Ave.						
Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100			Los Angeles Philadelphia	CA PA	90071 19170-8181	
LATHAM & WATKINS LLP		PO BOX 7247-8181						
Latham and Watkins LLP	Asif Attanwala	330 North Wabash Ave, Suite 2800			Chicago	IL	60611	
LATIMER, KEVIN		Address on File						
Latin Markets		10 W. 37th St	7th Floor		New York	NY	10018	
LatinFinance		Subscriptions	PO Box 4009		Chesterfield	MO	63006-4009	
Lattig, Larry		Address on File						
Lauren A. Coleman		Address on File						
Lauren Brady		Address on File						
LAUREN HOLLAND		Address on File						
Lauren Powell		Address on File						
Lauren Roche		Address on File						
Lauren Seiker		Address on File						
Lauren Selevan		Address on File						
Lauren Theoford	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	United Kingdom
Law Debuture Corporate Services Limited		Fifth Floor	100 Wood Street		London			
LAW JOURNAL PRESS		PO BOX 18105			Newark	NJ	07191-8105	
Law Office of Michael R. Boling		2305 W. Parker Rd	Suite 203		Plano	TX	75023	
Law Office of Sean F. Oshea		90 Park Ave, 20th Flr			New York	NY	10016	
Law Offices of Art Brender		600 Eighth Avenue			Ft. Worth	TX	76104	
LAW OFFICES OF CHAPMAN & CUTLER		PO BOX 71291			Chicago	IL	60694	
Law Offices of Charles Renfrew		710 Sansome St			San Francisco	CA	94111-1704	
LAW OFFICES OF CHRISTOPHER NOLLAND		1717 MAIN ST	STE 5550 LB 39		Dallas	TX	75201	
LAWLER, TIMOTHY		Address on File						
Lawrence A. Hamermesh		Address on File						
Lawrence Labanowski		Address on File						
LAWRENCE, SUZANNE		Address on File						
Lawyers Title of Arizona, Inc.		3131 E. Camelback Rd	Suite 220		Phoenix	AZ	85016	
LB GROUP, LLC	ATTN J LYONS BREWER	274 RIVERSIDE AVE			Westport	CT	06880	
LE, ELI		Address on File						
LEAK, ELIZABETH		Address on File						
LEAP Foundation		9101 N Central Expressway	Suite 600		Dallas	TX	75231	

0024267

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
LED ENTERPRISES, INC.		11131 SHADY TRAIL			Dallas	TX	75229	
LEDERMAN, SHAWN		Address on File						
Lee Lord		Address on File						
Lee Park and Arlington Hall Conservancy		3333 Turtle Creek Blvd.			Dallas	TX	75219	
Lee, Dylan		Address on File						
Lee, Jae		Address on File						
LEE, JEFFREY		Address on File						
Lee, Shawn		Address on File						
Lee, Woengjun		Address on File						
Legal Concierge, Inc.		3975 McCreary Road			Parker	TX	75002	
LegalLink Dallas		PO Box 277951			Atlanta	GA	30384	
LegalLink Dallas		PO Box 538481			Atlanta	GA	30353-8481	
Legalpeople LLC		134 N. LaSalle Street, Ste 800			Chicago	IL	60602	
LegalSource LS, LLC		601 West 5th St, Ste 240			Los Angeles	CA	90071	
LEGG, BRIAN		Address on File						
Leif M Clark Consulting PLLC		PO Box 2676			San Antonio	TX	78299	
LEMME, MATTHEW		Address on File						
LEMUS, LUIS		Address on File						
LEMUS, LUIS C.		Address on File						
LENGE, ANDREW		Address on File						
Lenz & Staehelin		Route de Chene 30	CH-1211		Geneva		6	Switzerland
LEO, EDWARD		Address on File						
Leonard Budyonny		Address on File						
LESJIE GILB TAPLIN LIVING TRUST		Address on File						
Leslie Kwang		Address on File						
Leung, Timothy		Address on File						
LEVENTON, ISAAC		Address on File						
Levinger PC		Address on File						
Levinger PC		1445 Ross Avenue	Suite 2500		Dallas	TX	75202	
Lewy & Salomao Advogados		1700 Pacific Ave Ste 2390			Dallas	TX	75201-7371	
Lewis J. Shuster		AV. Brog.Faria Lima, 2601-12oAndar	CEP 01452-924		Sao Paulo-SP			BRAZIL
		Address on File						
Lewis Silkin LLP		5 Chancery Lane	Cliffords Inn		London		EC4A 1BL	United Kingdom
Lewis, Rice & Fingersh, L.C.		500 N Broadway, Ste 2000			Saint Louis	MO	63102-2147	
Lexecon		332 S. Michigan Ave.			Chicago	IL	60604-4397	
LexisNexis		PO Box 733106			Dallas	TX	75373-3106	
Lexitas		P.O. Box 734298	Dept. 2012		Dallas	TX	75373-4298	
LHWL		PO Box 38011			Dallas	TX	75238	
Li, Chaoyi		Address on File						
Liberty CLO Ltd.	JPMorgan Chase Bank	600 Travis Street	50th Floor		Houston	TX	77002	
Liberty CLO Ltd.	Liberty CLO, Ltd. c/o Walkers SPV Limited	Walker House, PO Box 908GT, Mary Street	George Town, Grand Cayman		Grand Cayman			Cayman Islands
Liberty CLO Ltd.			The Directors					

002422

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Liberty CLO Ltd.		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Liberty Life Assurance Co of Boston		Group Benefits	PO Box 2658		Carol Stream	IL	60132-2658	
Liberty Life Assurance Company of Boston		100 Liberty Way			Dover	NH	03821-0000	
Liberty Mutual Insurance Company		175 Berkley St			Boston	MA	02116-0000	
LIDDLE, BRIANNE		Address on File						
Life Fitness		156 Oak Trail			Coppell	TX	75019	
LIFE INSURANCE COMPANY OF NORTH AMERICA		PO BOX 13701			Philadelphia	PA	19101-3701	
Lighthouse Document Solutions		723 Main St	Suite 430		Houston	TX	77002	
Lighthouse Document Solutions		2520 Caroline			Houston	TX	77004	
Lightpath Capital, Inc.		1453 Third Street Promenade	Suite 315		Los Angeles	CA	90401	
Lincoln Discovery Services, Inc.		42 Nevada Ave			Long Beach	NY	15161	
Lincoln Financial Advisors Corp.	Attn Trish Kendregan, FBO David Chazin	1300 S. Clinton Street, 1H-53			Fort Wayne	IN	46802	
Lincoln Financial Advisors Corp.		1 Independent Drive	Suite 2901		Jacksonville	FL	32202	
Lincoln Financial Advisors Corp.		Trish Kendregan	1300 S. Clinton St, IH-53		Fort Wayne	IN	46802	
Lincoln Financial Advisors Corp.		18400 Von Karman, Ste 400			Irvine	CA	92612	
LINDEN, RICHARD		Address on File						
Lindsey McCully		Address on File						
Lindsey Norman		Address on File						
Linear Technologies		259 West 30th Street	Suite 201		New York	NY	10001	
Linear Technologies, Inc.		259 West 30th Street, Suite 201			New York	NY	10001	
LinkedIn Corporation		62228 Collections Center Drive			Chicago	IL	60693-0622	
LinkedIn Corporation		1000 West Maude Avenue			Sunnyvale	CA	94085-0000	
Linsco/Private Ledger		9785 Towne Centre Dr			San Diego	CA	92121-1968	
LINVEL, SHANNON		Address on File						
Lipper Inc		PO Box 417148			Boston	MA	02241	
LiquidFiles		PO Box 2403			North Parramatta	NSW	01750	AUSTRALIA
Lisa Bock		Address on File						
Lisa Joseph		Address on File						
LISA RIDLEY		Address on File						
Litigation Paralegals, LLC		1717 McKinney Avenue	Suite 700		Dallas	TX	75202	
Litigation Research		15 Golf Links Court			Kingwood	TX	77339-5335	
Litigation Solution, Inc.		901 Main St Concourse 121			Dallas	TX	75202	
Litigation Research	ATTN Litigation Research	15 Gf Lnks Ct			Kingswood	TX	77339	
Little Forney Crossing, Ltd.	c/o Standridge Companies, Ltd	3008 E. Hebron Pkwy, Bldg 300			Carrollton	TX	75010	

002423

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Littler Mendelson, PC		PO Box 45547			San Francisco	CA	94145-0547	
LIU, JEFF		Address on File						
Live Healthy America		1300 Walnut Street	Suite 100		Des Moines	IA	50309	
LiveWire Technologies, Inc.		PO Box 550			Little Elm	TX	75068	
Lizarazo, Mireya		Address on File						
Llaughing Llama Productions	Attn Robert Briscoe	11 Moller St			Tenafly	NJ	07670	
LLOYD GROUP		PO BOX 1374 MIDTOWN STATION			New York	NY	10018	
LLOYD, ANDREA K.		Address on File						
LNR and Associates		9426 Chimney Corner Lane			Dallas	TX	75243	
Loan Syndications and Trading	Attn Alicia Sansone	366 Madison Ave, 15th Floor			New York	NY	10017	
Loan Syndications and Trading		360 MADISON AVE, 16TH FLR			New York	NY	10017	
Locke Liddell & Sapp LLP	ATTN LORENA DELUCA	PO Box 911541			Dallas	TX	75391-1541	
Lockton Companies of Dallas		PO Box #671195			Dallas	TX	75267-1195	
Loews Coronado Bay	Jessica Gaines	Loews Business Service Center	424 Church Street, Suite 300		Nashville	TN	37219	
Loews Coronado Bay	Loews Coronado Bay Hotel	4000 Coronado Bay Road			Coronado	CA	92118	
Loews Coronado Bay Resort		4000 Coronado Bay Road			Coronado	CA	92118	
Loews Las Vegas Resort		101 Montelago Blvd			Henderson	NV	89011	
Logan Allin		Address on File						
LogMeIn, Inc.		PO Box 50264			Los Angeles	CA	90074-0264	
LogLink		3001 LBJ Freeway Ste 103			Dallas	TX	75234	
LOHRDING, BRIAN		Address on File						
Loiben, Tara		Address on File						
LOMBARDI, CHRISTOPHER		Address on File						
London Stock Exchange		10 Paternoster Square			London		EC4M 7LS	United Kingdom
Longhorn Credit Funding, LLC	c/o Lord Securities Corp.	48 Wall Street, 27th Floor	Attn Secretary		New York	NY	10005	
Longhorn Credit Funding, LLC		874 Walker Rd, Ste C			Dover	DE	19904-0000	
Looper Reed & McGraw P.C.		1601 Elm St, Ste 4600			Dallas	TX	75201	
Loren Jackson, District Clerk	Att Civil/Family Post Trial	PO Box 4651			Houston	TX	77210-4651	
Lori Hosea		Address on File						
LOSEY, NICHOLAS		Address on File						
LOUGHLIN MEGHJI + COMPANY, INC.		148 MADISON AVE	8TH FLOOR		New York	NY	10016	
LOUGHLIN MEGHJI + COMPANY, INC.		220 West 42nd Street, 9th Floor			New York	NY	10036	
Louis Dessaint		Address on File						
LOVELACE, NAOMI		Address on File						
Lowenstein Sandler PC		65 Livingston Ave			Roseland	NJ	07068	
Loyal Source		3504 Lake Lynda Drive	Suite 175		Orlando	FL	32817	
Loyens Loeff		Address on File						
Loyola University- Barnett Professorship	ATTN Traci Wolff	Loyola University New Orleans	7214 St. Charles Ave., Campus Box 909		New Orleans	LA	70115	United Kingdom
LPGP Connect		98 Mereway Road			Twickenham		TW2 6RG	United Kingdom

002424

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
LPL Financial	Attn Accounts Receivable	PO Box 502308			San Diego	CA	92150-2308	
LPL Financial	Attn Client Comp Dept	4707 Executive Dr			San Diego	CA	92121-3091	
LPL Financial	Attn Comp Dept FBO Sid Lorio	4707 Executive Drive			San Diego	CA	92121-3091	
Lucas Associates, Inc.		PO Box 638364			Cincinnati	OH	45263-8364	
Lucas Group		PO Box 406672			Atlanta	GA	30384-6672	
LUCAS VOILES		Address on File						
LUCHEY, BRITTANY		Address on File						
LUCIDITY CONSULTING GROUP LP	ATTN ROBIN PARSONS	1300 LOOKOUT DRIVE	SUITE 225		Richardson	TX	75082	
Lucy Bannon	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
LUI, VINCENT		Address on File						
Luis Gomez		Address on File						
Luis Lopez		Address on File						
Lumenson Security, Inc.		PO Box 912806			Denver	CO	80291-2806	
Luna, Jose		Address on File						
LUNNEY, BRITTANY		Address on File						
Lutheran High School	c/o Hannah Culburtson	9531 Milltrail			Dallas	TX	75238	
Luu, Joye		Address on File						
LVOVICH, YARASLAV		Address on File						
Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	Lynn Pinker Cox & Hurst, LLP	2100 Ross Avenue, Ste 2700		Dallas	TX	75201	
LYNN, PHAM & ROSS, LLP		PO BOX 190466			Dallas	TX	75219-4129	
Lynne Fiske		Address on File						
Lynx Capital, LLC		10900 Wilshire Blvd Ste 300			Los Angeles	CA	90024	
Lyon Wealth Management Inc.		14646 N Kierland Blvd, Ste 125	HighTower Advisors		Scottsdale	AZ	85254	
LYON, RICHARD D.		Address on File						
Lyons Brewer Group		274 Riverside Ave			Westport	CT	06880	
LYRECO		DEER PARK - DONNINGTON WOOD			TELFORD SHROPSHIRE		TF2 7NB	United Kingdom
M Patrick McShan		Address on File						
M&M The Special Events Company		9500 W 55th St Ste A			Countryside	IL	60525-7125	
M&S Technologies		2727 LBJ Freeway	Suite 810		Dallas	TX	75234	
M/S Media Productions Inc		512 Main Street, Suite 1301			Fort Worth	TX	76102	
MA Division of Unemployment Assistance		Revenue Service	19 StanifoRd St		Boston	MA	02114-2566	
Mabry, Will		Address on File						
Macaulley LLC		300 Delaware Avenue	Suite 760		Wilmington	DE	19801	
Macfarlanes		10 Norwich St			London		EC4A 1BD	United Kingdom
MACKENZIE PARTNERS, INC		105 MADISON AVE			New York	NY	10016	
MacroMavens		180 W 20th Street	Suite 1700		New York	NY	10011-0000	
MacroMavens, LLC		180 W. 20th Street	Suite 1700		New York	NY	10011	
MADDEN, SAMUEL		Address on File						
MaddenSewell, LLP		1755 Wittington Place	Ste 300		Dallas	TX	75234	
MAH, JEFFERY		Address on File						

002423

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
MAHMUD, GIBRAN		Address on File			Chicago	IA	60673-1258	
MailFinance		25881 Network Place						
Make-A-Wish Foundation of Metro New York		One Penn Plaza Ste 3600			New York	NY	10119	
MALCOLM M KNAPP, INC		46 E 92ND ST APT 5			NEW YORK	NY	10128-1371	
Malone Maxwell Borson Architects		718 North Buckner Blvd	Suite 400		Dallas	TX	75218	
Malwarebytes Corporation		10 Almaden Blvd, 10th Floor			San Jose	CA	95113	
Management Recruiters of Tallahassee		743 East Tennessee St			Tallahassee	FL	32308	
Management Search Inc		245 Peachtree Center Ave	suite 2500		Atlanta	GA	30303	
Manaswi Sharma		Address on File						
Manchester Grand Hyatt		PO Box 51914, Unit O			Los Angeles	CA	90051-6214	
MandateWire	ATTN Accounting	1430 Broadway, 12th Floor	Suite 1208		New York	NY	10018	
Manesh Shah		Address on File						
Mangia		50 West 57th Street			New York	NY	10019	
Mangin, Andrew		Address on File						
Manhattan Fire & Safety Corp.		242 West 30th Street	7th Floor		New York	NY	10001	
Manhattan Information Systems, Inc.		228 East 45th St			New York	NY	10017	
Manhattan Jewish Experience	Attn Danielle Yadaie	131 West 86th Street, Floor 11			New York	NY	10024	
Manian, Meagan		Address on File						
MANNING, ELLEN		Address on File						
MANO, JONATHAN		Address on File						
Mansoor Kazi		Address on File						
Manuel Lopez		Address on File						
Manulife Financial		PO Box 894764			Los Angeles	CA	90189-4764	
MANZO, MARC C.		Address on File						
MapAnything		5200 77 Center Dr, Ste 400			Charlotte	NC	28217	
Maples and Calder		UGLAND HOUSE		George Town	Grand Cayman			Cayman Islands
Maples Compliance Services (Cayman) Limi		PO Box 1093, Queensgate House			Grand Cayman		KY1-1102	Cayman Islands
Maples Fiduciary Services (Delaware) Inc.		4001 Kennett Pike, Ste 302			Wilmington	DE	19807	
MAPLES FINANCE		PO BOX 1093GT, QUEENSGATE HOUSE	SOUTH CHURCH ST		GEORGE TOWN		KY1-1104	Cayman Islands
MaplesFS	attn Peter Huber	Boundry Hall, Cricket Square	PO Box 1093		Grand Cayman		KY1-1102	Cayman Islands
MaplesFS Service Company Limited		PO Box 1093	Boundary Hall		GRAND CAYMAN		KY1-1102	Cayman Islands
Marble Care Unlimited		705 N. Bowser	#110		Richardson	TX	75081	
Marc Carlsson		Address on File						
MARC FABER LIMITED		SUITE 3311-3313		8 FINANCE STREET	CENTRAL HONG KONG			HONG KONG
MARC KLYMAN		Address on File						
MARC MANZO		Address on File						
March of Dimes	attn Megan Fletcher	12660 Colt Road, Suite 200			Dallas	TX	75251	

002428

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Marcus Consulting, LLC		913 Westminster Way			Southlake	TX	76092	
Marcus Evans Inc.		Address on File						
Margaret Peggy Boswell		Address on File						
Margarita Masters		906 Sunnyvale Dr			Arlington	TX	76010-2936	
Maricopa County Treasurer		301 West Jefferson St	Rm 100		Phoenix	AZ	85003	
Marion A. Patterson		Address on File						
Mark Badros		Address on File						
Mark Divine	Koa Kai, LLC	PO Box 232307			Leucadia	CA	92023	
Mark Drucker		Address on File						
Mark Gargiulo - CFO		Address on File						
MARK GELNAW		Address on File						
Mark K. Okada	Sullivan Cromwell LLP	Brian D. Glueckstein	125 Broad Street		New York	NY	10004	
Mark Kiniry		Address on File						
Mark Okada		Address on File						
Mark Patrick	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Mark Rywelski		Address on File						
Mark Schonfeld, Esq.	Regional Director	Securities & Exchange Commission	3 World Financial Center, Suite 400		New York	NY	10281-1022	
Mark Simmelkjaer		Address on File						
Mark Turner		Address on File						
MARKET AXESS CORPORATION		LOCKBOX # 30023, GENERAL POST OFC	PO BOX 30023		New York	NY	10087-0023	
Market Builders, Inc.		433 Begonia Ave.	Suite A		Corona Del Mar	CA	92625	
Market76, Inc.		900 Grand Avenue			New Haven	CT	06511	
MarketResearch		6101 Executive Blvd Ste 110			Rockville	MD	20852	
Markets Group		10 W. 37th St.	7th Floor		New York	NY	10018	
Markham Fine Jewelers		8355 Gaylord Pkwy			Frisco	TX	75034	
Markit	Attn John Taylor	IHS Markit Legal Department	IHS Markit, 450 West 33rd St,	5th Floor	New York	NY	10001	United Kingdom
Markit Equities Limited	c.o Market Group Limited, Level 4	Ropemaker Place, 25 Ropemaker Street			London		EC2Y9LY	United Kingdom
Markit Group Limited		4th Fir Ropemaker Place	25 Ropemaker St		London		EC2Y9LY	United Kingdom
Markit Group Limited		Level 5	2 More London Riverside		London		SEI 2AP	United Kingdom
Markit Group Limited / Markit North Amer		2 More London Riverside			London		SE12AP	United Kingdom
Markit North America Inc.		620 8th Ave	35th floor		New York	NY	10018	United Kingdom
Markit Valuations Ltd		level 5	2 More London Riverside		London		SEI 2AP	United Kingdom
Markit WSO Corp	Kendra Montoya	15 Inverness Way East			Englewood	CO	80112	
MARKIT WSO CORPORATION		Three Lincoln Centre	5430 LBJ Fwy, Ste 800		Dallas	TX	75240	
MarksADR, LLC		4833 Rugby Ave, Ste 301			Bethesda	MD	20814	
MARQUESS & ASSOCIATES		15441 KNOLL TRAIL	STE 280 LB1		Dallas	TX	75248	
Marriott Business Services		PO Box 402642			Atlanta	GA	30384-2642	
Mars Printing		17426 Studebaker Rd			Cerritos	CA	90703	
MARSHALL HESS		Address on File						

0024279



Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 100 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Marson, Stacy		Address on File						
Martin G. Salazar		Address on File						
Martin Podorsky		Address on File						
Martin, Andrew		Address on File						
Martin, Carla		Address on File						
MARTIN, DANIEL G.		Address on File						
MARTIN, WILLIAM		Address on File						
MARTINSON, MARK		Address on File						
Marty Mooney		Address on File						
Marval & O'Farrell		Av. Leandro N. Alem 928			Buenos Aires		01001	ARGENTINA
Mary Irving	Michael P. Hutchens, Esq.	Whitaker Chaik Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Mary Zappone		Address on File						
Maryam Rusch		Address on File						
Maryland Office of the Attorney General	Division of Securities	200 Saint Paul Place			Baltimore	MD	21202	
Marzullo Reporting Agency		345 North LaSalle	No 1605		Chicago	IL	60654	
MASON, DEANA		Address on File						
MASON, FREDERIC		Address on File						
MASON, FREDERIC		Address on File						
Mass. Dept. of Revenue	Attn Bankruptcy Unit	PO Box 9564			Boston	MA	02114	
MASSACHUSETTS DEPARTMENT OF REVENUE		PO Box 7025			Boston	MA	02204	
MASSACHUSETTS DEPARTMENT OF REVENUE		PO BOX 7065			Boston	MA	02204-7065	
Massachusetts Mutual Life Insurance Co		1295 State Street			Springfield	MA	01111	
Massand Capital, INC		130 East 18th Street #1P			New York	NY	10003	United Kingdom
MASSEYS LLP		Hillegate House	26 Old Bailey		London		EC4M 7QH	
MassMutual Financial Group		100 Bright Meadow Blvd			Enfield	CT	06082	
MassMutual Life Insurance Company		1000 N Central Expwy Ste 1000			Dallas	TX	75231-4177	
Massoud Karimzadeh		Address on File						
Mateo Hix		Address on File						
MATRIX RESOURCES INC.		PO BOX 101177			Atlanta	GA	30392	
Matt Culler		Address on File						
MATT DUNHAM		Address on File						
Matt Hurd		Address on File						
Matt McElligott		Address on File						
Matt McElligott Photography		1409 E. Windsor Drive			Denton	TX	76209	
MATTHEW BENDER & CO, INC		PO BOX 7247-0178			Philadelphia	PA	19170-0178	
Matthew Berry, Esq.	Office of General Counsel	Federal Communications Commission	445 12th Street, S.W.		Washington	DC	20554	
Matthew DiOrto	Michael P. Hutchens, Esq.	Whitaker Chaik Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Matthew Garrett		Address on File						

002423

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Matthew Gould		Address on File						
Matthew Kirst		Address on File						
Matthew Murphy		Address on File						
MATTHEW SCHNABEL		Address on File						
Matthew Selman		Address on File						
MATTHEW WHITLEY		Address on File						
Mattos Filho Veiga Filho Marry Jr.		Address on File						
Maurice Robinson & Associates LLC		880 Apollo St Suite 125			El Segundo	CA	90245	
Maurice Robinson & Associates LLC		28 Dover Place			Manhattan Beach	CA	90266	
Mauricio Chavarriaga	c/o Highland Capital Mgmt.	245 Park Ave, 24th Flr			New York	NY	10167	
Mauricio Chavarriaga		Address on File						
Mauricio Delgado		Address on File						
MAWN, CHRISTOPHER		Address on File						
Max Russell Phinney		Address on File						
Maxim Group, LLC		405 Lexington Ave #2			New York	NY	10174	
MAY, DERRICK		Address on File						
MAYER BROWN LLP		2027 COLLECTION CENTER DR			Chicago	IL	60693-0020	
Mayer, Brown, Rowe & Maw LLP		1675 Broadway			New York	NY	10019-5820	
Mayeron, John		Address on File						
Mayo, Christopher L.		Address on File						
Mayors Intern Fellows Fund		3963 Maple Ave, Suite 390			Dallas	TX	75219	
Mazzeo Song & Bradham LLP		The Dallas Foundation						
MBA Reporting Services, Inc		708 Third Ave, 19th Fl			New York	NY	10017	
MBM Advisors, Inc.		555 Republic Drive			Plano	TX	75074	
McCafferty, Christopher		440 Louisiana #2600			Houston	TX	77002	
McCague Borlack LLP		Address on File						
McClung, Elizabeth B.		130 King St. West Suite 2700			Toronto	ON	M5X1C7	CANADA
McCormick, Robert		Address on File						
McCormick, Robert		Address on File						
McDaniel, Patrick		Address on File						
McDermott, Bonner		Address on File						
McDermott investment Services, LLC		44 E Broad St, FL 2			Bethlehem	PA	18018	
McDermott Will & Emery LLP		Lockbox - New York PO Box 7247-6755			Philadelphia	PA	19170-6755	
McDermott Will & Emery LLP		PO BOX 2995			Carol Stream	IL	60132-2995	
McDermott Will & Emery LLP		227 West Monroe Street			Chicago	IL	60606-5096	
McDermott Will & Emery LLP		P.O. Box 6043			Chicago	IL	60680-6043	
McElroy & Company P.C.		16415 Addison Road	Suite 800		Addison	TX	75001	

002423

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
McFARLANE, PETER A		Address on File						
McFARLING, BRANDON		Address on File						
McGRANER, MATTHEW		Address on File						
McGraner, Matthew		Address on File						
MCGREGOR, MICHELLE		Address on File						
McGuireWoods LLP		800 E. Canal Street			Richmond	VA	23219-3916	
McIntosh Search Incorporated		6310 Lemmon Ave Ste 202			Dallas	TX	75209	
McKay, Brad		Address on File						
MCKEE NELSON LLP		ONE BATTERY PARK PLAZA	34TH FLR		New York	NY	10004	
McKool Smith		300 Crescent Court	Suite 1500		Dallas	TX	75201	
McKool Smith P.C.	c/o Travis DeArman	300 Crescent Court Ste 1500			Dallas	TX	75201	
McKool Smith, P. C.	Gary Cruciani, Esq.	McKool Smith	300 Crescent Court, Suite 1500		Dallas	TX	75201	
McLagan Partners		PO Box 905188			Charlotte	NC	28290-5188	
McLagan Partners		PO Box 100137			Pasadena	CA	91189-0137	
McLagan Partners Inc (Aon McLagan)		1600 Summer Street	Ste 601		Stamford	CT	06905-0000	
McLagan Partners, Inc.	Stephen Reuther	4 Overlook Point			Lincolnshire	IL	60069	
MCLOCHLIN, MICHAEL		Address on File						
MCLOCHLIN, MICHAEL P.		Address on File						
McMains, Aubree		Address on File						
McMillan Binch Mendelsohn		Brookfield Place Suite 4400			Toronto	ON	M5J2T3	CANADA
McNamara, John		Address on File	Bay Wellington Tower					
McRedmond, Edward		Address on File						
MCS Capital LLC c/o STC, Inc.		233 North Prospect St., Ste. 202			Hagerstown	MD	21740	
Meadows Collier Reed Cousins & Blau LLP		901 Main St. Suite 3700			Dallas	TX	75202	
MEANS, BRADLEY		Address on File						
Medanich, Michael		Address on File						
Mediant Communications Inc.	Mediant Communications	400 Regency Forest Drive, Suite 200			Cary	NC	27518	
Mediant Communications LLC		PO Box 29976			New York	NY	10087-9976	
MedPost Urgent Care-East Dallas		9540 Garland Rd	Suite C408		Dallas	TX	75218-5004	
Meeks, Lucas		Address on File						
MEETINGZONE LTD		OXFORD HOUSE	OXFORD ROAD		Thame		OX9 2AH	United Kingdom
MEGAN MCGEE		Address on File						
Meister Seelig & Fein LLP		125 Park Avenue	7th Floor		New York	NY	10017	
MELLENDEZ, HELDER		Address on File						
MELISSA LOPEZ		Address on File						
Melody Po		Address on File						
Mendelsohn, Rosentzweig, Shact		1000 Sherbrooke St West, 27th Flr			Montreal	QC	H3A 3G4	CANADA
Mendenhall, Brad		Address on File						
MERCER (US) INC.	John Dempsey	1166 Avenue of the Americas			New York	NY	10036	

002430

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Mercer Consumer	Attn DV1 Fin	PO Box 310293			Des Moines	IA	50331-0293	
Mercer Consumer	Wells Fargo Bank	c/o Regulus Lockbox Services 310293	666 Walnut Street		Des Moines	IA	50309	
Merchants Automotive Group, Inc.		1278 Hooksett Road			Hooksett	NH	03106	
Merchants Automotive Group, Inc.		PO Box 16415			Hooksett	NH	03106-6415	
Mercy Corps		P.O. Box 2669, Dept W			Portland	OR	97208-2669	
MEREDITH HERZFELD Mergent, Inc.		Address on File						
Mergmarket		PO Box 403123			Atlanta	GA	30384-3123	
Mergmarket (US) Limited (trading as Xt		895 Broadway	4th Floor		New York	NY	10003	
MERGERMARKET LTD		1501 Broadway	Suite 801		New York	NY	10036-0000	
MERGERMARKET LTD		11 West 19th Street	2nd Floor		New York	NY	10011	
Merit Court Reporters		3 E 28th ST	4th FLR		New York	NY	10016	
Merope Pentogenis		307 W 7th Street	Ste 1350		Fort Worth	TX	76102	
Merrill Communications LLC		Address on File						
Merrill Communications LLC		One Merrill Circle			Saint Paul	MN	55108	
MERRILL CORPORATION		CM-9638			Saint Paul	MN	55170-9638	
MERRILL LYNCH	Attn Blake Bollinger	CM-9638			Saint Paul	MN	55170	
MERRILL LYNCH	Attn Chad Kulm	569 Brookwood Village	Ste 501		Birmingham	AL	35209	
MERRILL LYNCH	Attn Jason Aversa	110 S Phillips Ave, Ste 101			Sioux Falls	SD	57104	
MERRILL LYNCH	Attn Lynae Carr	3100 Hingston Ave			Egg Harbor Township	NJ	08234	
MERRILL LYNCH	Attn Megan Arnold	1221 McKinney Street, Ste 3900			Houston	TX	77010	
MERRILL LYNCH	Attn Monty Willhite	13355 Noel Rd, 7th Floor			Dallas	TX	75240	
MERRILL LYNCH	Attn Robert Luther	60 E South Temple St, #200-61			Salt Lake City	UT	84111	
MERRILL LYNCH	Attn Tiffany Contreras	1100 Canal Street			The Villages	FL	32162	
MERRILL LYNCH		17225 El Camino Real, Ste 200			Houston	TX	77058	
MERRILL LYNCH	C/O Girard Kovarik & Assoc	101 N. Clematis St, Ste 200			West Palm Beach	FL	33401	
MERRILL LYNCH		185 Asylum Street	City Place II, 14th Flr		Hartford	CT	06103	
MERRILL LYNCH		NJ2-140-02-01	1400 Merrill Lynch Drive		Pennington	NJ	08534	
MERRILL LYNCH		4802 Deer Lake Dr E	CMS CBRU FL9-801-01-02		Jacksonville	FL	32246	
MERRILL LYNCH		CMS CBRU FL9-801-01-02	4802 Deer Lake Dr E		Jacksonville	FL	32246	
MERRILL LYNCH		21805 FIELD PARKWAY STE 220			DEER PARK	IL	60010	
Merrill Lynch Valuations LLC	Attn Richard Eimbinder	15514 Collections Center Drive			Chicago	IL	60693	
Merry Phengvath		450 E 4th Street			Brooklyn	NY	11218	
MERS Educational Conference	ATTN Bob Rust	Municipal Empee Retirement Syst of LA	7937 Office Park Blvd		Baton Rouge	LA	70809	
MESERVE, NICHOLAS		Address on File						
Meta-e Discovery LLC	Paul McVoy	Meta-e Discovery	Six Landmark Square, 4th Floor		Stamford	CT	06901	

002437

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Meta-e Discovery, LLC	Attn Paul H. McVoy	93 River Street			Millford	CT	06460	
Meta-e Discovery, LLC	Morrison Cohen LLP	Attn Joseph T. Moldovan and Sally Siconolfi	909 Third Avenue		New York	NY	10022	
Metalogix International		PO Box 83304			Pittsburgh	PA	15250	
METHVIN, JAMES		Address on File						
Metlife	Attn Placings Unit	1300 Hall Blvd.			Bloomfield	CT	06002	
Metlife	Attn Retail Life & DI Operations	18210 Crane Nest Dr, 5th Floor	Placings Unit		Tampa	FL	33647	
Metlife		PO BOX 371487			Pittsburgh	PA	15250-7487	
Metlife Investors USA		PO Box 13863			Philadelphia	PA	19101-0000	
Insurance Company		5400 LBJ Freeway			Dallas	TX	75240	
MetLife SBC		PO Box 804466	Suite 1100		Kansas City	MO	64180-4466	
MetLife SBC		305 Broadway, 14th Flr			New York	NY	10007	
Metro Attorney Service Inc.		PO Box 560092			Dallas	TX	75356-0092	
Metro-Repro, Inc.		5205 N. O'Connor Blvd, Suite 200			Irving	TX	75039-3746	
METT	Attn Jana Clemans	Pioneer Natural Resources						
Meunier, Marc		Address on File						
MGL Consulting Corp.		10077 Grogans Mills Rd Ste 300			The Woodlands	TX	77380	
MHA Petroleum Consultants LLC		730 17th Street	Suite 410		Denver	CO	80202	
MIAO, EUGENE		Address on File						
MICHAEL & TERESA OLSON TRUST		Address on File						
Michael Blackburn		Address on File						
MICHAEL COLVIN		Address on File						
Michael Cummings		Address on File						
MICHAEL DEVICO		Address on File						
Michael Hasenauer		Address on File						
Michael Jeong		Address on File						
MICHAEL KELLY		Address on File						
MICHAEL LANE CUISINE, INC		8409 PICKWICK # 112			Dallas	TX	75225	
MICHAEL LATHAM		Address on File						
Michael Ly		Address on File						
Michael Malone Architects, Inc		5646 Milton St Suite 705			Dallas	TX	75206	
Michael Morris		Address on File						
Michael P Zarilli		Address on File						
MICHAEL PAGE INTERNATIONAL		8 BATIN RD			Slough Berkshire		SL1 3SA	United Kingdom
MICHAEL PASSMORE		Address on File						
MICHAEL PETERSON		Address on File						
Michael Phillips		Address on File						
Michael R. Coker Company		2700 Swiss Ave Suite 100			Dallas	TX	75204	
Michael Radovan		Address on File						
Michael S. Held		Address on File						
MICHAEL SHERIDAN		Address on File						
Michael Sorell		Address on File						

0024378

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
MICHAEL SZKODZINSKI		Address on File						
MICHAEL T DALBY IRA		Address on File						
Michael Tepitsky		Address on File						
MICHAEL WANG		Address on File						
MICHAEL WILCHER		Address on File						
Michael Paul Donaldson		Address on File						
Michelle French, Tax A/C		Address on File						
Michigan Department of Treasury		PO Box 30774			Lansing	MI	48909-8274	
Mick Law P.C.		816 South 169th Street			Omaha	NE	68118	
Microsoft Corporation		1950 N Stemmons Fwy	Suite 5010		Dallas	TX	75207	
Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation	David P. Papiez	Fox Rothschild LLP	1001 4th Ave, Suite 4500		Seattle	WA	98154	
Microsoft Corporation and Subsidiary of Microsoft Corporation		Amber Brazier, Associate Paralegal	One Microsoft Way		Redmond	WA	98052	
Microsoft Services		One Microsoft Way			Redmond	WA	98052	
Microsoft Services		PO Box 844510			Dallas	TX	75284-4510	
MICRO-TEL		3700 Holcomb Bridge Rd	Suite 5		Peachtree Corners	GA	30092	
Mike Brennan		Address on File						
Mike Brohm		Address on File						
Mike Doyle		Address on File						
Mike Hurley		Address on File						
Mike Sharkey		Address on File						
Mike Wolbert		Address on File						
Milbank, Tweed, Hadley & McCloy LLP		1 CHASE MANHATTAN PLAZA			New York	NY	10005-1413	
Milberg LLP		One Pennsylvania Plaza	49th Floor		New York	NY	10119	
Miles Littlefield		Address on File						
Miller & Chevalier Chartered		P.O. Box 758604			Baltimore	MD	21275-8604	
Miller Buckfire & Co, LLC		601 Lexington Ave			New York	NY	10022	
Miller Korzenik Sommers Rayman LLP		1501 Broadway Ste 2015			New York	NY	10036-5600	
MILLER, DEBORAH		Address on File						
Miller, Egan, Molter & Nelson LLP		4514 Cole Avenue	Suite 1200		Dallas	TX	75205	
Miller, Egan, Molter & Nelson LLP		1402 San Antonio St.	Suite 100		Austin	TX	78701	
MILLIMAN CONSULTANTS AND ACTUARIES		1550 LIBERTY RIDGE DR	STE 200		WAYNE	PA	19087-5572	
Mills, James		Address on File						
MILTENBERGER, WILLIAM		Address on File						
Mindy Billinghurst		Address on File						
Miner, Christopher		Address on File						
Minnesota Revenue		Mail Station 1260			Saint Paul	MN	55145-1260	

0024379

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Minnesota State Treasurer	Minnesota Department of Commerce	857th Place East, Suite 500			Saint Paul	MN	55101	
Miramar OSC	Attn Leslie Henger	11763 Ashlock Way			San Diego	CA	92131	
Mirani, Parth	Address on File							
MISLAV TOLUSIC	Address on File							
Mississippi Secretary of State	Business Regulation & Enforcement Div	125 S. Congress Street			Jackson	MS	39201	
MISSISSIPPI STATE TAX COMMISSION	PO BOX 1033				Jackson	MS	39215	
Missouri Department of Revenue	PO Box 3020				Jefferson City	MO	65105-3020	
MISSOURI DIRECTOR OF REVENUE	TAXATION BUREAU	PO BOX 3365 (573)751-4541			Jefferson City	MO	65105-3365	
Missouri Secretary of State	Securities Division	600 West Main Street, 2nd Floor			Jefferson City	MO	65101	
Mitchell A. Hanwood & Partners	791 Park Ave Ste 4B				New York	NY	10021	
Mitchell, Krysta	Address on File							
Mitchener Turnipseed	Address on File							
MITTS, BRIAN	Address on File							
MJL ENTERPRISE	PO BOX 852563				Richardson	TX	75085	
MLF Lex Serv LP	4350 East West Highway				Bethesda	MD	20814	
MODERN HEALTHCARES	CIRCULATION DEPT	1155 GRATIOT AVE			Detroit	MI	48207-2912	
DAILY DOSE	Address on File							
Mohring, Christopher	160 Second Street				Cambridge	MA	02142	
Molecular Insights	13537 Barrett Parkway Drive	Suite 300			Manchester	MI	63021	
Moloney Securities	PO Box 292265				Lewisville	TX	75029-2265	
Monarch Investigation Inc	330 Hudson Street	7th Floor			New York	NY	10013	
Money-Media, Inc.	PO Box 90364				Chicago	IL	60696-0364	
Monster, Inc.	14372 COLLECTIONS CENTER DR				Chicago	IL	60693	
MONSTERTRAK	395 Oyster Point Blvd	Suite 215			South San Francisco	CA	94080	
Moody's Analytics	PO BOX 102597				Atlanta	GA	30368-0597	
Moody's Analytics	PO BOX 116714				Atlanta	GA	30368-0597	
Moody's Analytics	PO Box 116647				Atlanta	GA	30368-6647	
Moody's Analytics, Inc.	Attn Christopher R. Belmonte and Pamela A. Bosswick	230 Park Avenue, Suite 1130			New York	NY	10169	
Moody's Analytics, Inc.	Sue McGeehan	250 Greenwich Street			New York	NY	10007	
Moody's Analytics, Inc.	7 World Trade Center				New York	NY	10007-0000	
Moody's Investor Service	PO Box 102597				Atlanta	GA	30368-0597	
Moody's Investors Service, Inc.	Attn Christopher R. Belmonte and Pamela A. Bosswick	230 Park Avenue, Suite 1130			New York	NY	10169	
Moody's Investors Service, Inc.	Sue McGeehan	250 Greenwich Street			New York	NY	10007	

002438



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Moody Investors Service, Inc.	Sue McGeehan	VP, Collections, Finance Dept.	7 World Trade Center at 250 Greenwich Street		New York	NY	10007	
MOORE & VAN ALLEN PLLC		100 NORTH TRYON ST	STE 4700		Charlotte	NC	28202-4003	
MOORE, CALEB		Address on File						
MOORE, WILLIAM C.		Address on File						
Morgan Lewis & Bockius LLP		PO Box 8500 S-6050			Philadelphia	PA	19178-6050	
Morgan Stanley	Attn Accounts Receivable	PO Box 860			New York	NY	10008-0860	
Morgan Stanley	Attn Adam Razov	855 Franklin Ave.			Garden City	NY	11530	
Morgan Stanley	Attn Diana Sigona	1585 Broadway, 23rd Flr			New York	NY	10036	
Morgan Stanley	Attn Jonathan Canter	10960 Wilshire Blvd, Ste 2000			Los Angeles	CA	90024	
Morgan Stanley	Attn Margaret Oshea-NW Managers Mtg	1585 Broadway, 23rd Floor			New York	NY	10036	
Morgan Stanley	Attn MF Billing Dept	1300 Thames St, 4th Flr			Baltimore	MD	21231	
Morgan Stanley	Attn Michael Lawrence	6037 La Flocha			Rancho Santa Fe	CA	92067	
Morgan Stanley	Attn Michelle Dolan	2 Jericho Plaza			Jericho	NY	11753	
Morgan Stanley	Attn Robyn Owens	370 17th Street, Suite 2800			Denver	CO	80202	
Morgan Stanley		111 S. Pflingsten Road	Suite 200		Deerfield	IL	60015	
Morgan Stanley		200 Crescent Court	Ste 900		Dallas	TX	75201	
Morgan Stanley		14850 N Scottsdale Rd	Ste 600		Scottsdale	AZ	85254	
Morgan Stanley		733 Bishop Street	Ste 2800		Honolulu	HI	96813	
MORGAN, JOHN		Address on File						
MORGANS, JONATHAN		Address on File						
MORLEY CAMPBELL		Address on File						
Morningstar, Inc.		22 W Washington St			Chicago	IL	60602-0000	
Morningstar, Inc.		2668 PAYSphere Circle			Chicago	IL	60674	
Morningstar, Inc.		135 South LaSalle St Dept. 2668			Chicago	IL	60674-2668	
Morningstar, Inc.		5133 Innovation Way			Chicago	IL	60682-0051	
Morris James LLP		500 Delaware Avenue	Suite 1500	PO Box 2306	Wilmington	DE	19899-2306	
Morris, Manning, & Martin LLP		1600 Atlanta Financial Center	3343 Peachtree Road, NE		Atlanta	GA	30326-1044	
MORRIS, NICHOLS, ARSHT & TUNNELL LLP		1201 NORTH MARKET ST	PO BOX 1347		Wilmington	DE	19899-1347	
MORRIS, NICHOLS, ARSHT & TUNNELL LLP	William M. Lafferty	Kevin M. Coen	1201 N. Market Street		Wilmington	DE	19801	
Morrison & Foerster		1290 Ave of the Americas			New York	NY	10104-0050	
Morrison Cohen LLP	Attn Joseph T. Moldovan and Sally Siconolfi	909 Third Avenue			New York	NY	10022	
Morstad		79 East Putnam Ave	Outdoor Traders Building		Greenwich	CT	06830	
Mortensen, Christopher		Address on File						
Morton, David C.		Address on File						
MOSTLY SMOKED		VITTORIA HOUSE	2A TOWCESTER RD		BOW London	TX	E3 3ND	United Kingdom
Motus Red LLC		7018 Hursey			Dallas	TX	75205	
Mourant Ozannes		Address on File						

0024381

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Move Solutions, Ltd.		1473 Terre Colony Ct, Dept DA			Dallas	TX	75212	
MoveWorks, Inc.		4945 Sharp Street			Dallas	TX	75247	
MP Advisory		43 Vila Nova Pauliceia			Sao Paulo-SP			BRAZIL
MPulse Maintenance Software		PO Box 22906			Eugene	OR	22906	
MQ Services Ltd.		Chancery Hall	52 Reid St		Hamilton		HM 12	BERMUDA
MQ Services Ltd.		PO Box HM 1737			Hamilton		HM GX	BERMUDA
MQ Services Ltd.		PO BOX HM 809			Hamilton		HM GX	BERMUDA
MRB Research Partners Inc.		122 East 42nd Street	Suite 2310		New York	NY	10168	
MRI Contract Staffing		5151 Beltline Rd	Suite 550		Dallas	TX	75254	
MRI Contract Staffing		88276 Expedite Way			Chicago	IL	60695-0001	
MS Society of Long Island		40 Marcus Dr.	Suite 100		Melville	NY	11747	
MSCI Inc.		PO Box 414631	250 Greenwich St, 49th floor		Boston	MA	02241-4631	
MSCI Inc.		7 World Trade Center			New York	NY	10007-0000	
MT State Auditor, Securities Comm.		840 Helena Avenue			Helena	MT	59601	
MTV Staying Alive Foundation		1305 Wycliff Ave	Suite 120		Dallas	TX	75207	
Muck Holdings LLC		c/o Crowell & Moring LLP	590 Madison Avenue		New York	NY	10022	
MULLER, MARY		Address on File						
Multichannel News		PO Box 5667			Harlan	IA	51593-1167	
MUNDASSERY, APPU		Address on File						
Munger Tolles & Olson LLP		355 South Grand Ave			Los Angeles	CA	90071-1560	
Munsch Hardt Kopf & Harr, P.C.		500 N. Akard St., Ste. 3800			Dallas	TX	75201	
Munsch Hardt Kopf & Harr, P.C.		3800 Ross Tower	500 N. Akard Street Suite 402		Dallas	TX	75202-2790	
Murano Connect LP		252 West 38th Street			New York	NY	10018	
Murder Mystery Texas		6304 Innsbrooke Dr			Arlington	TX	76016	
Murphy, George		Address on File						
MURPHY, MATTHEW		Address on File						
MURRAY HILL CENTER		14185 Dallas Parkway Suite 1200			Dallas	TX	75254	
SOUTHWEST INC		Address on File						
MURRAY, ANDREW		Address on File						
Murray, Mason		Address on File						
Murray, Wesley		Address on File						
Muscular Dystrophy Association		PO Box 38			Terrell	TX	75160	
Musser, Carley		Address on File						
Muthu Dorai		Address on File						
Mxtoolbox		12710 Research Blvd	Ste 225		Austin	TX	78759	
MY HOUSE OF FINE EATS & CATERING		2025 PROMENADE CENTER			Richardson	TX	75080	
Myers Bigel Sibley & Sajovec, P.A.		PO Box 37428			Raleigh	NC	27627	
Myers Park Country Club		2415 Roswell Avenue			Charlotte	NC	28209	
Myron Corp.		PO Box 660888			Dallas	TX	75266-0888	

0024382

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
N.C. DEPARTMENT OF REVENUE		PO BOX 25000			Raleigh	NC	27640-0002	
N9NE Group Dallas-Ghostbar		2440 Victory Park Ln, 33rd Floor			Dallas	TX	75219	
NAI OLYMPIA PARTNERS		320 NORTH MERIDIAN ST	STE 400		Indianapolis	IN	46204	
NAIFA - Greater Washington DC		600 State Street	Suite A		Cedar Falls	IA	50613	
Nalin Yogasundram		Address on File						
Namaro Graphics Designs		PO Box 148			Rhinebeck	NY	12572	
NANCY SMITH-WELLS, CSR		PO BOX 1284			South Pasadena	CA	91031	
NAPE Expo, LP		PO Box 224531			Dallas	TX	75222	
NAPONIC, JILL		Address on File						
NARAYAN HEGDE		Address on File						
NARY RADHAKRISHNAN		Address on File						
NASD Regulation, Inc.		701 Market St	W8705 c/o Mellon Bank, Rm 3490		Philadelphia	PA	19106	
NASD, CRD-IARD		PO Box 7777-W8705			Philadelphia	PA	19175-8705	
NASD, CRD-IARD		PO BOX 7777-W9995			Philadelphia	PA	19175-9995	
Nasdaq Information, LLC		LBX# 80200	PO Box 780200		Philadelphia	PA	19178-0200	
Nasdaq OMX	C/O Wachovia Bank	#90200	PO Box 8500		Philadelphia	PA	19178-0200	
NASDAQ Stock Market		PO Box 7777 W1555			Philadelphia	PA	19106	
NASH, CLARISSA		Address on File						
Nasher Sculpture Center		2001 Flora Street			Dallas	TX	75201	
NASKAR, ANJALI		Address on File						
NASKAR, ANJALI		Address on File						
NASKAR, ANJALI		Address on File						
NASP	Attn Michelle	727 15th Street, NW	Suite 750		Washington	DC	20005	
Natalie Uto		Address on File						
Nathan Brooks		Address on File						
Nathan Burns		Address on File						
Nathan Hall		Address on File						
Nathan Hukill		Address on File						
NATHAN SPEICHER		Address on File						
NATHAN ZANG		Address on File						
NATIONAL COMPLIANCE SERVICES, INC.		355 NE 5TH AVE	STE 4		Delray Beach	FL	33483	
National Corporate Research Ltd		122 E 42nd St Fl 18			New York	NY	10168-1899	
National Depo		P.O. Box 404743			Atlanta	GA	30384-4743	
NATIONAL ECONOMIC RESEARCH ASSOC. INC		PO BOX 29677	GENERAL POST OFFICE		New York	NY	10087-9677	
National Economic Research Associate		PO Box 7247-6754			Philadelphia	PA	19170-6754	
National Financial Services Corp.	ATTN Emily Ivers-Mailzone ZE7F	82 Devonshire St.			Boston	MA	02109	
National Financial Services, LLC	Attn FI Operational Accounting	100 Salem St, Mail Zone O1S			Smithfield	RI	02917	
National Financial Services, LLC	Attn Thomas Smith-Vaughan	82 Devonshire Street			Boston	MA	02109	

0024389

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NATIONAL FLAG & DISPLAY CO.		22 W 21ST ST			New York	NY	10010	
National MS Society	Attn Cara Harfing	2105 Luna Rd, Ste 390			Carrllton	TX	75006	
National Multiple Sclerosis Society		PO Box 4527			New York	NY	10163	
National Regulatory Services		33443 Treasury Center			Chicago	IL	60694-3400	
National Stripper Well Association		PO Box 18336			Oklahoma City	OK	73154	
National Trust Management Services	Accounts Receivable	7957 Wellington Dr			Warrenton	VA	20186	
National Trust Management Services		PO Box 3322			Warrenton	VA	20188	
National Valuation Consultants, Inc.		7807 E. Peakview Ave, Ste 200			Centennial	CO	80111	
Nationwide Business Concepts		1439 W. Chapman Avenue	#64		Orange	CA	92868	
Nationwide Services		P. O. Box 23099			Ft. Lauderdale	FL	33307	
Natixis North America LLC		1251 Avenue of the Americas			New York	NY	10020	
NAU, STEVEN		Address on File						
NautaDutilh NV		Postbus 7113, 1007 JC						Netherlands
NAVEJAS, MARIANA		Amsterdam, Beethovenstraat 400			Amsterdam		1082 PR	
		Address on File						
NAVIGANT CONSULTING INC		4511 PAYSHERE CIRCLE			Chicago	IL	60674	
Navigant 3, LLC		PO Box 5370			Wayland	MA	01778	
Navigant 3, LLC		1737 Washington st			E. Bridgewater	MA	02333	
NC Office of the Secretary of State		2 South Salisbury Street	Old Revenue Complex		Raleigh	NC	27601	
NEAR EARTH LLC		945 WEST ROAD	HOYT DAVIDSON		New Canaan	CT	06840	
Nebraska Department of Banking & Finance	Bureau of Securities	1526 K Street, Suite 300			Lincoln	NE	68508-2732	
NEEL MITRA		Address on File						
Neil Desai		Address on File						
Neil Menard		Address on File						
NELL GWYNN HOUSE APARTMENTS LTD		SLOANE AVE			London		SW3 3AX	United Kingdom
Nelson, Caitlin		Address on File						
Nelson, Kaitlin		Address on File						
NELSON, KRAMER		Address on File						
NELSON, KRAMER		Address on File						
NEOFUNDS BY NEOPOST		PO BOX 30193			Tampa	FL	33630-3193	
Nesmith, Christopher		Address on File						
NESTLE WATERS POWWOW		PO BOX 727			CAMBERLEY		GU15 9WZ	United Kingdom
Netapp		1395 Crossman Ave			Sunnyvale	CA	94089-0000	
Netherland, Sewell & Associates, Inc.		2100 Ross Avenue	Suite 2200		Dallas	TX	75201	
Netherland, Swell & Associates, Inc.		1601 Elm St. Suite 4500			Dallas	TX	75201	

0024384

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Netpro Computing Inc.		4747 N. 22nd St, #400			Phoenix	AZ	85016-4774	
NetWrix Corporation	Accounts Receivable	1460 Manning Parkway			Powell	OH	43065	
NEVADA COACHES, LLC		1550 S INDUSTRIAL RD			Las Vegas	NV	89102	
Nevada Dept of Taxation		PO Box 52609			Phoenix	AZ	85072-2609	
Nevada Secretary of State		2250 Las Vegas Blvd N Ste 400			N Las Vegas	NV	89030-5873	
NEW CONCEPT		Securities Division CROOKED COTTAGE, NEWCHAPEL RD	LINGFIELD		SURREY		RH7 6BJ	United Kingdom
New Edge Networks		Unit 10 PO Box 5000			Portland	OR	97208-5000	
NEW ERA		2935 Talisman			Dallas	TX	75229	
New Hampshire Department of State	Bureau of Securities Regulation	107 North Main Street	Room 204, State House		Concord	NH	03301-4951	
New Horizons Computer Learning Center		PO Box 671164			Dallas	TX	75267-1164	
New Mexico Securities Division		P.O. Box 25101			Santa Fe	NM	87504	
NEW YORK CITY DEPARTMENT OF FINANCE		345 ADAMS ST			Brooklyn	NY	11201	
NEW YORK CITY DEPARTMENT OF FINANCE		PO Box 3931			New York	NY	10008-3931	
NEW YORK CITY DEPARTMENT OF FINANCE		PO Box 5150			Kingston	NY	12402-5150	
New York Financial Writers Association		PO Box 338			Ridgewood	NJ	07451-0338	
New York State Corporation Tax	NYS Corporate Tax	Processing Unit	P.O. Box 22093		Albany	NY	12201	
New York State Department of Law		New York Office of the Attorney General	120 Broadway, 23rd Floor		New York	NY	10271	
New York State Department of State		Misc. Records Bureau	41 State St		Albany	NY	12231	
New York State Income Tax		W A HARRIMAN CAMPUS			Albany	NY	12227	
New York State Income Tax		Extension Request PO Box 4125			Binghamton	NY	13902-4126	
Newbridge Financial Inc.	ATtn Scott Weeks - Accountant	5200 Town Center Circle	Tower 1, Ste 306		Boca Raton	FL	33486	
Newbridge Securities Corporation		1451 W Cypress Creek Rd, Suite 204			Ft. Lauderdale	FL	33309	
Newbridge Securities Corporation	Attn Robert Spitler-CFO	5200 Town Center Circle Tower 1	Ste 306		Boca Raton	FL	33486	
NewOak Advisors LLC		485 Lexington Ave, 25th Floor			New York	NY	10017	
NewOak Capital		485 Lexington Ave, 25th flr			New York	NY	10017	
News Communications		4th Flr, Chinyang Bldg	90-3 Chungjeongno 2-ga,		Seodamun-gu		120-012	SOUTH KOREA
NexBank	John Damilowicz	2515 McKinney Ave	Ste 1100		Dallas	TX	75201	
NexBank Capital Advisors		2515 McKinney Ave, Ste 1100			Dallas	TX	75201	

0024385

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NexBank Capital, Inc., NexBank Securities, Inc., NexBank Title, Inc. and NexBank	Jason M. Rudd and Lauren K. Drawhorn	Wick Phillips Gould & Martin, LLP	3131 McKinney Avenue, Suite 500		Dallas	TX	75204	
NEXBANK SECURITIES, INC		2515 McKinney	Suite 1700		Dallas	TX	75201	
NEXBANK SECURITIES, INC		13455 NOEL RD	22ND FL		Dallas	TX	75240	
NexBank SSB	dba NexBank Credit Services	Grant Smith	2515 McKinney Ave.	11th Floor	Dallas	TX	75201	
NexBank SSB		2515 McKinney Ave. Suite 1100			Dallas	TX	75201	
NEXBANK, SSB	ATTN MARGIA SANDS	13455 NOEL RD	STE 2220		Dallas	TX	75240	
NexPoint Advisers, L.P.	Altn Davor Rukavina, Esq. and Julian P. Vasek, Esq.	Munsch Hardt Kopf & Harr, P.C.	3800 Ross Tower	500 N. Akard Street	Dallas	TX	75202-2790	
NexPoint Advisers, L.P.		200 Crescent Court	Suite 700		Dallas	TX	75201	
NexPoint Latin America Opportunities Fund	K&L Gates LLP	Stephen G. Topetzes	1601 K Street, NW		Washington	DC	20006	
NexPoint Latin America Opportunities Fund	K&L Gates LLP	James A. Wright III	State Street Financial Center	One Lincoln Street	Boston	MA	02111-2950	
NexPoint Latin America Opportunities Fund	Stephen G. Topetzes	K&L Gates LLP	1601 K Street, NW		Washington,	DC	02006	
Nextel Communications		PO Box 54977			Los Angeles	CA	90054-0977	
NexVest, LLC	Jason Rudd	3131 McKinney Ave Suite 100			Dallas	TX	75204	
NexVest, LLC		2515 McKinney Ave Suite 1100			Dallas	TX	75201	
Ney Castro		Address on File						
NGO, HONGVIEN		Address on File						
Nguyen, Hung		Address on File						
NGUYEN, KRISTINE		Address on File						
NGUYEN, TONY KHOI		Address on File						
NH Dept of State	Bureau of Securities Regulation	107 N. Main St, State House Room 204			Concord	NH	03301	
Nicholas Headley		Address on File						
Nicholas Headley		Address on File						
NICHOLAS OLENEC		Address on File						
Nicholas T. Meserve		Address on File						
NICHOLAS TRUYENS		Address on File						
NICK ALFERMANN		Address on File						
Nick Meserve		Address on File						
NICK PAULEIT		Address on File						
Nickey L. Oates Company		25 Highland Park Village	Suite 100		Dallas	TX	75205	
Nicklas, James		Address on File			Dallas	TX	75254	
NICODEMUS WINATA		14181 NOEL RD						
Nicole Lacues		Address on File						
Nikolayev, Yegor		Address on File						
Niles Chura		Address on File						
Niles K. Chura		Address on File						
NILSEN, CHRISTOPHER		Address on File						
Nirav Batavia		Address on File						

002440

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Nisen & Elliott LLC		200 West Adams St			Chicago	IL	60606	
Nitro Software, Inc.		150 Spear St Ste 1500			San Francisco	CA	94105-5115	
NIXON PEABODY LLP	ATTN BOBBI HALL	100 SUMMER ST			Boston	MA	02110	
NJ DIVISION OF TAXATION	REVENUE PROCESSING CENTER	PO BOX 642	PART		Trenton	NJ	08646-0642	
NMS Communications LLC		443 12th Street	5C		Brooklyn	NY	11215	
NMS MANAGEMENT, INC.		500 NORTH BROADWAY	STE 236		Jericho	NY	11753	
NOAH MAYER		Address on File						
NOBLE, SHELBY		Address on File						
Noel, Kirby		Address on File						
Noelle Williams		Address on File						
Nonna Knows Catering		1931 Market Center Blvd Apt 1323			Dallas	TX	75207-3500	
Noonmark Capital		9 Hall Avenue			Larchmont	NY	10538	
NORRIS, DUSTIN		Address on File						
NORRIS, DUSTIN		Address on File						
North Carolina Department of Revenue		PO Box 25000			Raleigh	NC	27640-0520	
North Ridge Securities		112 Madison Ave, 5th Floor			New York	NY	10016	
NorthPark Center		8687 North Central Expressway			Dallas	TX	75225	
Northwestern University	Attn Maureen Fenty	1800 Sherman Avenue, Suite 400			Evanston	IL	60201	
Norton Rose		Address on File						
Notable Solutions, Inc.		9715 Key West Avenue	Suite 200		Rockville	MD	20850	
Nouveau		2270 Springlake Rd	Suite 400		Dallas	TX	75234	
Nova Engineering, Inc		2625 N. Josey Lane, Suite 112			Carrollton	TX	75007	
Novack and Macey LLP		100 N Riverside Plaza			Chicago	IL	60606-1501	
NOW Advisors		1320 Greenway Dr	Suite 758		Irving	TX	75038	
NPB Financial Group, LLC		3500 W. Olive Avenue	Suite 300		Burbank	CA	91505	
NTR Review		407 East maple Street			Cumming	GA	30040	
Numara Software Inc		PO Box 102280			Atlanta	GA	30368-2280	
Numara Software Inc		PO BOX 933754			Atlanta	GA	31193-3754	
Nutter, McClellenn & Fish, LLP	Attn Ian Roffman	Seaport West	155 Seaport Blvd		Boston	MA	02210	
NWCC, LLC	c/o of Michael A. Battle, Esq.	Barnes & Thornburg, LLP	1717 Pennsylvania Ave N.W. Ste 500		Washington	DC	20006-4623	
NWCC, LLC	James Peterson	375 Park Avenue, 36th Floor			New York	NY	10152	
NWCC, LLC	Jonathan D. Sundheimer	Barnes and Thornburg LLP	11 S. Meridian St.		Indianapolis	IN	46204	
NYC DEPARTMENT OF FINANCE		PO Box 3644			New York	NY	10008	
NYC DEPARTMENT OF FINANCE		PO Box 3646			New York	NY	10008	
NYC DEPARTMENT OF FINANCE		PO Box 3922	General Corporation Tax		New York	NY	10008-3922	
NYC DEPARTMENT OF FINANCE		PO Box 3931			New York	NY	10008-3931	
NYC DEPARTMENT OF FINANCE		59 Maiden Lane, 19th Floor			New York	NY	10038-4502	

0024487



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NYC DEPARTMENT OF FINANCE		PO Box 5040			Kingston	NY	12402-5040	
NYC DEPARTMENT OF FINANCE		PO Box 5060			Kingston	NY	12402-5060	
NYC DEPARTMENT OF FINANCE		PO Box 5070			Kingston	NY	12402-5070	
NYC DEPARTMENT OF FINANCE		PO BOX 5100			Kingston	NY	12402-5150	
NYC DEPARTMENT OF FINANCE		PO BOX 5150			Kingston	NY	12402-5150	
NYC FIRE DEPARTMENT		CHURCH STREET STATION	PO BOX 840		New York	NY	10008-0840	
NYEMASTER GOODE LAW FIRM		700 WALNUT	STE 1600		Des Moines	IA	50309-3899	
NYIAC		150 E. 42nd St, 17th Floor			New York	NY	10017	
NYS Assessment Receivables		PO Box 4127			Binghamton	NY	13902-4127	
NYS Unemployment Insurance		PO Box 4301			Binghamton	NY	13902-4301	
NYS Workers Comp Board DB		One Exchange Plaza	55 Broadway Suite 201		New York	NY	10006	
NYSE ARCA, LLC		PO Box 223529			Pittsburgh	PA	15251-2529	
NYSE MARKET, INC		Grand Central Station	PO BOX 4695		New York	NY	10163	
NYSE MARKET, INC		Box #223695			Pittsburgh	PA	15251-2695	
NYSE MARKET, INC		BOX #4006	PO BOX 8500		Philadelphia	PA	19178-4006	
NYSIF Disability Benefits	DCC	1 Watervliet Ave. EXT			Albany	NY	12206	
NYSIF Disability Benefits		PO Box 5239			New York	NY	10008-5239	
Oak Tree Securities, Inc.		4049 First Street	Suite 129		Livermore	CA	94551-4949	
Ober, Kaler, Grimes & Shriver		100 Light Street			Baltimore	MD	21202	
Objective Group, Inc.		201 South Biscayne Blvd, 28th Floor			Miami	FL	33131	
OBJECTIVE PARADIGM CORPORATION		805 N MILWAUKEE AVE STE 300			Chicago	IL	60622	
OBRIEN, JUSTIN	ATTN RYAN POLLOCK	Address on File						
OBRIEN, MICHAEL J		Address on File						
OC CRUISER, Inc		1439 W Chapman Ave #260			Orange	CA	92868	
Oce Imagistics Inc		PO Box 856193			Louisville	KY	40285	
OConnor, Shannon		Address on File						
OConnors		3800 Buffalo Speedway	Ste 500		Houston	TX	77098	
Office Depot, Inc		DEPT 56-4201182804	PO BOX 689020		Des Moines	IA	50368-9020	
Office Depot, Inc		Dept. 56 - 4201182804 PO Box 9020			Des Moines	IA	50368-9020	
Office Depot, Inc		PO Box 70025			Los Angeles	CA	90074-0025	
OFFICE EQUIPMENT								
FINANCE SERVICES		PO BOX 790448			Saint Louis	MO	63179-0448	
Office Expo		2025A Midway Rd			Carrollton	TX	75006	
Office of Secretary of State		1019 Brazos Street			Austin	TX	78701	
Office of the Attorney General	Michael B. Mukasey, Esq.	U.S. Department of Justice	950 Pennsylvania Avenue, N.W.		Washington	DC	20530-0001	

092448

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Office of the Attorney General	Securities Division	200 St Paul Place			Baltimore	MD	21202	
Office of the General Counsel	Re Prime Brokerage Services	520 Madison Avenue, 16th Floor			New York	NY	10022	
Office of the General Counsel	Pension Benefit Guaranty Corp.	1200 K Street, N.W.			Washington	DC	20005-4026	
Office of the Securities Comm. KS	Securities Division	1300 SW Arrowhead Rd PO BOX 89			Topeka	KS	66604-4019	
OGLETREE DEAKINS		918 S PLEASANTBURG DR (29607)	PO BOX 167		Columbia	SC	29202	
OGLETREE DEAKINS					Greenville	SC	29602	
Ogletree Deakins Nash Smoak & Stewart PC		P.O. Box 89			Columbia	SC	29202	
OHANNA, DAVID		Address on File						
OHC Advisors Inc		12060 SW 129th CT Ste 200			Miami	FL	33186-4582	
Ohio Division of Securities		77 South High Street	22nd Floor		Columbus	OH	43215	
Oil & Gas Information Systems		5801 Edwards Ranch Road	Suite 200		Fort Worth	TX	76109	
Oil & Gas Journal		Pennwell Corporation	PO Box 4362		Chicago	IL	60680-4207	
Oil and Gas Investor		PO Box 3001			Northbrook	IL	60065-3001	
Okada, Luke		Address on File						
Oklahoma Department of Securities		Oklahoma Department of Securities	204 N. Robinson Ave., Ste. 400		Oklahoma City	OK	73102-7001	
Oklahoma Independent Petroleum Assoc.		500 N.E. 4th Street			Oklahoma City	OK	73104	
OKLAHOMA TAX COMMISSION	GENERAL COUNSELS OFFICE	100 N. BROADWAY AVE, SUITE 1500			OKLAHOMA CITY	OK	73102	
OKLAHOMA TX COMMISSION		PO BOX 26930			Oklahoma City	OK	73126-0930	
OKOLITA, MATTHEW		Address on File						
Okta Inc		100 1st St Fl 6			San Francisco	CA	94105-4632	
Okta, Inc.		301 Brannan St	Suite 100		San Francisco	CA	94107	
Old Republic National Title Ins. Co.		8201 Preston Rd	Suite 450		Dallas	TX	75225	
Olander Reporting, Inc.		1522 K St NW Ste 720			Washington	DC	20005	
Olive & Ivy		7135 E Camelback Rd	No 195		Scottsdale	AZ	85251	
OLIVER CASTELINO		Address on File						
OLSON,CANNON, GORMLEY, & DESRUISSEAU		9950 WEST CHEYENNE AVE			Las Vegas	NV	89129	
OM5-DALLAS		Prestonwood Tower	5151 Bellline Rd.	Suite 550	Dallas	TX	75254	
OMelveny & Myers LLP		400 South Hope St, 18th Floor			Los Angeles	CA	90071-2899	
Omgeo LLC		2967 Collections Center Dr			Chicago	IL	60693	
On Course Promotion		6865 Pear Tree Dr			Carlsbad	CA	92011	
Onelogin, Inc.		848 Battery St			San Francisco	CA	94111-1504	
On-Site Sourcing, Inc.		PO Box 75495			Baltimore	MD	21275	
Opal Financial Group		132 W 36th St Rm 200			New York	NY	10018-8840	
Open Text Inc.	c/o JP Morgan Lockbox	24685 Network Place			Chicago	IL	60673-1246	
Opentext		275 Frank Tompa Drive			Waterloo	ON	N2L 0A1	Canada

0024489

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
OppenheimerFunds, Inc.	Altn Accounts Payable	6803 S. Tucson Way, Bldg 2 Garden Level			Centennial	CO	80112	
Options Group		121 East 18th St			New York	NY	10003	
Options Price Reporting Authority		PO Box 95718			Chicago	IL	60694-0001	
Opus 2 International Inc	Mr Matthew Finney Matthew Finney, Credit Controller	5th Floor, 5 New Street Square			London		EC4A 3BF	United Kingdom
Opus 2 International, Inc.		5 New Street Square			London		EC4A 3BF	United Kingdom
Opus 2 International, Inc.		100 Pine Street	Suite 560		San Francisco	CA	94111	
ORACLE AMERICA, INC		PO BOX 71028			Chicago	IL	60694-1028	
ORACLE AMERICA, INC		PO BOX 203448			Dallas	TX	75320-3448	
Oracle America, Inc.		500 Oracle Parkway			Redwood Shores	CA	94065-0000	
Oracle America, Inc., Successor in Interest to Sun Microsystems	Shawn M. Christianson, Esq.	Buchalter, a Professional Corporation	55 2nd St., 17th Fl.		San Francisco	CA	94105	
Oracle Healthcare Advisors Inc.		12060 SW 129th Ct Ste 201			Miami	FL	33186-4582	
Orbis Marketing, Inc.		21550 Oxnard Street	Suite 850		Woodland Hills	CA	91367	
Orchard Group Productions		301 Park Forest Ct			Hurst	TX	76053	
Oregon Department of Revenue		955 Center St NE			Salem	OR	97301	
ORENT, COURTNEY		Address on File			Edgewater	MD	21037	
Organizational Talent		3752 Colliers Dr						
Orrick, Herrington & Sutcliffe LLP		4253 Collections Center Dr			Chicago	IL	60693	
OSD Investments, LLC		8951 Synergy Dr., Ste 225			McKinney	TX	75070	
OUTLOOKSOFT CORPORATION		ONE STAMFORD PLAZA	11TH FLR		Stamford	CT	06901-3281	
OutSource Management	c/o Cathy Wylet, Meeting Planner	14410 N. 10th Place			Phoenix	AZ	85022	
Ouyang, Kaixi		Address on File						
OVATION TRAVEL GROUP	ATTN ANDREA KELLY	71 FIFTH AVE	11TH FLR		New York	NY	10003	
Ovis Creative		483 10th Ave	Suite 230		New York	NY	10018	
Owens, David		Address on File						
OXANA BROWN		Address on File						
Oxer Technologies		59 Franklin Street	Suite 5R		New York	NY	10013	
PA Consulting Group		1750 Pennsylvania Ave Ste 100			Washington	DC	20006-4506	
PACER Service Center		PO Box 71364			Philadelphia	PA	71364	
PACER Service Center		PO BOX 70951			Charlotte	NC	28272-0951	
PACER Service Center		PO Box 277773			Atlanta	GA	30384-7773	
PACER Service Center		P.O. Box 5208			Portland	OR	97208-5208	
Pachulski Stang Ziehl & Jones LLP		10100 Santa Monica Blvd	Ste 1300		Los Angeles	CA	90067	
Pacific Life Annuities & Mutual Funds		700 Newport Center Drive			Newport Beach	CA	92660-6397	
Paciugo Catering		1215 Viceroy Drive			Dallas	TX	75247	
Packerland Brokerage Services Inc.		432 Security Blvd			Green Bay	WI	54313-9709	

002444

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PADILLA, ANDREW		Address on File			Nuremberg		90411	Germany
Paessler		Thurn-und-Taxis-Str. 14						United Kingdom
Pageant Media		Dunstan House 14a St Cross St			London		EC1N 8XA	
PAIPANANDIKER, CHET		Address on File						
Pallico LLC		420 Lexington Avenue	Suite 1425		New York	NY	10170	
Palisade Capital Management		One Bridge Plaza	Suite 695		Fort Lee	NJ	07024	
PALLEY, RENNICK		Address on File						
Palm Beach Investment		13638 Via Flora	Suite A		Delray Beach	FL	33484	
Research Grp Inc.		Address on File						
PALMER, JAMES								
PAM Capital Funding LP	c/o Maples & Calder	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PAM Capital Funding LP	c/o Queensgate SPV Services Limited	PO Box 1093GT / Suzanne St. Thomas	Compass Center, 2nd Flr, Crewe Road	George Town	Grand Cayman			Cayman Islands
PAM Capital Funding, LP / Ranger Asset M	c/o Maples and Calder, PO Box 309	Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd.	c/o Maples & Calder	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd.	c/o Queensgate SPV Services Limited	PO Box 1093, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd. / Ranger Asset Managem	c/o Maples and Calder, PO Box 309	Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Panhandle Producers Royalty Ownrs Assoc.		3131 Bell Street	Suite 209		Amarillo	TX	79106	
PaperCut Software		308 SW 1st Ave Ste 300			Portland	OR	97204-3432	
International Pty Ltd		60 N. Prospect Avenue			Lynbrook	NY	11563-1395	
PAR Plumbing		360 Park Avenue South	16th Floor		New York	NY	10010	
Paradigm								
Paradise Bakery and Cafe		13710 Dallas Parkway, Suite H			Dallas	TX	75240	
Paradox Sports		710 10th Street	Suite 200		Golden	CO	80401	
Paragon Photocopying, Co.		1700 Commerce Ste 200			Dallas	TX	75201	
PARCELS INC		PO BOX 27			Wilmington	DE	19899	
PARIVEDA SOLUTIONS		PO BOX 671060			Dallas	TX	75267	
Park Cities Quail 2016 Dinner & Auction		25 Highland Park Village	Suite 100-417		Dallas	TX	75205	
Park, Jun		Address on File						
Parker Poe Adams & Bernstein LLP		401 S. Tryon St, Ste 3000	Three Wells Fargo Center		Charlotte	NC	28202	
Parkinsons Disease Foundation		Gift Processing Center	PO Box 96268		Washington	DC	20090-6268	
Parkland Securities, LLC	ATin Blayne Andersen	300 Parkland Plaza			Ann Arbor	MI	48103	
Parks Coffee		PO Box 110209			Carrollton	TX	75011-0209	
Parkway Bent Tree Partners, Ltd		17130 Dallas Parkway	Suite 240		Dallas	TX	75248	
Parmentier, Andrew		Address on File						
Parmentier, Andrew		Address on File						
Parmentier, Andrew		Address on File						

002443

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PARNELL, CATHERINE		Address on File						
PARS International Corp	Attn Permissions A/R	253 West 35th Street, 7th Floor			New York	NY	10001	
Parth Shah		Address on File						
Partner Engineering & Science, Inc.		2154 Torrance Blvd	Suite 200		Torrance	CA	90501	
Partridge Snow & Hahn, LLP		40 Westminster Street	Suite 1100		Providence	RI	02903	
Party Frills		219 E White St			Anna	TX	75409	
PASSMORE, MICHAEL		Address on File						
Pat & Emmitt Smith Charities		16000 North Dallas Pkwy	Suite 550N		Dallas	TX	75248	
Pate & Knarr		PO Box 1907			Oklahoma City	OK	73101-1907	
PATEL, VISHAL		Address on File						
PATRICK BOYCE		Address on File						
Patrick Bressler		Address on File						
Patrick Conner		Address on File						
Patrick Daugherty	c/o Thomas A. Uebler	McCollom DEEmilio Smith	2751 Centerville Rd #401		Wilmington	DE	19808	
Patrick Daugherty	c/o Thomas A. Uebler, Esq.	McCollom DEEmilio Smith	2751 Centerville Rd #401		Wilmington	DE	19808	
Patrick Daugherty		Address on File						
Patrick Daugherty/Andrew K. York	Dylan O. Drummond	Gray Reed & McGraw, LLP	1601 Elm Street	Suite 4600	Dallas	TX	75201-7212	
Patrick Hagaman Daugherty	Jason Kathman	2701 Dallas Parkway Suite 590			Plano	TX	75093	
Patrick Hagaman Daugherty	Pronske and Kathman	Jason P. Kathman	2701 Dallas Parkway Suite 590		Plano	TX	75093	
Patrick J. Elverum		Address on File						
PATRICK KELLY		Address on File						
PATRICK, MARK		Address on File						
Patrina Corporation		45 Broadway	Ste 1440		New York	NY	10006	
Patton Boggs LLP		2550 M St NW			Washington	DC	20037	
Paul D. Kauffman		Address on File						
Paul D. Peterson, Ltd.		3040 Woodbury Drive			Woodbury	MN	55129	
Paul DiMartino		Address on File						
Paul Hastings, Janofsky & Walker LLP		55 Second St, 24th Flr			San Francisco	CA	94105-3441	
Paul Kauffman	Jason P. Kathman	Pronske & Kathman, P.C.	2701 Dallas Parkway, Suite 590		Plano	TX	75093	
PAUL KAUFFMAN		Address on File						
Paul Kauffman		Address on File						
PAUL KUNDEL		Address on File						
PAUL N. ADKINS		Address on File						
Paula Shober		Address on File						
PAUS2 (Investments) GP Ltd.	Attn Eric Pedde	c/o Alberta Investment Management Corporation	1100-10830 Jasper Avenue		Edmonton	AB	T5J2B3	Canada
Paws Cause 2015	Attn Paws Cause 2015	2400 Lone Star Drive			Dallas	TX	75212	

002448

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
Paxstone Capital LLP	Athn Kasper Kemp Hansen	483 Green Lane 4005 NW Expressway, STE 500			London		N13 4BS	United Kingdom
PayCom Payroll, LLC		10802 Farnam Drive	Suite 100		Oklahoma City	OK	73116	
PayFlex Systems USA, Inc.		1400 American Ln # 1900			Omaha	NE	68154	
PayLocity		3850 N. Wilke Rd.	Suite 110		Schaumburg	IL	60173-5452	
Paylocity Corporation		10711 Preston Rd			Arlington Heights	IL	60004-0000	
Payne & Smith, LLC		PO Box 670805			Dallas	TX	75230	
Payne & Smith, LLC		PO Box 49283			Dallas	TX	75367-0805	
PayScale Inc		DEPT 77430, PO BOX 77000			San Jose	CA	95161-9283	
PBGC		PO Box 979120			Detroit	MI	48277-0430	
PBGC		PO Box 382808			Saint Louis	MO	63197-9001	
PC Connection		1521 Gordon Petty Dr			Pittsburgh	PA	15250-8808	
PC Serv LLC/SharePoint Solutions	Accounts Recievable	PO Box 1588			Brentwood	TN	37027	
PC Serv, LLC / SharePoint Solutions		1209 Orange St			Brentwood	TN	37024-1558	
PCMG Trading Partners XXIII, L.P.	c/o The Corporation Trust Company	19020 88th Avenue West			Wilmington	DE	19801	
PCS Securities, Inc.		108 S Jackson St Ste 300			Edmonds	WA	98026	
Peach Labs, Inc.		Address on File			Seattle	WA	98104-2872	
Peacock, Carissa		Address on File						
Pearson, James M.		Address on File						
Pearson, Kyle		Address on File						
PEGGY FRANCIS		Address on File						
Peller		Dreikonigsstrasse 45	Postfach 2016		Zurich		CH-8027	SWITZERLAND
Peltekian, Michael		Address on File						
Peltekian, Michael		Address on File						
PELZEL, TERRY		Address on File						
Penant Management GP, LLC	c/o Highland Capital Management, L.P.	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Penland, Nathan		Address on File						
Pension Benefit Guaranty Corporation	Attn M. Baird	Office of the General Counsel	1200 K Street, N.W., Suite 3305		Washington	DC	20005	
Pension Benefit Guaranty Corporation	Lori Butler, Assistant General Counsel	1200 K Street, N.W., Suite 3513			Washington	DC	20005	
Pension Benefit Guaranty Corporation		Department 77430	PO Box 77000		Detroit	MI	48277-0430	
PensionDanmark		Langelinie Alle 43			Copenhagen		02100	Denmark
Pensionsforsikringsakties	Attention Head of Legal							
PensionsDanmark		c/o Fox Rothschild LLP	5420 LBJ Freeway, Suite 1200		Dallas	TX	75240	
Pensionsforsikringsaktieselska b	Attn David Grant Crooks	Crain Communication Inc.	115 Gratiot		Detroit	MI	48207-2997	
Pensions & Investments		Subscriber Services			Detroit	MI	48277-0940	
Pensions & Investments		Department 77940			Detroit	MI	48277-0940	
Pensions & Investments		PO BOX 79001	DRAWER #7718	SUBSCRIBER SERVICES	Detroit	MI	48279-7718	

0024499

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PENTAGROUP FINANCIAL, LLC		5959 CORPORATE DR	STE 1400		Houston	TX	77036	
PENTON TECHNOLOGY MEDIA		221 E 29TH ST			Loveland	CO	80538	
Pepper Hamilton LLP		1201 Market St, Ste 1600			Wilmington	DE	19899	
Pepperdine University PEREIRA, TOM	ATTN Stacy Taylor	Pepperdine School of Law Address on File	24255 Pacific Coast Hwy		Malibu	CA	90263	
Perino, Inc		450 W 42nd Street	Apt 46M		New York	NY	10036	
Perkins Coie LLP	Attn Client Accounting	1201 Third Avenue, Suite 4900			Seattle	WA	98101	
Perot Museum of Nature and Science		2201 North Field Street			Dallas	TX	75201	
Perot Museum of Nature and Science		PO Box 151469			Dallas	TX	75315	
Pershing LLC	Alternative Invest Dept. - Zamana Khan	300 Colonial Center Parkway, 3rd Floor			Lake Mary	FL	32746	
Pershing LLC	Attn Brittany Crowley	300 Colonial Center Parkway			Lake Mary	FL	32746	
Pershing LLC	Attn Genesis Garola	One Pershing Plaza, 8th Fl			Jersey City	NJ	07399	
Pershing LLC	Attn IBD - 15th Floor	One Pershing Plaza			Jersey City	NJ	07399	
Personnel Concepts		PO Box 3353			San Dimas	CA	91773	
PERTRAC FINANCIAL SOLUTIONS, LLC		2650 Thousand Oaks, Ste 1340			Memphis	TN	38118	
PERTRAC FINANCIAL SOLUTIONS, LLC		10403 DOUBLE R BOULEVARD			Reno	NV	89521	
Pestotnik + Gold LLP		501 W. Broadway	Suite 1850		San Diego	CA	92101	
Petals & Stems Florist		13319 Montfort	LBJ at Montfort		Dallas	TX	75240	
PETER CHUNG		Address on File						
PETER FERGUSON		Address on File						
PETER NOLAN		Address on File						
PETER PESTILLO		Address on File						
Peter Roman		Address on File						
PetroCap III and SLP	Marc Lombardi	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap III and SLP	Sarah Schultz	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap III and SLP	Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
Petrocap Inc		2602 McKinney Avenue	Suite 400		Dallas	TX	75204	
Petrocap Incentive Partners III GP, LLC	Attn Lane Britain	Petrocap Incentive Holdings III, LP	3333 Lee Parkway, Suite 750		Dallas	TX	75219	
Petrocap Incentive Partners III GP, LLC	Marc Lombardi, Sarah Schultz, Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap Partners II GP, LLC	Attention William L. Britain	2602 McKinney Avenue	Suite 400		Dallas	TX	75204-0000	
Petrocap Partners II GP, LLC	Attn Lane Britain	Petrocap Incentive Partners II, LP	3333 Lee Parkway, Suite 750		Dallas	TX	75219	
PetroCap Partners II, GP, LLC	PetroCap, LLC	William L. Britain	2602 McKinney Avenue, Suite 400		Dallas	TX	75204	

002448



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PetroCap Partners III, L.P.	Marc Lombardi, Sarah Schultz, Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap Partners III, L.P.		3333 Lee Parkway	Suite 750		Dallas	TX	75219	
Petroleum Club of Midland		PO Box 10527			Midland	TX	79702-7527	
Petsmart Charities, Inc.		PO Box 96426			Washington	DC	20077-7227	
PFERTNER, JIM		Address on File			Philadelphia	PA	19182-8789	
PFPC DISTRIBUTORS		PO BOX 828789			Philadelphia	PA	19182-8810	
Phase 3 Marketing and Communications		Dep# 7052	PO Box 2153		Birmingham	AL	35287-7052	
PHELAN, KEVIN		Address on File						
PHIL GALPIN		Address on File						
Phil Rochefort		Address on File						
Philadelphia Biblical University	Attn Mr. Tim Hui	200 Manor Ave			Langhorne	PA	19047-9989	
PHILET FOODS		5331 E MOCKINGBIRD LN	STE 413		Dallas	TX	75206	
Philip Settini		Address on File						
Philippine American Physicians		PO Box 690695			Orlando	FL	32869	
Phillips, Michael		Address on File						
Phoenician Operating LLC		6000 East Camelback Road			Scottsdale	AZ	85251	
PicFlips, LLC		8553 N Beach St #280			Fort Worth	TX	76244	
Pillsbury Winthrop Shaw Pittman LLP		PO Box 7880			San Francisco	CA	94120-7880	
Pink Ribbon Cleaning Services		PO Box 541141			Dallas	TX	75354	
Pinnacle Aviation Charter		14988 North 78th Way	Suite 106		Scottsdale	AZ	85260	
Pinnacle Business Systems		609 S. Kelly Avenue, Suite E-7			Edmond	OK	73003	
Pinnacle Group International		PO BOX 2800, # 265			Carefree	AZ	85377	
Pinnacle International		5420 LBJ, Ste 390			Dallas	TX	75240	
Pinnacle International		PO Box 2800, #265			Carefree	AZ	85377	
Pinnacle Office Products LLC		8024 Glenwood Ave	Suite 200		Raleigh	NC	27612	
Pinnacle Office Products LLC		8024 Glenwood Ave Ste 200	STE 200		Raleigh	NC	27612	
PIONEER INVESTMENT MANAGEMENT		60 STATE STREET			Boston	MA	02109	
Pipos Travel Corp.		2333 Brickell Ave.	Mezz UL4		Miami	FL	33129	
PIRA Energy Group		3 Park Ave, 26th Flr			New York	NY	10016-5989	
Piriform Inc.		590 Madison Avenue	21st Floor		New York	NY	10022	
Pirtle Design		274 Madison Ave			New York	NY	10016	
Pitney Bowes Credit Corp.		506 Union St			Hudson	NY	12534-2816	
PITNEY BOWES FINANCIAL SERVICES LLC		PO Box 856460			Louisville	KY	40285-6460	
Pitney Bowes Global Financial Services		PO BOX 371887			Pittsburg	PA	15250-7887	
Pitney Bowes Inc.		PO Box 371874			Pittsburgh	PA	15250-0000	
Pitney Bowes Inc.		PO Box 371896			Pittsburgh	PA	15250-7896	

002449

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Pitney Bowes- Purchase Power		PO Box 371874			Pittsburgh	PA	15250-2648	
PITTMAN, TABOR J.		Address on File						
Pivotal Research Group LLC	Jeff Shelton	c/o 12 John Street			Demarest	NJ	07627	
Pivotal Research Group LLC		12 John Street			Demarest	NJ	07627	
PJ Mechanical Service & Maint. Corp.		135 W. 18th Street			New York	NY	10011	United Kingdom
Planatech Solutions Ltd.		Grosvenor Gardens House	35/37 Grosvenor Gardens		London		SW1W 0BY	
Plano East Golf Booster Club	Attn Brian Flanagan	700 Bear Creek Dr.			Murphy	TX	75094	
Plano Party Animals		600 Legacy Drive	Suite 111		Plano	TX	75023	
PLANT DECOR		PO BOX 8			Ponder	TX	76259-0008	
Plant Interscapes, Inc.		6436 Babcock Rd.			San Antonio	TX	78249	
PlantKeeper		PO BOX 226142			Dallas	TX	75222-6142	
Platinum Litigation Solutions, LLC		Subscriber Services	PO Box 07938		Detroit	MI	48207-9944	
Platinum Parking		325 N. Saint Paul Street	Suite 1100		Dallas	TX	75201	
Platypus Studios	Attn Mark Baldi	300 Crescent Court	Level G1, LB#102		Dallas	TX	75201	
Plexus Groupe LLC		21805 W Field Parkway, Ste 300			Deer Park	IL	60010	
Plimus, Inc.		142 N. Milpitas Blvd #435			Milpitas	CA	95035-4401	
PLS Inc.		PO Box 4987			Houston	TX	77210-4987	
PLUM, KEITH		Address on File						
PLUMER, KURTIS		Address on File						
PMC Commercial Trust		17950 Preston Road	Ste 600		Dallas	TX	75252	
PMC Service Company		2425 DilliaRd St			Grand Prairie	TX	75051	
PNC Global Investment Servicing		PO Box 828789			Philadelphia	PA	19182-8789	
PNP Productions		8312 Westlawn Avenue			Los Angeles	CA	90045	
POER, MARY		Address on File						
POGLITSCH, JON		Address on File						
POGRANICHNY, PAUL		Address on File						
Point Multimedia LLC		501 Elm Street	Suite 350		Dallas	TX	75202	
Pollock, Staci		Address on File						
Polsen, Gregory		Address on File						
Pope, Hardwicke, Chrisite, Schell, Kelly & Taplett LLP		500 W 7th Street	Ste 600		Fort Worth	TX	76102	
POPE, JAMES		Address on File						
POPE, THERESA		Address on File						
Portfolio Media, Inc		860 Broadway	6th Floor		New York	NY	10003	
POST, ROBERT		Address on File						
Potbelly Sandwich Works, LLC		222 Merchandise Mart Plaza	23rd FL		Chicago	IL	60654	
POTTER ANDERSON & CORROON LLP	Timothy R. Dudderar	Hercules Plaza, 6th Floor	1313 North Market Street		Wilmington	DE	19801	
Potter, Anderson & Corroon POWELL, ETHAN K.		1313 North Market St PO Box 951			Wilmington	DE	19899-0951	

002430

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PR Newswire		PO Box 5897			New York	NY	10087-5897	
PR Newswire Association, LLC		602 Plaza	Three Harborside Financial Center		Jersey City	NJ	07311-0000	
PRACTICING LAW INSITUTE		810 SEVENTH AVE			New York	NY	10019	
PRACTICING LAW INSITUTE		PO Box 26532			New York	NY	10087-6532	
Prairie Rose Studio		PO Box 1316			Commerce	TX	75429	
PRAMOD RAJU		Address on File						
Precise Land Surveying, Inc.		4625 Eastover Dr			Mesquite	TX	75149	
Premier Wealth Strategies	Attn: Jon Rustad	8777 E. Via de Ventura, Ste 140			Scottsdale	AZ	85258	
Premiere Global Services		PO Box 404351			Atlanta	GA	30384-4351	
Premiere Speakers Bureau, Inc.		109 International Drive	Suite 300		Franklin	TN	37067	
Preqin Ltd.		Scotia House	33 Finsbury Square		London			United Kingdom
Preqin Ltd.		PO Box 200918			Pittsburgh	PA	15251-0918	
Presbyterian Hospital of Dallas		PO Box 910013			Dallas	TX	75391	
Prescott Legal Search		PO Box 1024140			Atlanta	GA	30368-4140	
Presidential Process Service Inc		419 Park Ave South	Suite 700		New York	NY	10016	
Preston Florist		14856 Preston Rd Ste 110			Dallas	TX	75240	
Preston Hollow Catering		3419 Westminister	#235		Dallas	TX	75205	
Preston Hollow Elementary PTA		6423 Walnut Hill Lane			Dallas	TX	75230	
PRI Association		5th Floor	25 Camperdown Street		Whitechapel			United Kingdom
PRICE, BRIAN		Address on File						
Price, Kevin		Address on File						
PRICE, WHITNEY		Address on File						
Pricewaterhouse Coopers, LLP		8 Cross St. #17-00	PWC Singapore Building		Singapore		048424	SINGAPORE
Pricewaterhouse Coopers, LLP		P.O. Box 952282			Dallas	TX	75395	
Pricewaterhouse Coopers, LLP		PO Box 75647			Chicago	IL	60675-5647	
PricewaterhouseCoopers	c/o John Wander, Vinson Elkins LLP	2001 Ross Avenue	Suite 3900		Dallas	TX	75201	
PRICEWATERHOUSECOOPE RS		SOUTHWARK TOWERS	32 LONDON BRIDGE ST		London			United Kingdom
PricewaterhouseCoopers LLP		One North Wacker			Chicago	IL	60606-0000	
Prime Brokerage Services		Jefferies LLC	520 Madison Avenue		New York	NY	10022	
Primedia		PO Box 96985			Chicago	IL	60693	
Princeton Club of NY		15 West 43rd Street			New York	NY	10036-7497	
Princeton Search LLC		d/b/a PrincetonOne	PO Box 52265		Newark	NJ	07101-0220	
Principal Financial Group		PO Box 477			Appleton	WI	54912-0477	
Principal Life		Dept. 400 PO Box 14416			Des Moines	IA	50306-3416	

0024397

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PrintComm		1161 Executive Drive West			Richardson	TX	75081	
PrintGlobe		PO Box 975659			Dallas	TX	75397-5659	
Privcap LLC		86 Chambers Street	7th Floor		New York	NY	10007	
Probe Ministries		2001 W. Plano Pkwy	Suite 2000		Plano	TX	75075	
Probe Ministries		1900 Firman Dr Ste 100			Richardson	TX	75081-6796	
Professional Technologies, Inc.	Accounting Dept.	4950 N. OConnor Rd., 1st Floor			Irving	TX	75062-2778	
PROFESSIONALS PUBLISHING GROUP		1911 N US HWY 301	STE 140		Tampa	FL	33619	
PROFESSIONAL TECHNOLOGIES INCORPORATED		CORPORATE PLAZA 1, 1st floor	4950 North OConnor Rd		Irving	TX	75062-2778	
Professional Video Services, LLC		8 Canterbury Lane			Westfield	NJ	07090	
Progenics Pharmaceuticals, Inc.	Attn CEO	777 Old Saw Mill Road			Tarrytown	NY	10591	
Progressive Business Publication		370 Technology Drive	PO BOX 3019		Malvern	PA	19355	
Pronse and Kathman Proofpoint	Jason P. Kathman	2701 Dallas Parkway Suite 590			Plano	TX	75093	
Proposal Software, Inc.		892 Ross Drive			Sunnyvale	CA	94089	
Prosek Partners LLC		1140 US Hwy 287	Suite 400-102		Broomfield	CO	80020	
Proskauer Rose LLP		1552 Post Road			Fairfield	CT	06824	
Prospect News Inc.		Eleven Times Square			New York	NY	10036-8299	
Prospect News Inc.		6 MAIDEN LANE	9th floor		New York	NY	10038	
Prospect News Inc.		164 Prospect Park West #4R			Brooklyn	NY	11215	
Prosper Sports Association		1050 High Willow			Prosper	TX	75078	
ProStar Services, Inc		PO Box 110209			Carrollton	TX	75011	
Protection Networks		4887 Alpha Road, St 200			Farmers Branch	TX	75244-4632	
PROVIDEA CONFERENCEING LLC		PO Box 636132			Cincinnati	OH	45263	
PROVIDEA CONFERENCEING LLC		1297 Flynn Rd.	Suite 100		CAMARILLO	CA	93012	
Prudential		100 Mulberry St, Gateway Ctr			Newark	NJ	07102	
Prudential	Attn Nirsa Reyes	3, 14 flr			Louisville	KY	40285	
Pryor Cashman LLP		PO BOX 856138			New York	NY	10022	
PUBLIC COMPANY ACCTNG OVERSIGHT BOARD		410 Park Ave						
Puerto Rico Secretary of the Treasury		PO BOX 631116			Baltimore	MD	21263-1116	
Puglisi & Associates		Securities Division	1492 Ponce de Leon Avenue, Suite 600		San Juan	PR	00907-1492	
PUNCHSTOCK		850 Library Ave, Suite 204			Newark	DE	19711	
PUNCHSTOCK		8517 EXCELSIOR DR	STE 200		Madison	WI	53717	
PURCELL, ONDINA A.		PO Box 953604			Saint Louis	MO	63195	
PURCELL, ONDINA A.		Address on File						
Purdy-McGuire		Address on File						
Pure Compliance		4300 Sigma Ste 200			Dallas	TX	75244-4416	
Pure Compliance		PO BOX 951839			Dallas	TX	75395	

002432

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Purshe Kaplan Sterling Investments, Inc.		18 Corporate Woods Blvd	4th Floor		Albany	NY	12211	
PUSATERI, MICHAEL		Address on File						
Putnam Lovell		1155 Metcalfe St, 4th Flr			Montreal	QC	H3B 4S9	CANADA
PwC Product Sales LLC		PO Box 952282			Dallas	TX	75395-2282	
Q&A RECRUITING		14241 N DALLAS PKWY, STE 550			Dallas	TX	75254	
Q.O.P.S.		PO Box 10429			Van Nuys	CA	91410	
Quadriga Partners, LLC	Attn Jason Ficken	100 Fillmore, Suite 425			Denver	CO	80206	
Quality High-Tech Services, Inc.		11807 Forestgate Dr			Dallas	TX	75243	
QUAN ZHANG		Address on File						
QUANTUM		DEPT 0596	PO BOX 120596		Dallas	TX	75312	
Queens Ballpark Co.	Attn Marc Candelaria	126-01 Roosevelt Ave.			Flushing	NY	11368	
Quest CE		10100 W. Innovation Drive	Suite 200		Milwaukee	WI	53226	
Quest Events		2591 Dallas Parkway	Suite 201		Frisco	TX	75034	
QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # x9811								
QUEST IRA, INC., FBO JON POGLITSCH, ACCT. # x0612		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # x8311		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO NEIL DESAI, ACCT. # x9211		17171 Park Row #100			Houston	TX	77084	
Quest Software		17171 Park Row #100			Houston	TX	77084	
Quick Trak Messengers		17171 Park Row #100			Houston	TX	77084	
Quinn Emanuel Trial Lawyers		287 West 17th Street	3rd Floor		Los Angeles	CA	90051-6039	
Quintairos, Prieto Wood & Boyer		865 S Figueroa St	10th FL		New York	NY	10019	
Quintairos, Prieto Wood & Boyer		9300 South Dadeland Blvd, 4th Floor			Los Angeles	CA	90017	
Quintairos, Prieto Wood & Boyer					Miami	FL	33156	
QVerity, Inc.		865 S. Figueroa St	10th FL		Los Angeles	CA	90017	
Rabbit Reproduction		740 Greenville Blvd.	Suite 400, PMB 154		Greenville	NC	27858	
Rachael Romine		PO Box 29764			Dallas	TX	75229	
RACHAL, TRAVIS		Address on File						
RACHAL, TRAVIS		Address on File						
Rademacher, Cole		Address on File						
Radianz Americas Inc	ATTN Head of Legal	620 Eighth Ave	45 th Floor		New York	NY	10018	
Radianz Americas Inc		PO Box 7247-6642			Philadelphia	PA	19170-6642	
Radianz Americas Inc		DEPT CH 19227			Palentine	IL	60055-9227	
Rafael Anchia		Address on File						
RAJU, PRAMOD		Address on File						
Rakhee V. Patel, Phillip Lamberson, Ammarie Chiarello								
Rally Point Media Strategies LLC		500 Windstead Building	2728 N. Harwood Street		Dallas	TX	75201	
RAMAMURTHY, SUNDAR		1320 North Veitch St	#1712		Arlington	VA	22201	
		Address on File						

0024339

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1 Address on File	Address2	Address3	City	State	Zip	Country
Ramesh Swaminathan								
Rand Advisors Series I Insurance Fund	c/o Rand Advisors	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Rand Advisors, LLC / Atlas IDF LP, et al	Attn John Honis	87 Railroad Place	Ste 403		Saratoga Springs	NY	12866-0000	
Rand PE Fund I, L.P.	c/o Rand PE Fund Management, LLC	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Randal Stout Entertainment	2341 Hummingbird Trail				Grapevine	TX	76051	
RANDAL ZIEGENHAGEN	5317 ELLSWORTH AVE				Dallas	TX	75206	
Random Lengths	PO Box 867				Eugene	OR	97440-0867	
RANGEL, VICTOR	Address on File							
Ranger Creek Goose	209 Alex Way				Abilene	TX	79602	
Ransom, Garrett	Address on File							
Rapid7 LLC	120 Causeway St Ste 400				Boston	MA	02114-1314	
Rapid7 LLC	PO Box 347377				Pittsburgh	PA	15251-4377	
Ratcliffe for Congress	2931 Ridge Road, Ste 101		PMB #217		Rockwall	TX	75032	
RAWLINGS, OLSON, CANNON	GORMLEY & DESRUISSEAU AVE		9950 W CHEYENNE		Las Vegas	NV	89129	
Raymond Dougherty	Address on File							
Raymond James & Associates, Inc	Attn Kristin Koscho	880 Carillon Parkway			St. Petersburg	FL	33716	
Raymond James & Associates, Inc	Attn Treasury/RMB-M/F	PO Box 23591			St. Petersburg	FL	33742	
Raymond James & Associates, Inc		70 East Main St			Avon	CT	06001	
Raymond James & Associates, Inc		Granada Building, 5th Floor	1216 State Street, Suite 500		Santa Barbara	CA	93101	
Raymond James Financial	ALPG attn Todd Moulton	3610 N. University Ave, Ste 350			Provo	UT	84604	
Raymond James Financial	Attn Catina Cruz/RJ BP Dev Conf Free	PO Box 23613			St. Petersburg	FL	33742	
Raymond Joseph Dougherty	D. Craig Shew, PLLC	PO Box 1373			Ada	OK	74821-1373	
Raymond Joseph Dougherty		Address on File						
RBC Capital Markets, LLC	Attn Dave Hiron	4250 Executive Square, Ste 800			Lajolla	CA	92037	
RBC Capital Markets, LLC	Attn Jim Brick	60 South Street, P21			Minneapolis	MN	55402	
RCR Wireless News	Subscriber Services	Department 77940			Detroit	MI	48277-0940	
Real Capital Analytics		139 5th Ave			New York	NY	10010	
REAL ESTATE ALERT		5 Marine View Plaza #400			Hoboken	NJ	07030	
Real Time Services		452 West John Street			Hicksville	NY	11801-1301	
REALPOINT		BOX #3001	200 WITMER RD		Horsham	PA	19044	
REALPOINT		Receivable Management Services	4836 Brecksville Rd		Richfield	OH	44286	
Reasoning Mind		5910 N. Central Expressway # 250			Dallas	TX	75206	
Rebecca A. Thompson		Address on File						
Rebecca Stropoli		Address on File						
Record Press Inc.		229 West 36th Street			New York	NY	10018	
Records Deposition Service		1701 N Collins Blvd Ste 334			Richardson	TX	75080-3602	

002434

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 127 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Red Hat		100 East Davie Street			Raleigh	NC	27601-0000	
Red Oak Compliance Solutions LLC		1320 Arrow Point Dr Ste 411			Cedar Park	TX	78613-2095	
Red River CLO Corp.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Red River CLO Ltd c/o Ogier Fiduciary Services (Cayman) Limited		P.O.Box 1234,	Queensgate House South Church Street	George Town	Grand Cayman		KY1-1108	Cayman Islands
Red River CLO Ltd.	Attention The Directors		George Town		Grand Cayman		KY1-9005	Cayman Islands
Red River CLO Ltd. et al	U.S. Bank National Association Corporate Trust Services/CDO Department	190 Elgin Avenue			Boston	MA	02110	
Red River CLO Ltd. Grand Central Asset Trust	LaSalle Bank N.A., as Collateral Administrator	One Federal Street, Third Floor			Chicago	IL	60602	
Red River CLO Ltd. Grand Central Asset Trust	U.S. Bank, National Association	181 West Madison Street	Suite 3200	CDO Trust Services - Roy Hyskal	Boston	MA	02110	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	Highland Special Opp. Holding Company	One Federal Street	3rd Floor	Mr. Jackson Carneiro	Boston	MA	02110	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	LaSalle Bank N.A., as Collateral Administrator	2 Galleria Towers 13455 Noel Road	Suite 1300		Dallas	TX	75240	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	U.S. Bank, National Association	181 West Madison Street	Suite 3200	CDO Trust Services - Maciej Zurawski	Chicago	IL	60602	
Red River CLO Ltd. MMP-5 Funding, LLC IXIS Financial Products Inc.	IXIS Financial Products Inc.	One Federal Street	Third Floor	Mr. Jackson Carneiro	Boston	MA	02110	
Red River CLO Ltd. MMP-5 Funding, LLC IXIS Financial Products Inc.	MMP-5 Funding, LLC	9 West 57th Street	36th Floor		New York	NY	10019	
Red River CLO Ltd. U.S. Bank National Association IXIS Financial Products Inc.	Red River CLO Ltd. Address c/o Ogier Fiduciary Services (Cayman) Limited	120 White Plains Road	Suite 115		Tarrytown	NY	10591	
Red River CLO Ltd., et al	c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1234	Queensgate House South Church Street	Red River CLO Ltd.	George Town		KY1-1108	Cayman Islands
Red River CLO, Ltd.	Red River CLO Ltd. c/o Ogier Fiduciary Services (Cayman) limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Red River CLO, Ltd.	U.S. Bank National Association Corporate Trust Services/CDO Department	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Red River CLO, Ltd. U.S. Bank National Association	Red River CLO Ltd. U.S. Bank National Association	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors c/o Ogier Fiduciary Services (Cayman) Limited	George Town			Cayman Islands
Red River CLO, Ltd. U.S. Bank National Association	Red River CLO Ltd. U.S. Bank National Association	One Federal Street, Third Floor	Ref Red River CLO Ltd		Boston	MA	02110	
Red River CLO, Ltd. U.S. Bank National Association	Red River CLO Ltd. U.S. Bank National Association	P.O. Box 1234	Queensgate House South Church Street	The Directors - Red River	George Town		KY1-1108	Cayman Islands

002455



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Red Rock Strategic Partners		PO Box 35			Watkinsville	GA	30677	
Redbud E&P Inc.		2602 McKinney Ave	Ste 400		Dallas	TX	75204	
Redeemer Committee - Highland Crusader	Attn Eric Felton	731 Pleasant Ave.			Glen Ellyn	IL	60137	
Redeemer Committee Highland Crusader Fund	c/o Terri Mascherin, Esq.	Jenner & Block 6731 W. 121 St, Ste 226	353 N. Clark Street		Chicago	IL	60654-3456	
Redmond Law Firm		27271 Las Ramblas	Suite 200		Overland Park	KS	66209	
Redspin					Mission Viejo	CA	92691	
REED SMITH		Address on File						
REED SMITH		PO Box 360074M			Pittsburgh	PA	15251-6074	
REED SMITH		PO BOX 759052			Baltimore	MD	21275-9052	
REED WATSON		Address on File						
Reese Energy Consulting, Inc.		725 South Boulevard			Edmond	OK	73034	
Refinitiv	c/o Sarah E. Doerr	Refinitiv f/d/b/a Thomson Reuters	Moss & Barnett	150 5th St S, Suite 1200	Minneapolis New York	MN NY	55402 10036	
Refinitiv US LLC		3 Times Square						
Regulatory Compliance Watch		PO Box 9407			Gaithersburg	MD	20898-9407	
Regus Business Centre		Colleen Susini, Centre Manager	245 Park Ave, 39th Flr		New York	NY	10167	
Regus Management Group LLC		PO Box 842456			Dallas	TX	75284-2458	
Reid Collins & Tsai	William T. Reid, Esq.	Reid Collins & Tsai LLP	810 Seventh Avenue, Ste 410		New York	NY	10019	
Reid Collins & Tsai LLP		1301 S. Capital of Texas Hwy			Austin	TX	78746	
Reid Collins & Tsai LLP		4301 Westbank Drive	Building B Suite 230		Austin	TX	78746	
Reid Davis		Address on File						
REIS SERVICES, LLC		530 Fifth Ave 5th Floor			New York	NY	10036	
Reis, Inc.		5 West 37th St			New York	NY	10018	
Reis, Inc.		530 5TH AVE, 5TH FLR			New York	NY	10036	
REIT ZONE PUBLICATIONS, LLC		448 IGNACIO BLVD	STE 345		Novato	CA	94949	
Reiter, Jon		Address on File						
Relationship Science LLC		909 3rd Ave	FL 18		New York	NY	10022	
Relationship Science LLC		PO Box 347989			Pittsburgh	PA	15251-4989	
Ren Morrison Photography		5445 Canuth Haven 121			Dallas	TX	75225	
Rentacrate Incorporated		124 Prospect St.			Waltham	MA	02453	
Rentacrate Incorporated		22 Century Blvd	Suite 420		Nashville	TN	37214	
Rentacrate Incorporated		PO Box 32194			New York	NY	10087-2194	
Renfro, Tyler		Address on File						
Reorg Research, Inc.		1140 Broadway	Ste 201		New York	NY	10001	
Reorg Research, Inc.		11 East 26th Street	12th Floor		New York	NY	10010-0000	
Reporters Central LLC		363 Seventh Ave, 21st Fl			New York	NY	10001	
Republic Title of Texas, Inc.		2701 W. Plano Parkway, Suite 100			Plano	TX	75075	
Reputation Management Consultants		92 Corporate Park	Suite C-700		Irvine	CA	92606	
Rescue Cell Phone		280 Legacy Dr	#104		Plano	TX	75023	

002458

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Rescue Cell Phone Corporation		6121 Greenville Ave			Dallas	TX	75206	
Research in Motion Corporation		12432 Collections Center Dr			Chicago	IL	60693	
Resolutions, LLC.		222 Berkeley Street	Suite 1060		Boston	MA	02116	
Resort Capital Advisors		712 Intracoastal Dr			Ft. Lauderdale	FL	33304	
Resource Technologies Corp.		PO Box 3201			Troy	MI	48007-3201	
Restaurant Associates	Attn: Jeanine Miller	1071 Fifth Avenue			New York	NY	10128	
Resulte Universal		5151 Belt Line Rd	Suite 455		Dallas	TX	75254	
REUTERS LOAN PRICING CORPORATION		GENERAL POST OFFICE	PO BOX 26803		New York	NY	10087-6803	
Rey Rodriguez		Address on File						
Reynolds Frizzell Black Doyle Allen		1100 Louisiana	Ste 3500		Houston	TX	77002	
Reynolds, Steven		Address on File						
RFPnetworks B.V.		Laan van Kronenburg 14			Amstelveen		1183AS	NETHERLAN DS
Rhinotek Computer Products		PO Box 6205			Carson	CA	90749	
Rhode Island Dept. Business Regulation		Securities Division	1511 Pontiac Ave. Bldg 69, 1st Floor		Cranston	RI	02920	
Rialto Capital Advisors, LLC		Address on File	Suite 400		Miami	FL	33131	
RICCI, JENNIFER		Address on File						
Riccione Resources, Inc		17194 Preston Rd	Suite 102-390		Dallas	TX	75248-1221	
RICE, BRIAN		Address on File						
RICE, CHARLES		Address on File						
Rice, Christopher		Address on File						
Rich Bitterman		Address on File						
RICH DAPAAH		Address on File						
RICH MICHAEL		Address on File						
RICHARD & SYLVIA TUCKER TRUST		Address on File						
Richard Arnitz		Address on File						
RICHARD BARNES TRUST		Address on File						
Richard Egelhof		Address on File						
Richard Even		Address on File						
Richard Harris		Address on File						
Richard Layton & Finger		One Rodney Square	920 North King Street		Wilmington	DE	19801	
RICHARD LINDENMUTH		Address on File						
Richard M. Alderman		Address on File						
Richard Pines		Address on File						
Richard Redden		Address on File						
Richard Rinehart		Address on File						
RICHARD TUCKER		Address on File						
Richards Partners		8750 N Central Expy	Suite 100		Dallas	TX	75231-6437	
Richards, Paul		Address on File						
Richards, Paul A.		Address on File						
Richardson, Kellie		Address on File						
Richmond Communicatinos Group, Inc.		2750 Northhaven Rd Ste 202			Dallas	TX	75229	
Richofsky, Lori		Address on File						

0024509

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
RICK DREW		Address on File						
Ricky Swadley	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Ricoh Americas Corporation		PO BOX 13852			Newark	NJ	07188-0852	
Ricoh Americas Corporation		PO Box 4245			Carol Stream	IL	60197-4245	
Ricoh Americas Corporation		PO BOX 73210			Chicago	IL	60673-7210	
Ricoh Americas Corporation		PO Box 660342			Dallas	TX	75266-0342	
Ricoh Americas Corporation		PO BOX 730366			Dallas	TX	75373-0366	
RICOH BUSINESS SOLUTIONS		First Floor	4667 N. Royal Atlanta Dr.		Tucker	GA	30084	
RICOH BUSINESS SOLUTIONS		PO BOX 73210			Chicago	IL	60673-7210	
Ricoh USA, Inc.		PO Box 827577			Philadelphia	PA	19182-7577	
Ricoh USA, Inc.		21146 Network Place			Chicago	IL	60673-1211	
Ricoh USA, Inc.		PO Box 660342			Dallas	TX	75266-0342	
Riddle, Cara		Address on File						
Ridgely, Taylor		Address on File						
RIDGELY, TAYLOR		Address on File						
RIDGELY, TAYLOR		Address on File						
RIDGEWAY, BRIAN		Address on File						
Rigzone.com, Inc.		Address on File						
Rigzone.com, Inc.		14531 FM 529, Ste 225			Houston	TX	77095	
RINGHEIMER, JEREMY		Address on File						
RIORDAN, TERENCE		Address on File						
RIORDAN, TERENCE C.		Address on File						
Rios, Heriberto		Address on File						
Ripe4Offices		13-19 Circus Rd	St. Johns Wood Suite 235		London		NW8 6PB	United Kingdom
Ripple Effect Strategies, Inc.		503 E. Jackson St.			Tampa	FL	33602-4904	
RISI		PO BOX 16586			North Hollywood	CA	91615-6586	
Risk Metrics Group		PO Box 2621			Buffalo	NY	14240-2621	
Ritch, Lauren N.		Address on File						
Riveron Consulting, LLC		2515 McKinney Avenue	Suite 1200		Dallas	TX	75201	
RL Consulting		19228 Charandy Drive			Leesburg	VA	20175	
RME		PO Box 261237			Tampa	FL	33685-1237	
ROARK, BRANDEN		Address on File						
ROB BUCK PHOTOGRAPHS, INC		3411 CLEARVIEW DR			Austin	TX	78703	
ROB PEDERSON		Address on File						
Robbins, Russell, Englet, Orseck, Untereiner & Sauber LLP		2000 K Street, NW	4th FL		Washington	DC	20006	
Robert A. Leonard		Address on File						
Robert Carey		Address on File						
Robert Flink		Address on File						
ROBERT GAGE		Address on File						
ROBERT GEORGE		Address on File						
Robert Half Finance and Accounting		2613 Camino Ramon			San Ramon	CA	94583	
Robert Half Finance and Accounting		PO Box 743295			Los Angeles	CA	90074-3295	

002458

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Robert Half Legal		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Half Legal		File 73484	PO Box 60000		San Francisco	CA	94160-3484	
Robert Half Management Resources								
Robert Half Management Resources		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Half Technology		PO Box 60000			San Francisco	CA	94160-3484	
Robert Half Technology		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Hargheheimer		FILE 73484	PO Box 60000		San Francisco	CA	94160-3484	
Robert M. Garza & Associates, Inc.		Address on File						
ROBERT MUNROE		1001 Hot Springs Dr			Allen	TX	75013	
Robert Pederson		Address on File						
Robert Peiser		Address on File						
Robert Roland		Address on File						
Robert Sullivan		Address on File						
ROBERT THOMPSON		Address on File						
Robert William Chanda		Address on File						
Roberta L. Fisher		Address on File						
Robin Russell, Joseph P. Rovira		600 Travis Street, Suite 4200			Houston	TX	77002	
Robust Advisors, Inc.		7 DeGraaf Court			Mahwah	NJ	07430	
ROBY, JOHN		Address on File						
Rochelle McCullough, LLP		325 North St. Paul Street, Suite 4500			Dallas	TX	75201	
Rockwall CDO II Ltd.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rockwall CDO II, Ltd. Investors Bank & Trust Company		200 Clarendon Street	CDO Services Group		Boston	MA	02116	
Rockwall CDO II, Ltd. Investors Bank & Trust Company		P.O. Box 1093GT, Boundary Hall	Cricket Square George Town, Grand Cayman	Attention The Directors- Stratford CLO Ltd.	Grand Cayman			Cayman Islands
Rockwall CDO Ltd JPMorgan Chase Bank, National Association		600 Travis Street	50th Floor	Worldwide Securities Services-Rockwall CDO Ltd.	Houston	TX	77002	
Rockwall CDO Ltd.		P.O. Box 1093GT	Queensgate House	George Town	Grand Cayman			Cayman Islands
Rockwall CDO Ltd., et al		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rockwell CDO (Delaware) Corp.		PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rockwell CDO I Ltd		PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman		KY1-1108	Cayman Islands
Rockwell CDO II Ltd		PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman		KY1-1108	Cayman Islands
Rockwell CDO, Ltd		PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman		KY1-1108	Cayman Islands
Rod Laughlin		Address on File	South Church Street	George Town	Grand Cayman			Cayman Islands
Rod Lim		Address on File						

002439

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
RODDA, SANDIE		Address on File						
RODDA, SANDIE K		Address on File						
Roderick Givens		Address on File						
Rodolfo Esquivel		Address on File						
Roe Golithly		Address on File						
Roerber, Blair A.		Address on File						
ROGER CHEN		Address on File						
ROGER LI		Address on File						
ROGGE DUNN GROUP, PC	Brian P. Shaw	500 N. Akard Street, Suite 1900			Dallas	TX	75201	
Romacorp. Inc.	David Short	1700 Alma Drive	Suite 400		Plano	TX	75075	
Ron Attar		Address on File						
Ron DVari		Address on File						
Ron Patterson Insurance		2435 N Central Expy Ste 1600			Richardson	TX	75080-2784	
Ronald McDonald House of Dallas		5641 Medical Center Dr			Dallas	TX	75235	
ROOS, PAUL		Address on File						
Ropes & Gray LLP		800 Boylston Street			Boston	MA	02199	
Ropes & Gray LLP		One International Place			Boston	MA	02110-2624	
Ropes & Gray LLP		PO Box 414265			Boston	MA	02214-4265	
Rosen Systems, Inc.		2323 Langford St.			Dallas	TX	75208	
Rosenthal, Monhait, & Goddess PA		Suite 1401, 919 Market St	PO Box 1070		Wilmington	DE	19899-1070	
Rosewood Crescent Hotel	Attn Ms Eva Deigadillo	PO Box 845576			Dallas	TX	75284-5576	
Rosewood Crescent Hotel		400 Crescent Court			Dallas	TX	75201	
Rosewood Crescent Hotel & Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610	400 Crescent Court		Dallas	TX	75201	
Ross Smith Energy Group		400, 407 - 8th Avenue			Dallas	TX	75201	
Ross Vaillancourt		Address on File			CALGARY	AB	T2P 4Z2	CANADA
ROSS, JAMES		Address on File						
Roth Staffing Companies, LP		PO Box 848761			Los Angeles	CA	90084-8761	
ROTHSTEIN, JASON		Address on File						
Rothstein, Kass & Company, P.C.		9171 Wilshire Blvd, Ste 500			Beverly Hills	CA	90210-5591	
Roubini Global Economics, LLC		131 Varick St., Ste 1005			New York	NY	10013	
Roubini Global Economics, LLC		PO Box 10087			Uniondale	NY	11555	
Rough Creek Lodge		PO Box 2400			Glen Rose	TX	76043	
Round Hill Country Club		3169 Roundhill Rd			Alamo	CA	94507	
ROURKE, KEVIN		Address on File						
ROWLETT HILL, LLP		25 HIGHLAND PARK VILLAGE	STE 100-448		Dallas	TX	75205	
Rowlett Law PLLC		100 HIGHLAND PARK VILLAGE	STE 200		Dallas	TX	75205	
Rowlett Law PLLC		12655 N Central Expwy Ste 421			Dallas	TX	75243	

0024006

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ROY SEROUSSI		Address on File			Long Island City	NY	11101	
Royal Dispatch Services Inc		43-22 Van Dam Street						
ROYAL PRINTING GROUP, INC.			STE 250		Dallas	TX	75229	
RR Donnelley		2035 ROYAL LN			Cleveland	OH	44193	
RR Donnelley		PO Box 932721			Atlanta	GA	30353-8602	
RR Donnelley Financial, Inc.		PO Box 538602			Cleveland	OH	44193	
RR Donnelley Financial, Inc.		PO Box 932721			Dallas	TX	75373-0216	
RR Donnelley Financial, Inc.		PO Box 730216						
RR Donnelley Receivables, Inc		PO Box 13654			Newark	NJ	07188-0001	
RSM MCGladrey		5155 Paysphere Circle			Chicago	IL	60674	
RSM US LLP		5155 Paysphere Circle			Chicago	IL	60674	
RTB Media LLC		619 Willow Ave	Suite 3L		Hoboken	NJ	07030	
Rubin and Rudman LLP		50 Rowes Wharf			Boston	MA	02110	
Rudy Mora Brick Masonry		131 Rosegarden Dr.			McKinney	TX	75070	
RUGG, STACEY		Address on File						
Rugmakers Gallery, Inc.		4920 Cash Rd.			Dallas	TX	75247-6308	
RUSCH, MARYAM		Address on File						
Russ Kathrein		Address on File						
Russel Reynolds & Associates		Church Street Station	Post Office Box 6427		New York	NY	10249	
Russell Jones & Walker		61 Sandmere Rd	Clapham		London		SW1Y4UR	United Kingdom
Russell Reynolds Associates		Church Street Station	PO Box 6427		New York	NY	77100	
Russell W. May		Address on File						
Russell W. May		Address on File						
RUTLEDGE, ROBERT		Address on File						
Ryan Associates Technology LLC		Address on File						
RYAN HIGHTOWER		21 Hillandale Dr			New Rochelle	NY	10804	
Ryan Law		Address on File						
Ryan Lucero		Address on File						
Ryan Moore		Address on File						
Ryan O'Dowd Photography		3924 County Road 168			McKinney	TX	75071	
Ryan P. Newell (Connolly Gallagher LLP)		Connolly Gallagher LLP	1201 N. Market Street, 20th Floor		Wilmington	DE	19801	
RYAN VOTAW	Altn Jeffrey C. Wisler, Esq.	Address on File						
Ryan, Inc.		Address on File						
Ryder, Phillip		Address on File						
S&P Global Market Intelligence		33356 Collection Center Drive			Chicago	IL	60693-0333	
S&P Global Market Intelligence LLC		55 Water Street			New York	NY	10041-0000	
S. LeBlanc & Company		942 Shore Crest Rd.			Carlsbad	CA	92011	
Saagar Grover		Address on File						
Sachdev, Kunal		Address on File						
Sacred Heart in NYC		1 East 91st ST.			New York	NY	10128	
SACRS	c/o Strategic Local Govt Services, LLC	1415 L Street, Suite 1000			Sacramento	CA	95814	

002404

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Sadis & Goldberg	Stephen Huttler	551 Fifth Avenue, 21st Flr			New York	NY	10176	
SAEHLER, CHRISTOPHER J.		Address on File						
Sagar Vira		Address on File						
Sage Document Services Group LLC		2 West 45th Street	Ste 407		New York	NY	10036	
Sage Search Partners		3811 Turtle Creek Blvd	Suite 850		Dallas	TX	75219	
SagePoint Financial, Inc.	Attn Supervision-Reimbursement	2800 N Central Ave, Suite 1200	Suite 105		Phoenix	AZ	85004	
SAGEPOINT Financial, Inc.		74 8th St. SE			Hickory	NC	28602	
SAKUNGEW, PON		Address on File						
Sal Villacorta		Address on File						
Salesforce.com		PO BOX 842569			Boston	MA	02284	
Salesforce.com		PO Box 5126			Carol Stream	IL	60197-5126	
Salesforce.com		PO Box 203141			Dallas	TX	75320-3141	
Salesmanship Club Chrtbl Golf Dallas Inc		106 E. Tenth St.			Dallas	TX	75203	
Sali Fund Management, LLC	Tom Nieman	6836 Austin Center Blvd.	Suite 320		Austin	TX	78731	
Salomon Smith Barney Inc.			Queensgate House		George Town			Cayman Islands
Highland Loan Funding V Ltd.	Highland Loan Funding V Ltd	P. O. Box 1093 GT	South Church Street	The Directors			KY1-1108	
Salomon Smith Barney Inc.								
Highland Loan Funding V Ltd.	Salomon Smith Barney	390 Greenwich Street	4th Floor	FI Structured Products Group	New York	NY	10013-2396	
Salus Valuation Group, Inc.		111 West Myrtle Ave	Unit 6		Foley	AL	36535	
Sam Engineering & Testing		1115 Luke St, Suite 100			Irving	TX	75061	
SAM GARCIA		Address on File						
Sam Graham		Address on File						
Sams Club		PO Box 9001152			Louisville	KY	40290-1152	
Sanborn, Brian		Address on File						
SANBORN, PATRICIA		Address on File						
SANCHEZ, RODERICK		Address on File						
SANDEEP GUPTA		Address on File						
SANDEEP GUPTA		Address on File						
Sandlapper Securities, LLC		406 N Pleasantburg Dr			Greenville	SC	29607-2128	
Sands Point Funding, Ltd.	c/o Guggenheim Partners	330 Madison Ave, 11th Floor			New York	NY	10017	
SANJEEV MEHTA		Address on File						
Santoyo Moore Wehmeyer P.C.		1020 NE Loop 410, Suite 320			San Antonio	TX	78209	
Sard Verbinen & Co.		630 Third Ave			New York	NY	10017	
Sard Verbinen & Co.		General Post Office	PO Box 26781		New York	NY	10087-6781	
Sard Verbinen, LLC		PO Box 26781			New York	NY	10087-6781	
Satuit Technologies Inc.		80 Washington St.	Unit M50		Norwell	MA	02061	
Satuit Technologies Inc.		100 Grossman Drive	Suite 302		Braintree	MA	02184	
Savvy Training & Consulting		4530 Independence Trail			Evergreen	CO	80439	
Sawko & Burroughs, P.C.		1172 Bent Oaks Drive			Denton	TX	76210	
Saxton Morgan		PO Box 2302			Addison	TX	75001	
Sayles Werbner		Address on File						
Sbaiti & Company PLLC	Mazin A Sbaiti	J.P. Morgan Chase Tower	2200 Ross Avenue	Suite 4900W	Dallas	TX	75201	
SBC		PO Box 660324			Dallas	TX	75266-0324	

002402



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SBC Long Distance		PO Box 660688			Dallas	TX	75266-0688	
SBC Southwestern Bell		PO Box 5069			Saginaw	MI	48605-5069	
SC Department of Revenue		300A Outlet Pointe Boulevard			Columbia	SC	29210	
Scarab Consulting	AMEGY BANK NATIONAL ASSOCIATION	ASSIGNEE FOR SCARAB ACQUISITION, LLC	DEPT 338, PO BOX 4346		Houston	TX	77210-4346	
Scarab Consulting		Dept 338, PO Box 4346			Houston	TX	77210	
Scarab Consulting		504 Lavaca, Suite 910			Austin	TX	78701	
SCF Securities, Inc.		155 E. Shaw Avenue	Suite 102		Fresno	CA	93710	
SCHMIDT & STACEY CONSULTING Eng. Inc.		Address on File						
SCHNABEL, MATTHEW		400 City Place	2711 N. Haskell Ave.	Lock Box 29	Dallas	TX	75204	
School, Jennifer		Address on File						
SCHRAY, NATHAN		Address on File						
SCHRECK, DEANNE		Address on File						
Schroepfer Wessels Jolesch		Address on File						
SCHROTH, MELISSA		Address on File						
SCHULER, ELLIOT		Address on File						
SCHULER, KARISSA		Address on File						
Schulte Roth & Zabel LLP	James T. Bentley	919 Third Avenue			New York	NY	10022	
Schumacher Cargo Logistics, Inc.		550 W. 135th Street			Gardena	CA	90248	United Kingdom
SCI		311/507 Clerknwell Close			London		EC1R 0AT	
Scoop Reprint Source		30270 Rancho Viejo Road	Suite E		San Juan Capistrano	CA	92675	
Scott A. Snook		Address on File						
Scott B. Ellington	c/o David Neier, Winston Strawn LLP	200 Park Avenue			New York	NY	10166	
Scott B. Ellington	Scott Ellington c/o Francis A Smith, Ross & Smith PC	Plaza of the Americas	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
Scott B. Ellington		Address on File						
SCOTT COOPER		Address on File						
Scott Douglass & McConnico LLP		303 Colorado Street, Suite 2400			Austin	TX	78701	
Scott Ellington	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue		New York	NY	10018	
Scott Ellington	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Scott F. Kavanaugh		Address on File						
Scott F. Kavanaugh		Address on File						
Scott Harris		Address on File						
Scott Hoermann		Address on File						
Scott K Meyer		Address on File						
SCOTT KOHNEN		Address on File						
Scott McCurry		Address on File						
SCOTT NELSON		Address on File						
Scott Niebling Valuation Group		3930 East Ray Rd	Suite 180		Phoenix	AZ	85044	

002469

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SCOTT ROSENTHAL		Address on File						
SCOTT SCHEIN		Address on File						
Scott Shpilberg		Address on File						
SCOTT TANDBERG		Address on File						
Scott Waggoner		Address on File						
Scura Paley Securities LLC		489 5th Ave, 15th Flr			New York	NY	10017	
Sea Island Company	c/o Group Billing, Acctg Dept	100 Cloister Drive			Sea Island	GA	31561	
SEAL Legacy Foundation		1401 McKinney	Ste 2222		Houston	TX	77010	
SEAMAN, CRISTINA		Address on File						
SeamlessWeb Professional Solutions, Inc.		PO Box 5439			New York	NY	10087-5439	
SeamlessWeb Professional Solutions, Inc.		PO Box 71649			Chicago	IL	60694-1649	
Sean Neumayer Photography		4321 S. Coolidge Ave			Tampa	FL	33611	
Search Finance		14001 Dallas Pkwy		Ste 1200	Dallas	TX	75240	
Seaver, Jeffrey		Address on File						
SEC Headquarters	Mail Stop 7010 / 2017 Annual Report	100 F Street, NE	Mail Stop 7010		WASHINGTON	DC	20549-2000	
Secretary of State	Division of Corporations	Franchise Tax	P.O. Box 7040		Dover	DE	19903	
Secretary of State		PO BOX 12887			Austin	TX	78711	
Secretary of State		1500 11th St	IRC Unit, 3rd FL		Sacramento	CA	95814	
Secretary of State		PO Box 13550			Austin	TX	78711-3550	
Secretary of State		PO Box 13697			Austin	TX	78711-3697	
Secretary of State		801 Capitol Way South	PO Box 40234		Olympia	WA	98504-0234	
Secretary of State of Illinois		Illinois Securities Department	421 E. Capital Ave., 2nd Fl.		Springfield	IL	62701	
SECRETARY OF STATE OF TEXAS	ACCOUNTS RECEIVABLE	PO BOX 12887			Austin	TX	78711-2887	
Secretary of the Commonwealth		Securities Division	One Ashburton Place, Rm. 1701		Boston	MA	02108	
Secretary of Treasury		P.O. Box 7040			Dover	DE	19903	
Secretary of Treasury		15th & Pennsylvania Avenue, N.W.			Washington	DC	20220	
Secure Concepts LLC		128 East BRDway #501			New York	NY	10002	
Secure Options, Inc.		5420 Bryan Street			Dallas	TX	75206	
Secure Options, Inc.		2156 W Northwest Hwy Ste 300			Dallas	TX	75220	
Secure Share Network LLC		3475 Piedmont Road NE, Ste 450			Atlanta	GA	30305	
Secure Source Inc.		710 South Kimball Ave			Southlake	TX	76092	
Secured Access Systems, LLC		1913 Walden Court			Flower Mound	TX	75022	
Securities & Exchange Commission		100 F Street, NE	Mail Stop 7010		WASHINGTON	DC	20549-2000	
Securities & Exchange Commission	Division of Trading & Markets	Office of General Counsel-Bankruptcy			Washington	DC	20549	
Securities America	Michael A. Berman, Esq.	12325 Port Grace Blvd.	100 F Street, N.E.		La Vista	NE	68128	
Securities America, Inc.	Altn Accounting Dept							
Cooper McManus		9870 Research Drive			Irvine	CA	92618-3302	

0024014

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 137 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Securities Commissioner State of ND		State Capitol	600 East Boulevard Avenue, 5th Floor		Bismarck	ND	58505-0510	
Securities Division, AZ Corp. Comm		Securities Division	1300 W Washington St #3		Phoenix	AZ	85007	
Securities Investor Protection Corp		PO Box 92185			Washington	DC	20090-2185	
Securities Service Network		115 Glastonbury Blvd			Glastonbury	CT	06033	
See Food Media LLC		496 Lagurdai Place # 4C			New York	NY	10012	
SEI Investments Distribution Co.	Attn Chris Rowan-SIDCO Acctng	One Freedom Valley Dr			Oaks	PA	19456	
SEIDEN KRIEGER ASSOCIATES, INC		375 PARK AVE			New York	NY	10152	
Selah Photography		5421 Shiver Road			Keller	TX	76244	
Select Security & Private Investigations		PO Box 1352			Rockwall	TX	75087	
Selig ADR, Inc		5009 Caroline St, Ste 100			Houston	TX	77004	
Sellman, Matthew		Address on File						
SERENI, ALEXIS J.		Address on File						
SERVICORP		Level 19	Two International Finance Center		CENTRAL HONG KONG			HONG KONG
SERVICORP		6 BATTERY ROAD	RAFFLES PLACE		Singapore		049909	SINGAPORE
Service Systems Associates SET, AUGUSTUS	Attn Robin Scichili	650 S RL Thornton Frwy			Dallas	TX	75203	
		Address on File						
Setfords Solicitors		14 Haydon Place			Guilford		GU1 4LL	United Kingdom
Seth Weinstein		Address on File						
Seton Hall University	Attn Bryan Felt	400 South Orange Ave			South Orange	NJ	07079	
Severson, Keith		Address on File						
SEVILLA, JEAN-PAUL		Address on File						
Seward & Kissel		One Battery Park Plaza			New York	NY	10004	
Seyfarth Shaw LLP		131 S. Dearborn Street, Suite 2400			Chicago	IL	60603	
ShadowTV, Inc.		630 9th Ave	Suite 1000		New York	NY	10036	
Shag Carpet Productions, Inc.		502 South 2nd Avenue			Dallas	TX	75226	
SHAH, AMOL		Address on File						
SHAHDA, CHRIS		Address on File						
SHAHDA, CHRISTOPHER		Address on File						
Shahzad Pirvani		Address on File						
Shakelford Melton & McKinley		3333 Lee Pkwy	10 th fl		Dallas	TX	75219	
Shane Tipton		Address on File						
Shannon, Gracey, Ratliff & Miller, LLP		420 Commerce St, Ste 500			Fort Worth	TX	76102	
SharePoint Solutions	Attn Accounts Receivable	PO Box 1588			Brentwood	TN	37024-1588	
SHARON EASLEY		Address on File						
SHARON SHUSTER		Address on File						
SHARRY, GREGORY		Address on File						
Shasta Land Management Consultants		1229 South Street			Redding	CA	96001	

002405

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SHAWN LEDERMAN		Address on File						
Shawn Raver		Address on File						
Shayla Kelly		Address on File						
Shea & Carlyon Ltd		701 Bridger Ave #850			Las Vegas	NV	89101	
Shearman & Sterling LLP		5990 Lexington Ave			New York	NY	10022-6069	
Shelley Shackelford & Co.		5807 SANDHURST LN SUITE D			Dallas	TX	75206	
SHELLY RASTOGI		Address on File						
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP		333 S. Hope Street	48th Floor		Los Angeles	CA	90071	
SHIFFERD, CHARLES		Address on File						
Shoot2Sell		14681 Midway Rd	Ste 105		Addison	TX	75001	
Short, Lauren		Address on File						
SHIPILBERG, SCOTT		Address on File						
Shred-it USA		11101 Franklin Avenue	Suite 100		Franklin Park	IL	60131-1403	
Shred-it USA		28883 Network Place			Chicago	IL	60673-1288	
Shred-it USA		PO Box 730504			Dallas	TX	75373-0504	
Shred-it USA		PO Box 101007			Pasadena	CA	91189-1007	
SHUMWAY, CLAY		Address on File						
SHUSTER, SHARON		Address on File						
Siber Systems, Inc		3701 Pender Dr Ste 400			Fairfax	VA	22030-6045	
Siddharth Mehra		Address on File						
SIDLEY AUSTIN LLP		Address on File						
SIEGEL, HAROLD		PO BOX 0642			Chicago	IL	60690	
Siepe Services, LLC	Chris Doty	Address on File						
Siepe Services, LLC		5440 Harvest Hill Road Suite 100			Dallas	TX	75230	
Siepe Services, LLC		5440 Harvest Hill Road Suite 100			Dallas	TX	75230	
Siepe, LLC		2200 Ross Ave, Ste 4700E			Dallas	TX	75201-0000	
SIEVERT, AMY		6135 Churchill Way			Dallas	TX	75230	
Sigma Financial Corp	Attn Jackie Pascarella	Address on File						
Sigma Financial Corporation		1717 N. IH 35, Ste 150			Round Rock	TX	78664	
Signator Investors, Inc.		300 Parkland Plaza			Ann Arbor	MI	48103	
Signature Productions, Ltd.		20 E Thomas Rd Ste 2000			Phoenix	AZ	85012-3129	
Sils Cummis & Gross		5331 85th St.			Lubbock	TX	79424	
Silva, Alison		The Legal Center	One Riverfront Plaza		Newark	NJ	07102-5400	
Silver Scriptor LLC		Address on File						
Silver Scriptor LLC		PO Box 9012			Austin	TX	78766	
Silverman Communications Group		PO Box 61064			Seattle	WA	98141	
SIMEK, DAVID		11 Carol Ct.			Glen Rock	NJ	07452	
SIMMONS, DAVID		Address on File						
Simon, Scott		Address on File						
Simpson Appraisal, Inc		6009 Belt Line Rd., Suite 145			Dallas	TX	75254	
SIMPSON THACHER & BARTLETT LLP		425 LEXINGTON AVE			New York	NY	10017-3954	
SIMPSON THACHER & BARTLETT LLP		PO Box 29008			New York	NY	10087-9008	
Sims, Austin		Address on File						

0024018

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SINGH, TANIA		Address on File						
SISK, JESSICA		Address on File						
Sitrick and Company Inc.		11999 Vincente Blvd	Penthouse		Los Angeles	CA	90049	
Sitrick and Company Inc.		1840 Century Park East Ste 800			Los Angeles	CA	90067	
SK Research, LLC		10320 Little Patuxent Parkway	12th Floor		Columbia	MD	21044	
Skadden, Arps, Slate, Meagher & Flom LLP		Four Times Square			New York	NY	10036	
Skadden, Arps, Slate, Meagher & Flom LLP		PO Box 1764			White Plains	NY	10602	
SKC COMMUNICATION PRODUCTS, LLC		P.O. BOX 874843			Kansas City	MO	64187-4843	
Skybridge Alternatives Conference	Attn Jeanie Reyes	527 Madison Ave, 16th Flr			New York	NY	10022	
SkyBridge SALT LLC	Attn Jeanie Reyes	527 Madison Ave, 16th Floor			New York	NY	10022	
Skyline DFW Exhibits & Events		900 Avenue S			Grand Prairie	TX	75050	
Skyline Sector 5		525 113th Street			Arlington	TX	76011	
Slant Partners		3838 Oak Lawn Avenue	Suite 1550		Dallas	TX	75219	
Slayton International		One North Franklin Ste 2500			Chicago	IL	60606	
SlideGenius, Inc.		1660 Hotel Cir N # 175			San Diego	CA	92108-2807	
SloMo Lounge		4901 Harbor Court			Flower Mound	TX	75022	
Smallwood, Allan		Address on File						
Smarsh		921 SW Washington St	Suite 540		Portland	OR	97205	
Smarsh		PO Box 505265			Saint Louis	MO	63150-5265	
Smith Katzenstein Jenkins LLP		800 Delaware Avenue, Ste. 1000	P.O. Box 410		Washington	DE	19899	
SMITH, DAVID		Address on File						
Smith, Felicia		Address on File						
Smith, Ian		Address on File						
Smith, Jackson, Boyer & Bovard		9400 NCX, Ste 420 9400 N Central Expwy			Dallas	TX	75231-5063	
SMITH, SEAN		Address on File						
Smith, Theodore		Address on File						
SMS		WELLS FARGO BANK-IN CARE OF SMS	6480 ARGO ST		Dallas	TX	75214	
SMU Cox School of Business		Pitts Leadership Award	PO Box 750333		Dallas	TX	75275-0333	
Snapptraffic Consulting		9 Cherry Pl.			Huntington	NY	11743	
Snell & Wilmer LLP		One Arizona Center	400 E. Van Buren, Suite 1900		Phoenix	AZ	85004-2202	
SNI Companies		14241 Dallas Parkway	Suite 550		Dallas	TX	75254	
SNL Financial		PO BOX 414624			Boston	MA	02241-4624	
SNR Denton US LLP		233 S. Wacker Dr	Suite 7800		Chicago	IL	60606	
Snyder Kearney, LLC		10320 Little Patuxent Pkwy						
Snyder, Evan		Suite 1200			Columbia	MD	21044	
Social Matters		Address on File						
		PO Box 800357			Dallas	TX	75380-0357	

0024017

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 13**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which



was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>			<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>			<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Vol. 8

001349

001352

001359

001361

001369

001381

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				

001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>37</u> Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

**Counsel for Appellant**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

*/s/ Mazin A. Sbaiti*  
Mazin A. Sbaiti

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SOCIETY FOR HUMAN RESOURCE MANAGEMENT		PO BOX 79482			Baltimore	MD	21279-0482	
Society of St. Vincent de Paul, Inc	Diocesan Council of Dallas	10500 Steppington Drive, Suite 251			Dallas	TX	75230	
Software Shelf International, Inc		601 Cleveland Street, Suite 710			Clearwater	FL	33755	
SoftwareONE, Inc.		PO Box 7343			Menlo Park	CA	94026	
SoftwareONE, Inc.		20875 Crossroads Cir.	Suite 1		Waukesha	WI	53186	
SoftwareONE, Inc.		PO Box 510944	15700 W. Cleveland Ave		New Berlin	WI	53151-0944	
Sohn Conference Foundation	c/o Garwood Events	225 106 Street, Ste 15M			New York	NY	10025	
Solarwinds		7171 Southwest Parkway	Bldg 400		Austin	TX	78735-0000	
SolarWinds, Inc		PO Box 730720			Dallas	TX	75373	
Solid Details LLC		2121 Santa Anna Ave.			Dallas	TX	75228	
Solomon R. Guggenheim Foundation		345 Hudson Street	12th Floor		New York	NY	10014	
SOLOW BUILDING COMPANY II, LLC		PO BOX 27112			New York	NY	10087-7112	
SOLOW BUILDING COMPANY II, LLC		PO Box 823812			Philadelphia	PA	19182-3812	
SOMMER FRAZIER		Address on File						
Sonny Bryans Smokehouse		2625 Seeloco St			Dallas	TX	75235-2608	
Sony Pictures Studio Group	A Sony Pictures Entertainment Company	File #54715			Los Angeles	CA	90074-4715	
Soto, Hailey		Address on File						
Source Code North America, Inc		Dept CH 16510			Palatine	IL	60055-6510	
Source, Inc.		PO Box 202414			Dallas	TX	75320	
SourceMedia		PO Box 4871			Chicago	IL	60680	
SourceMedia		PO Box 4634			Chicago	IL	60680-9598	
SourceMedia		PO Box 71633			Chicago	IL	60694-1633	
South Dakota Division of Securities		124 S. Euclid, Ste. 104			Pierre	SD	57501	
Southern Conference Teacher Retirement		PO Box 642			Sturbridge	MA	01566	
Southern Methodist University	Attn Erin Sutton	PO Box 750460			Dallas	TX	75275-0460	
Southfork CLO Ltd. JPMorgan Chase Bank, National Association	Attention The Directors-Strafford CLO Ltd.	Queensgate House, South Church Street, George Town		P.O. Box 1093GT	Grand Cayman			Cayman Islands
Southfork CLO Ltd. JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	600 Travis Street	50th Floor	Institutional Trust Services-Southfork CLO Ltd.	Houston	TX	77002	
Southfork CLO, Ltd.	The Directors	PO Box 1093 GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Southland Property Tax Consultants, Inc		201 S Main St Ste 1460			Fort Worth	TX	76102-3146	

002403



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Southland Property Tax Consultants, Inc		777 Main Street	Suite 1960		Fort Worth	TX	76102-5323	
Southwest Ford Inc.		PO Box 234			Weatherford	TX	76086	
Southwest Glass, Inc.		2333 Glenda Lane			Dallas	TX	75229	
Southwest Reporting & Video Service		826 Heights Blvd.			Houston	TX	77007	
Southwest Search		PO Box 710596			Dallas	TX	75371-0596	
Southwest Securities, Inc.	Attn Holly Peritz	1201 Elm St, Ste 3500			Dallas	TX	75270	
Southwestern Medical Foundation		Parkland Hall at Old Parkland	3889 Maple Ave, Ste 100		Dallas	TX	75219	
Sove Lavi		Kimberly Simeus	1212 Wyndham Hill Lane		Southlake	TX	76092	
SOWIN, JOSEPH		Address on File						
SOWIN, JOSEPH		Address on File						
Spears & Associates		8908 S. Yale	Suite 440		Tulsa	OK	74137	
Special Delivery Service, Inc.		5470 L.B.J. Freeway			Dallas	TX	75240	
Special Fund For Disability Benefits	Accounts-DB Penalty	328 State Street			Schenectady	NY	12305-2318	
Special Fund For Disability Benefits	Accounts-DB Penalty Room	301 20 Park St			Albany	NY	12207-1674	
Specialized Schedulers, Inc.		22334 SW 107th Ave			Tualatin	OR	97062	
SPECTOR, ANASTASIYA		Address on File						
SPECTRUM GAMING GROUP LLC		2 DONOVAN ROAD			Pennington	NJ	08534	
SPEICHER, NATHAN		Address on File						
Spence, Austin		Address on File						
Spherion		PO Box 100186			Atlanta	GA	30384-0186	
Spinner Printing Company		3335 Keller Springs #100			Carrollton	TX	75006	
Spin-Off Advisors, LLC		1327 W. Washington Blvd	Ste 4-G		Chicago	IL	60607	
Spoke LLC		3304 9th St. NE #1			Washington	DC	20017	
Spot Cooling Systems		1420 Century Dr Ste 800			Carrollton	TX	75006	
Spotlight Marketing								
Communications		18101 Von Karman Ave.	Third Floor		Irvine	CA	92612	
Springboard Network LLC		9900 Spectrum Drive			Austin	TX	78717-0000	
Sprint		PO Box 660092			Dallas	TX	75266-0092	
Square, Inc		1455 Market St.	Suite 600		San Francisco	CA	94103	
Squire Patton Boggs (US) LLP		PO Box 643051			Cincinnati	OH	45264	
ST JUDE CHILDRENS RESEARCH HOSPITAL		501 St. Jude Place			Memphis	TN	38105	
ST JUDE CHILDRENS RESEARCH HOSPITAL		4324 N BELTLINE RD	STE C-206		Irving	TX	75038	
ST LOUIS CARDINALS		700 Clark St	Group Ticket Dept.		Saint Louis	MO	63102	
STA SVDP		6306 Kenwood Ave			Dallas	TX	75214	
Stacey Morimoto		Address on File						
STACEY RUGG		Address on File						
Staffelbach, Inc.		2525 McKinnon, Suite 800			Dallas	TX	75201	
STAGGS, JOE		Address on File						
Staltari, Mauro		Address on File						
Stan Lata		Address on File						

0024015

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Standard & Poors	Capital IQ	2542 Collection Center Dr			Chicago	IL	60693	
Standard & Poors/Capital IQ		33356 Collection Center Drive			Chicago	IL	60693-0333	
Standard Ins. Co. RAS Executive Benefits	Attn Glenda Wright-P4B	1100 SW 6th Ave			Portland	OR	97204	
Standard Ins. Co. RAS Executive Benefits		INDIVIDUAL CLIENT SERVICES	PO BOX 711		Portland	OR	97207-0711	
Standard Ins. Co. RAS Executive Benefits		PO BOX 5674			Portland	OR	97228-5674	
Standard Insurance Company		1100 SW 6th Ave			Portland	OR	97204	
Standard Insurance Company		PO Box 2707			Portland	OR	97208-3358	
Standard Insurance Company		PO BOX 3358			Portland	OR	97208-3358	
Standard Research Corporation		4430 Tyne Blvd			Nashville	TN	37215	
STANLEY ACCESS TECH LLC		PO BOX 0371595			Pittsburgh	PA	15251-7595	
Stanton Advisors LLC	James Stanton	300 Coles Street	Apt. 802		Jersey City	NJ	07310	
Stanton Law Firm PC		1717 Main St., Suite 3800			Dallas	TX	75201	
Stanton Law Firm PC		4350 Beltway Drive			Addison	TX	75001	
Stanton LLP		1717 Main St, Ste 3800			Dallas	TX	75201	
Stanton LLP		9400 N Central Expwy	Ste 1304		Dallas	TX	75231	
Staples Credit Plan		Dept. 22 - 0008144217 PO Box 9020			Des Moines	IA	50368-9020	
Star Displays		16914 FM 2920			Tomball	TX	77377	
Star Pro Staffing		8600 Preston Rd Apt 113			Dallas	TX	75225-3529	
State Auditor		1900 Kanawha Boulevard East	Building 1, Room W-100		Charleston	WV	25305	
STATE BAR OF TEXAS		PO Box 5075			Saginaw	MI	48605-5075	
State Bar of Texas		PO Box 12487			Austin	TX	78711-2487	
State Bar of Texas		PO BOX 13007	MCLE DEPT		Austin	TX	78711-3007	
State Bar of Texas		PO Box 149335			Austin	TX	78714-9335	
State Comptroller		111 E 17th St			Austin	TX	78774-0001	
State Comptroller		Comptroller of Public Accounts	111 E 17th St		Austin	TX	78774-0100	
State Fair of TX Youth Livestock Auction		PO Box 150009			Dallas	TX	75315	
State Insurance Fund		PO Box 4779			Syracuse	NY	13221-4779	
State Insurance Fund		PO Box 5261	Disability Benefits		Binghamton	NY	13902-5261	
State of Alaska		Securities Section, Division of Banking	333 W. Willoughby Ave., Ste. 9		Juneau	AK	99801	
STATE OF ARKANSAS ADMINISTRATION	DEPT OF FINANCE & ADMINISTRATION	PO BOX 919	CORPORATION INCOME TAX SECTION		Little Rock	AR	72203-0919	
STATE OF CALIFORNIA, FRANCHISE TAX BOARD		PO BOX 942867			Sacramento	CA	94267-0011	
State of Delaware	Division of Corporations	PO Box 5509			Binghamton	NY	13902-5509	

002476

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
STATE OF MARYLAND	Dept of Assessments & Taxation	Personal Property Division	PO Box 17052		Baltimore	MD	21297-1052	
STATE OF MICHIGAN	COMPOSITE RETURN	PO BOX 30058	MICHIGAN DEPT OF TREASURY		Lansing	MI	48909	
STATE OF MICHIGAN	Corp. Securities & Comm Licensing Bureau	525 W. Allegan Street	Audit & Exam Division		Lansing	MI	48909	
STATE OF MICHIGAN	MICHIGAN DEPARTMENT OF TREASURY	DEPT 77375	PO BOX 77000		Detroit	MI	48277-0375	
STATE OF MICHIGAN		PO Box 30774			Lansing	MI	48909-8274	
State of New Hampshire		New Hampshire Dept. of State	107 N. Main Street, Rm 204, State House		Concord	NH	03301-4951	
STATE OF NEW JERSEY	DEPT OF LABOR AND WORKFORCE	PO BOX 929	DIV OF REVENUE PROCESSING		Trenton	NJ	08646-0929	
STATE OF NEW JERSEY		New Jersey Dept of Law & Public Safety	153 Halsey Street, 6th Floor		Newark	NJ	07102	
STATE OF NEW JERSEY		REVENUE PROCESSING CENTER	PO BOX 642		Trenton	NJ	08646-0642	
State of New Jersey-CBT	Division of Tax Revenue Proc Center	PO Box 66			Trenton	NJ	08646-0666	
State of Oregon	Div of Finance & Corporate Securities	350 Winter St NE, Rm 410	Labor & Industries Bldg 401 Adams Avenue, Suite 280		Salem	OR	97301	
State Securities Commissioner of Alabama		Registration Division			Montgomery	AL	36104	
State Street Bank and Trust Company		200 Clarendon Street	Mail Code EUC-108		Boston	MA	02116	
State Street Bank and Trust Company		PO Box 5607			Boston	MA	02206-5607	
State Street Corporation		PO Box 5013			Boston	MA	02206-5013	
State Street Corporation		PO Box 5607			Boston	MA	02206-5607	
State Street Global Exchange	State Street Bank and Trust Company	Elkins McSherry LLC	One Lincoln Street		Boston	MA	02111	
State Street Global Markets, LLC		One Lincoln Street			Boston	MA	02111	
Status Labs.com		151 South 1st	Suite 100		Austin	TX	78704	
Stax Media, Inc.		4630 Soquel Drive	Suite 5		Soquel	CA	95073	
Stefan Peller		Address on File						
Stellar Adventures		PO Box 8329			Scottsdale	AZ	85252	
Stenstrom-Schneider, INC		13748 Neutron Rd			Dallas	TX	75244-4412	
Stephanie Catalano		Address on File						
Stephanie Vitello	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
STEPHEN LORENZ		Address on File						
Stephen M. Fremgen		Address on File						
Steptoe & Johnson LLP		1330 Connecticut Ave, N.W.			Washington	DC	20036-1795	
STERLING VALUATION GROUP, INC		590 MADISON AVE	5TH FLR		New York	NY	10022	
Steve Mackay		Address on File						
Steve Thel		Address on File						
STEVE ZIMMERMAN		Address on File						

0924717

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Steven Delarosa STEVEN GART		Address on File						
Steven Haltom	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Steven J White MD		PO Box 650772			Dallas	TX	75265-0772	
Steven J. Kaplan, P.C.		5910 Stoneshire Ct			Dallas	TX	75252	
Steven Johnson		Address on File						
STEVEN SUN		Address on File						
Stevens, Kellie		Address on File						
Stevens, Kellie		Address on File						
Stewart F. House Photography		2600 Bunker Hill Cr			Plano	TX	75075	
Stewart, Phoebe		Address on File						
Stewart, Phoebe L.		Address on File						
STEWART, STEVEN a.		Address on File						
STF Services Corporation		PO Box 3251			Syracuse	NY	13220-3251	
STIKEMAN ELLIOT		5300 Commerce Court West	199 Bay Street West		Toronto	ON	M5L 1B9	CANADA
Stillman & Friedman, P.C.		425 Park Avenue	26th Floor		New York	NY	10022	
Stinson Leonard Street LLP	Stinson LLP	Attn Paul Lackey	3102 Oak Lawn Avenue, Suite 777		Dallas	TX	75219	
Stinson Leonard Street LLP		PO Box 843052			Kansas City	MO	64184	
Stinson LLP	Attn Paul Lackey	3102 Oak Lawn Avenue, Suite 777			Dallas	TX	75219	
Stinson LLP	Deborah Deitsch-Perez, Michael P. Aigen	3102 Oak Lawn Avenue, Suite 777			Dallas	TX	75219	
Stinson LLP	Paul M. Hoffmann	1201 Walnut Street, Suite 2900			Kansas City,	MO	64106-2150	
STINSON MORRISON								
HECKER LLP		PO Box 219492			Kansas City	MO	64121	
Stone, David		Address on File						
Stone, Kenneth		Address on File						
Stoneypher, Abbie		Address on File						
Stonelake Capital Holdings, LP	Attn Blake Wilson	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn Jacob Becker	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn John A. Kiltz	3200 Gracie Kiltz Lane, Suite 500			Austin	TX	78758	
Stonelake Capital Holdings, LP	Attn Kenneth E. Aboussie, Jr.	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn W. Hunter Sage, Esq.	200 Park Place, 4200 Westheimer, Suite 900			Houston	TX	77027	
Stonelake Capital Holdings, LP	Attn William C. Wilshusen	Haynes & Boone, LLP	2323 Victory Avenue, Suite 700		Dallas	TX	75219	
STOOPS, CLIFFORD		Address on File						
Stout Management Company		10151 Park Run Drive			Las Vegas	NV	89145	
Stradley Ronon Stevens & Young, LLP		2005 Market Street	Suite 2600		Philadelphia	PA	19103-7018	
Strand Advisors Inc.		1209 Orange Street			Wilmington	DE	19801-0000	

0924718

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Strand Advisors, Inc.	Attn James Seery	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strand Advisors, Inc.	Attn John Dubel	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strand Advisors, Inc.	Attn Russell Nelms	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strasburger & Price, L.L.P.	ATTN Eileen Gabay	52 Vanderbilt Avenue	8th Floor		New York	NY	10017	
Strategas Research Partners LLC		52 Vanderbilt Ave	8th Fl		New York	NY	10017	
Strategas Securities LLC		500 W CYPRESS CREEK RD	STE 420		Ft. Lauderdale	FL	33309	
STRATEGIC ALLIANCE GROUP, LLC		2650 Thousand Oaks Blvd	Suite 1340		Memphis	TN	38118	
Strategic Financial Solutions		5004 Crestway Drive			Austin	TX	78731	
Strategic Growth, Inc		1300 Summit Ave Ste 512			Fort Worth	TX	76102-4419	
Strategic Insight Group								
STRATEGIC WORKFORCE SOLUTIONS		PO BOX 32960			Hartford	CT	32960	
Stratford CLO Ltd.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Stratford CLO Ltd. State Street Bank and Trust Company	State Street Bank and Trust Company	200 Clarendon Street			Boston	MA	02116	
Stratford CLO Ltd. State Street Bank and Trust Company	Stratford CLO Ltd.	P.O. Box 1093GT, Boundary Hall	Cricknet Square George Town, Grand Cayman	Attention The Directors- Stratford CLO Ltd.	Grand Cayman			Cayman Islands
Stratford CLO Ltd.	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street Ste 125	George Town	Grand Cayman		KY1-1108	Cayman Islands
Stratos Legal Services, LP	Attn P. Hudson	4295 San Felipe			Houston	TX	77027	
Stratus Energy Group		1206 San Antonio Street			Austin	TX	78701	
Stroh Systems Group		631 Park Ave			King of Prussia	PA	19406	
STRONGZEK, JILLIAN N.		Address on File						
Strong Pipkin Bissell & Ledyard, L.L.P.		1400 San Jacinto Building, 595 Orleans			Beaumont	TX	77701-3255	
Stroock & Stroock & Lavan LLP		180 Maiden Lane			New York	NY	10038	
Structural and Steel Products, Inc		3001 W Pafford Street			Fort Worth	TX	76110-0000	
Structure Tone Southwest, Inc.		3333 Weiborn St, Ste 200			Dallas	TX	75219	
Structured Credit Investor		507 Clerkenwell Workshops	27/31 Clerkenwell Close		Farrington		EC1R 0AR	United Kingdom
Studio Movie Grill		5405 Bellline Rd			Dallas	TX	75248	
STUECHELI, GREGORY		Address on File						
Stuhsatz, Amy		Address on File						
Stutman Treister & Glatt PC		1901 Avenue of the Stars	12th Floor		Los Angeles	CA	90067-6013	
Styx International, Ltd.		875 Third Avenue	10th Floor		New York	NY	10022	
Styx Partners, LP		875 Third Avenue	10th Floor		New York	NY	10022	
Success CE		2 Corporate Plaza Drive	Suite 100		Newport Beach	CA	92660	
Succession Resource Group		PO Box 1573			Tualatin	OR	97062	

0024713

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 146 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Sue McGeehan	VP, Collections, Finance Dept.	7 World Trade Center at 250 Greenwich Street			New York	NY	10007	
Sui Hook Goy	Ni Advisors, Inc.	1138 Cadillac Ct.			Nilpitas	CA	95035	
Suicide and Crisis Center of North Texas	Brian D. Glueckstein	10625 Northboro 125 Broad Street			Dallas New York	TX NY	75230 10004	
SULLIVAN, JOURDAN		Address on File						
Summit Brokerage Services, Inc.	Attn Compliance/Payroll	595 South Federal Highway	Ste 500		Boca Raton	FL	33432	
Summit Brokerage Services, Inc.		500 S. Federal Highway	Suite 500		Boca Raton	FL	33432	Cayman Islands
Summit Management Limited		23 Lime Tree Bay Avenue	Suite #4-210	Govenors Square	Philadelphia	PA	19170-7184	
Sun Life Assurance Company of Canada		PO Box 7247-7184						
Sunbelt Securities, Inc.		2700 Post Oak Blvd, Suite 1700			Houston	TX	77056	
Sundance Painting		3702 N Buckner Blvd			Dallas	TX	75228-5612	
SunDiego Charter Company		522 W 8th Street			National City	CA	91950	
SUNEET AGARWAL		444 WASHINGTON BLVD			Jersey City	NJ	07310	
SunGard		Bank of America Lockbox Services	15138 Collections Center Dr		Chicago	IL	60693	
Sungard Availability Services		91233 Collection Center Drive			Chicago	IL	60693	
Sungard Protegent	Automated Securities Clearance LLC	15138 Collections Center Dr			Chicago	IL	60693	
Sunil Devarakonda		111 East 125th Street, Apt 3 E			New York	NY	10035	
SunTrust Robinson Humphrey Inc.	Attn Documentation	SunTrust Robinson Humphrey 5001 Spring Valley Rd Ste 1000 W	711 5th Avenue 14th Fl.		New York	NY	10022-0000	
Superior Search & Staffing		PO Box 15548			Dallas	TX	75244	
Supermarket News		Address on File			North Hollywood	CA	91615-5548	
SURGENT, THOMAS		Address on File						
Susan Burton Consulting, LLC		4127 Towne Green Circle			Addison	TX	75001	
Susan Leahy		Address on File						
SUSMAN GODFREY LLP		1000 Louisiana	Ste. 5100		Houston	TX	77002	
Sutherland Asbill & Brennan LLP		700 Sixth Street NW	Suite 700		Washington	DC	20001	
Sutherland Asbill & Brennan LLP		999 Peachtree Street NE			Atlanta	GA	30309-3996	
Swadley, Emily		Address on File						
SWADLEY, RICK		Address on File						
Swank Audio Visuals		400 Crescent Court			Dallas	TX	75201	
Sweeney, Katelyn		Address on File						
SWIXMED		Zurichbergstrasse 20			Zurich		08032	SWITZERLAN D
Sybari Software, Inc.		353 Larkfield Rd			East Northport	NY	11731	

0024720

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Symphony Communication Services LLC		1117 S California Ave			Palo Alto	CA	94304-0000	
Synnex Corporation		5845 Collections Center Dr			Chicago	IL	60693	
Sysco Food Services		PO Box 560700			Lewisville	TX	75056-0700	
System Electric		1278 Montalvo Way			Palm Springs	CA	92262	
T.H. Quest, Inc.		5001 Spring Valley Rd.	Ste 400-E		Dallas	TX	75244	
T4 Capital Talent, LLC		272 E. Deerpath Rd	Suite 236		Lake Forest	IL	60045	
TACA The Arts Community Alliance	Attn Julie Bice	One Arts Plaza	1722 Routh Street, #115		Dallas	TX	75201	
TAK-CHEUNG DAVIDSON WAN		5050 S LAKE SHORE DR, APT #1509			Chicago	IL	60615	
Talkingbox DMG, LLC		284 Sport Hill Road			Easton	CT	06612	
TAMALE SOFTWARE, INC		320 CONGRESS ST			Boston	MA	02210	
TANDBERG, SCOTT		Address on File						
Tanner Morgan		Address on File						
Tara Allen		Address on File						
TARAs LIMO & AIRPORT SERVICE		PO BOX 795581	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75379-5581	
Tarrant County	Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP			Dallas	TX	75207	
TARSHA, DANIEL S.		Address on File						
TARUN K BHATT		Address on File						
Tax & Accounting-R&G		PO BOX 71687			Chicago	IL	60694-7687	
TAX EXECUTIVES INSTITUTE, INC		PO BOX 9407			Uniondale	NY	11555-9407	
Taylor Porter		Address on File						
Taylor, Brian		Address on File						
TAYLOR, GREGORY		Address on File						
TCS Central Region GP LLC	ATTN Kelly Thomas	5001 Spring Valley	Suite 600W		Dallas	TX	75244	
TCS Corporate Services	Allied Capital Partners	PO Box 676649			Dallas	TX	75267	
TCS Corporate Services		PO Box 671160			Dallas	TX	75267-1160	
TD Ameritrade Trust Company	Attn FFC RMT	PO Box 17748			Denver	CO	80217-0748	
TDA Associates, Inc.		2101 Sardis Rd N, Suite 109			Charlotte	NC	28227	
TDIndustries		PO Box 300008			Dallas	TX	75303-0008	
Technology Team, LLC		1120 South Freeway	Suite 215		Fort Worth	TX	76104	
Ted Kanarek		Address on File						
Telecom Strategies Inc		6404 Highland Drive			Chevy Chase	MD	20815	
TELOS Performance Center		13701 Dallas Pkwy			Dallas	TX	75240	
Temple Emanu-El	Attn Rick Rosenberg	8500 Hillcrest			Dallas	TX	75225	
Tennessee Department of Revenue		500 Deaderick Street	Andrew Jackson State Office Building		Nashville	TN	37242	
Tennessee Dept of Commerce & Insurance		Securities Division	500 James Robertson Parkway, Suite 680		Nashville	TN	37243	
TERRELL, ARTIS		Address on File						
Terrie Rabinowitz, L.C. S.W.		7186 Promenade Dr Apt 801			Boca Raton	FL	33433-6977	
Terry Jackson		Address on File						
Terry Jackson		Address on File						
Terry Swagerty		Address on File						
Terry, Doris A.		Address on File						

002473



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TERRY, JOSHUA N.		Address on File						
TESLA, NIKOLA		Address on File						
Texas Alliance of Energy Producers		900 8th Street, Suite 400			Wichita Falls	TX	76301	
Texas Best Meats		PO Box 4810			Wichita Falls	TX	76308	
Texas Best Meats		7043 Seymour Hwy			Wichita Falls	TX	76310	
Texas Commerce Bank, N.A.		600 Travis Street	8th Floor, Texas Commerce Tower	Global Trust Services	Houston	TX	77002	
Texas Comptroller of Public Accounts		PO Box 149348			Austin	TX	78714-9348	
Texas Department of Insurance	Financial Regulation Division	Company Licensing and Registration	333 Guadalupe		Austin	TX	78701	
Texas Dept of Licensing and Regulation		PO Box 12157			Austin	TX	78711	
TEXAS DEPT OF STATE HEALTH SERVICES		LOCKBOX-DSHS ASBESTOS/DEMO NOTIFICATION	PO BOX 12190		Austin	TX	78711-2190	
Texas Entertainment Group		103 N Kirby St			Garland	TX	75042	
Texas LawBook LLC		3888 Everwood Lane			Addison	TX	75001	
TEXAS ROOF MANAGEMENT, INC		728 LINGCO DR			Richardson	TX	75081	
Texas Secretary of State	Accounts Receivable	PO Box 12887			Austin	TX	78711-2887	
Texas Secretary of State		PO Box 13697			Austin	TX	78711	
Texas State Comptroller		9241 LBJ FREEWAY	STE 205		Dallas	TX	75243	
Texas State Comptroller		PO Box 12030			Austin	TX	78711-2030	
Texas State Securities Board		Securities Commission of Texas	208 E 10th, Room 610		Austin	TX	78701	
TEXPERS		13111 Northwest Freeway	Suite 100		Houston	TX	77040	
Thackray Williams LLP		32-40 Widmore Rd	Bromley		Kent	NC	BR1 1RY	United Kingdom
Tharrington Smith LLP		PO Box 1151			Raleigh		27602	
The American Cancer Society		18505 West Twelve Mile Rd			Southfield	MI	48076	
The Ashcroft Lawfirm, LLC		950 North Glebe Road	Suite 2400		Arlington	VA	22203	
The Ashcroft Lawfirm, LLC		1100 Main Street	Suite 2710		Kansas City	MO	64105	
The Aspen Institute		Society of Fellows	1000 N. Third Street		Aspen	CO	81611	
The Badge of Honor Memorial Foundation		David Blanchard	3131 Maple Ave		Dallas	TX	75201	
The Bailey Group		PO Box 1395			Whitehouse Station	NJ	08889	
The Bank of New York Mellon	Elizabeth Stern	Director and Managing Counsel	240 Greenwich Street, 18th Floor		New York	NY	10286	
The Bank of New York Mellon Trust Compan		601 Travis, 16th floor			Houston	TX	77002-0000	
The Bank of New York Trust Co.	Global Corp. Trust	600 Travis Street, 50th Floor			Houston	TX	77002	
The Bermuda Monetary Authority		43 Victoria Street			Hamilton		HM 12	Bermuda
The Bowman Law Firm, LLC		840 Tom Wheeler Lane			McEwen	TN	37101	
The Bradbury Group		10661 Rockley Rd			Houston	TX	77099	

002473

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Brattle Group		44 Brattle St			Cambridge	MA	02138-3736	
The Bretton Woods Institute		R.R. #1 Simcoe			Toronto	ON	N3Y 4J9	CANADA
The Bryant Park Hotel		40 W. 40th Street			New York	NY	10018	
THE BUREAU OF NATIONAL AFFAIRS, INC		PO Box 419889			Boston	MA	02241-9889	
The Bureau of National Affairs, Inc.(Blo		1801 South Bell Street			Arlington	VA	22202-0000	
The Burnett Companies Consolidated, Inc.		PO Box 973940			Dallas	TX	75397	
The Cake Guys		730 Big Stone Gap Rd	Suite B		Duncanville	TX	75137	
The Cayman Islands Monetary Authority		171 Elgin Ave, SIX Cricket Square		George Town	Grand Cayman			Cayman Islands
The Charlotte Observer		600 S. Tryon Street			Charlotte	NC	28202	
The Chart Store		11768 Tarrynot Ln			Carmel	IN	46033	
The Claro Group, LLC		123 N Wacker Dr Ste 2100			Chicago	IL	60606-1747	
THE CLUEN CORPORATION		135 5TH AVE FL 4			NEW YORK	NY	10010-7157	
The Crystal Charity Ball		Mrs. Mark D Leyendecker, Underwriting	3838 Oak Lawn Avenue, Suite L150		Dallas	TX	75219	
The Cystic Fibrosis Foundation		4040 North Central Expressway	Ste 730		Dallas	TX	75204	
The da Vinci School	Attn Christi Warren	10909 Midway Rd			Dallas	TX	75229	
The Dallas Morning News		Subscriptions Dept.	PO Box 630054		Dallas	TX	75263-0054	
The Darden School	Attn Development- CFR	PO Box 7726			Charlottesville	VA	22906-7726	
The Day Group		The 401 Centre	302 Regent Street		London		W1B3HH	United Kingdom
The Deal LLC		105 Madison Ave	5th floor		New York	NY	10016	
The Deal LLC		PO BOX 26356			New York	NY	10087-6356	
The Deal LLC		PO Box 3502			Northbrook	IL	60065-9850	
The Devon Trust II		#2800	715 - 5th Avenue SW		Calgary	AB	T2P 2X6	CANADA
The DI Wire Publishing LLC		18101 Von Karman Ave	Suite 300		Irvine	CA	92612	
The Dugaboy Investment Trust	Grant Scott, Trustee	4140 Park Lake Ave., Suite 600			Raleigh	NC	27612	
The Economist		Subscription Center	PO Box 46978		Saint Louis	MO	63146-6978	
The Economist		Subscriptions Department	PO Box 58522		Boulder	CO	80322-8522	
The Efficient Business LLC		13601 Preston	Ste 250E		Dallas	TX	75240	
The Efficient Business LLC		14800 Quorum Dr	Suite 560		Dallas	TX	75254-7679	
The Emblem Source, LLC		4575 Westgrove Drive	Suite 500		Addison	TX	75001	
The Englishmans Interiors		14655 Midway Rd			Addison	TX	75001	
The Executive Centre		Tokyo Ginko Kyokai Bldg 15th Floor	1-3-1 Marunouchi		Chiyoda-ku	Tokyo	100-0005	JAPAN
The Expert Series LLC		317 Madison Avenue	Suite 920		New York	NY	10017	
The Family Place	Attn Shivangi Pokharel	PO Box 7999			Dallas	TX	75209	
THE FRANCHISE TAX BOARD		PO BOX 942867			Sacramento	CA	94267-0001	
THE FRANK W. NORRIS FOUNDATION		PO Box 6071			Athens	GA	30604	
THE FRANK W. NORRIS FOUNDATION		Warnell School of Forestry	and Natural Resources		Athens	GA	30602-2152	
THE FREDONIA GROUP		767 BETA DR			Cleveland	OH	44143	

00240729

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Garden Gate		2615 Routh Street			Dallas	TX	75201	
The Garden Gate		2303 Farrington	#100		Dallas	TX	76207	
The General Counsel Forum		PO Box 131263			Dallas	TX	75313	
The Greitens Group		4500 West Pine Boulevard			Saint Louis	MO	63108	
The Griffith Law Firm		4925 Greenville Ave	Suite 200		Dallas	TX	75206	
The Gym		921 W. Mayfield Rd.	Suite 112		Arlington	TX	76015	
The Hanover Insurance Group		PO Box 580045			Charlotte	NC	28258-0045	
The Harry Walker Agency, Inc.		355 Lexington Ave	Flr 21		New York	NY	10017	
THE HARTFORD		PO BOX 2907			The Hartford	CT	06104-2907	
THE HARTFORD		PO Box 660916			Dallas	TX	75266-0916	
The Hockaday School	Altn Holly Hook	11600 Welch Road			Dallas	TX	75229	
The Hogan Firm		1311 Delaware Ave			Wilmington	DE	19806	
The House Oldtown Brasserie		6936 E. Main St.			Scottsdale	AZ	85251	
The Intl Stock Exchange Authority Ltd		PO Box 623, Helvetoa Court	Block B, 3rd Floor	Les Echelons	St Peter Port	GUERNSEY	GY1 1AR	United Kingdom
The Irish Stock Exchange plc		28 Anglesea Street			Dublin	CA	D02 XT25	IRELAND
The Island Hotel		690 Newport Center Drive			Newport Beach	CA	92660	
The Joule		1530 Main Street			Dallas	TX	75201	
The Junior League of Dallas		PO Box 12707			Dallas	TX	75226	
The Kaplan Group		2250 King Ct, Suite 50			San Luis	CA	93401	
The Kiplinger Tax Letter		PO Box 62300			Tampa	FL	33662-2300	
The Kiplinger Tax Letter		PO Box 3299			Harlan	IA	51593-0479	
The Ladders	Accounting Dept	137 Varick St			New York	NY	10013	
THE LAKESHORE COMPANIES		1081 MOMENTUM PL			Chicago	IL	60689-5310	
The LDM Group, LLC		Renaissance Tower	1201 Elm Street, Ste. 4201		Dallas	TX	75270	
The Leukemia & Lymphoma Society		1311 Mamaroneck Ave, Suite 310			White Plains	NY	10605	
The Leukemia & Lymphoma Society		8111 LBJ Freeway	Suite 425		Dallas	TX	75251	
The Loan Syndications and Trading Assoc		366 Madison Ave	15th Floor		New York	NY	10017	
The Mark and Pamela Okada Family Exempt Trust #1	Brian D. Glueckstein	Sullivan Cromwell LLP	125 Broad Street		New York	NY	10004	
The Markets.com		PO Box 9420			Uniondale	NY	11555-9420	
The Matchbox Studio		3013 Canton Street			Dallas	TX	75226	
The McCarlton Foundation		331 W. 25th Street			New York	NY	10001	
The Medleh Group		PO Box 96370			Houston	TX	77213	
The Money Management Institute		1101 17th St, NW Ste 703			Washington	DC	20036	
The Money Management Institute		PO Box 759231			Baltimore	MD	21275-9231	
The Montessori School of Raleigh		7005 Lead Mine Road			Raleigh	NC	27615	

002473

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Morgan Library & Museum		225 Madison Avenue			New York	NY	10016	
The NASDAQ OMX Group Inc.		Lockbox 90200	PO Box 8500		Philadelphia	PA	19178-0200	
The NASDAQ Stock Market LLC	c/o Wells Fargo Bank	Lockbox 80200/PO Box 8500			Philadelphia	PA	19178-0200	
The National due Diligence Alliance		West8 Tower	10205 Westheimer Rd, Ste 500		Houston	TX	77042	
The Neighbors Law Firm P.C.		2500 Regency Parkway			Cary	NC	27518	
The New York Times		PO Box 4039			Woburn	MA	01888-4039	
The New York Times		PO BOX 371456			Pittsburgh	PA	15250-7456	
The nGage Company, LLC	Attn Phil McKay	170 Pine Point Rd			Scarborough	ME	04074	
The Oechsli Institute		PO Box 29385			Greensboro	NC	27429	
The Optimal Networking Event, LLC		5 Block Court			Randolph	NJ	07869	
The Optimal Networking Event, LLC		PO Box 191			Mt. Freedom	NJ	07970-0191	
The Original Butt Sketch		PO Box 4495			Dallas	TX	75208-4495	
The Paley Center for Media	Attn Accounting Department	25 West 52nd Street			New York	NY	10019	
The Party New York		137 Avenue A	Suite 2E		New York	NY	10009	
The Paul Revere Life Ins. Co.		PO Box 740590			Atlanta	GA	30374-0590	
The Pension Bridge, Inc		4504 S Ocean Blvd			Highland Bch	FL	33487-4233	
THE PLACEMENT GROUP, INC.		6060 North Central Expressway	Suite 524		Dallas	TX	75206	
THE PLANT PLACE		10704 Goodnight Lane			Dallas	TX	75220	
The Plexus Groupe		21805 Field Parkway	Suite 300		Deer Park	IL	60010	
The Plumbing Mechanical Fire Prot. Co		60 North Prospect Avenue			Lynbrook	NY	11563-1395	
The Promise House	Attn Christy Cerralvo	RBC Capital Markets	2711 N Haskell Ave, Ste 2500		Dallas	TX	75240	
The Real Estate Council		Three Lincoln Center	5430 LBJ Frwy, Suite 100		Dallas	TX	75240	
The Real Estate Council Foundation	Attn Stephanie Keller Hudberg	3100 McKinnon Street	Suite 1150		Dallas	TX	75201	
The Reeds Public Relations Corporation		3232 McKinney Avenue	Suite 855		Dallas	TX	75204	
The Renaissance Consulting Group		870 San Jacinto Twr 2121 San Jacinto St			Dallas	TX	75201	
The Rhythm Room	Attn Elaine Hewlett	4734 Tremont Street			Dallas	TX	75246	
The Rise School		4220 Monterey Oaks Blvd.			Austin	TX	78749	
The Riz-Carlton		455 Grand Bay Drive			Key Biscayne	FL	33149	
The RitZ-Carlton		2121 McKinney Avenue			Dallas	TX	75201	
THE RITZ-CARLTON, LAKE LAS VEGAS	ATTN A/R Ronald L. Rowland, Authorized Agent	1610 LAKE LAS VEGAS PKWY			Henderson	NV	89011	
The Rowland Law Firm		2453 Vineyard Lane			Crofton	MD	21114	
The Ryan Anthony Foundation		2512 Boll Street			Dallas	TX	75204	
The Search Group		222. W Las Colinas Blvd	Ste 844E		Irving	TX	75039	

002473

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
THE SIGN COMPANY		575 MADISON AVE			New York	NY	10022	
The Spencer Company		2121 North Akard	Suite 100		Dallas	TX	75201	
The Standard		1100 SW Sixth Ave			Portland	OR	97204-0000	
The Standard		PO Box 3358			Portland	OR	97208-3358	
The Standard		PO BOX 5674			Portland	OR	97228-5674	
The Standard Life Insurance Co of NY		PO Box 3358			Portland	OR	97208-3358	
The State of Texas	Deana K. Adams, CSR	Official Court Reporter	600 Commerce, 630 C		Dallas	TX	75202	
The Stewpot Alliance		4516 Lovers Lane	Suite 229		Dallas	TX	75225	
The Strategic Financial Alliance		202 Abbey Court			Alpharetta	GA	30004	
The Strategic Financial Alliance, Inc.		2200 Century Parkway, Ste 500			Atlanta	GA	30345	
The TAARP Group, LLP		8333 Douglas Avenue	Suite 1500		Dallas	TX	75225	
The TAARP Group, LLP		PO Box 797337			Dallas	TX	75379-7337	
The TASA Group, Inc.		1166 DeKalb Pike			Blue Bell	PA	19422-1853	
The Texas Lyceum		3305 Steck Ave Ste 200			Austin	TX	78757-8155	
The Texas Lyceum Association, Inc		7131 Lavendale Ave			Dallas	TX	75230	
The Townwide Fund of Huntington, Inc.		148 East Main Street			Huntington	NY	11743	
The United States Ski & Snowboard Assoc		1 Victory Lane	Box 100		Park City	UT	84060	
The United States Treasury		Internal Revenue Service	PO Box 9941		Ogden	UT	84409	
The University of Texas at Arlington		Grants and Accounting, Box 19136			Arlington	TX	76019-0136	
The VIA Group, Inc		2610 Technology Forest Blvd			The Woodlands	TX	77381	
The Wall Street Journal		Corporate Subscription Program	102 First Ave		Chicopee	MA	01020	
The Wellness Group, LLC		1000 N. Green Valley Pkwy	Suite 440 #401		Henderson	NV	89074	
The Wellness Group, LLC		100 N. Green Valley Pkwy	Suite 440 #401		Henderson	NV	89074	
The Westin Charlotte		601 South College Street			Charlotte	NC	28202	
The YGS Group		3650 West Market Street	Content Division-A/R		York	PA	17404	
The Yield Book, Inc.		PO Box 13755			Newark	NJ	07188-0755	
THEDFORD, LAUREN E.		Address on File						
Theodore N Dameris		Address on File						
Theodore N. Dameris		Address on File						
Think-Cell		InvalidenstrBe 34			Berlin	GERMANY	10115	
Think-cell Sales GmbH & Co. KG		Chausseestr. 8/E			Berlin	GERMANY	10115	
Thirstystone Resources		860 E 19th St			Tucson	AZ	85719	
THOMAS HENNINGS		Address on File						
Thomas Hoerner		Address on File						
Thomas Printworks		PO Box 740967			Dallas	TX	75374-0967	
Thomas Reprographics		P.O. Box 740967			Dallas	TX	75374-0967	
THOMAS SHARP		Address on File						
Thomas Surgent	c/o David Neier	Winston Strawn LLP	4441 Beverly Drive		Dallas	TX	75205	
Thomas Surgent	c/o David Neier, Winston Strawn LLP	200 Park Avenue			New York	NY	10166	
Thomas Surgent		Address on File						

002480

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Thomas White	c/o KGen Power Corp	9337 Spring Cypress Rd, #214			Spring	TX	77379	
Thompson & Knight	PO Box 660684				Dallas	TX	75266-0684	
Thompson & Knight	Dept 70 PO Box 4346				Houston	TX	77210-4346	
THOMPSON & KNIGHT LLP		ONE ARTS PLAZA	1722 ROUTH STREET SUITE 1500		Dallas	TX	75201-2533	
Thompson Coe Cousins & Irons LLP		700 N. Pearl Street	Twenty Fifth Floor		Dallas	TX	75201	
Thompson Reuters	610 Opperman Drive		PO Box 64833		Eagan	MN	55123-0000	
THOMPSON, DAVISON R.	Address on File							
Thompson, Jordan	Address on File							
THOMPSON, ROBIN	Address on File							
Thomson	PO Box 4634				Chicago	IL	60680-9598	
Thomson Financial	195 Broadway		7th floor		New York	NY	10007	
Thomson Financial	PO Box 360301				Pittsburgh	PA	15251-6301	
Thomson Financial	PO Box 5136				Carol Stream	IL	60197-5136	
Thomson Financial	PO Box 95512				Chicago	IL	60690-5512	
THOMSON REUTERS	Attn Greg Winterton	3 Times Square, 18th Floor			New York	NY	10036	
THOMSON REUTERS		PO BOX 55743	The Tomson Reuters Building		London		E14 10B	United Kingdom
THOMSON REUTERS		PO Box 95512			Chicago	IL	95512	
THOMSON REUTERS		TAX & ACCOUNTING- R&G	PO BOX 71687		Chicago	IL	60694-1687	
Thomson Reuters (Markets) LLC		PO Box 415983			Boston	MA	02241	
Thomson Reuters (Markets) LLC		GPO BOX 10410			Newark	NJ	07193-0410	
Thomson Reuters (Tax & Accounting) Inc.		PO Box 71687			Chicago	IL	60694-1687	
Thomson Reuters Corporation		17400 Medicine Road	Suite 850		Plymouth	MN	55447	
Thomson Reuters Tax & Accounting - Check		PO Box 71687			Chicago	IL	60694-0000	
thomson RIA	PO Box 6159				Carol Stream	IL	60197-6159	
Thomson West	PO Box 64833				Saint Paul	MN	55164-0833	
Thomson West	PO Box 6292				Carol Stream	IL	60197-6292	
Thomton-Tomasetti Group, Inc.	PO Box 826203				Philadelphia	PA	19182-6203	
Throckmorton, Michael	Address on File							
Thuzio, Inc.	267 Fifth Avenue		Seventh Floor		New York	NY	10016	
TIAMPO, SAUKOK	Address on File							
TIBCO Software, Inc.	Lockbox No 7514		PO Box 7247		Philadelphia	PA	19170-7514	
Tiffs Treats	Address on File							
Tim Dalton	Address on File							
TIM LAWLER	Address on File							
Tim Symington	Address on File							
Timber Mart-South	Daniel B. Warnell School of Forestry		The University of Georgia		Athens	GA	30602-2152	
Timberhorn, LLC	Center for Forest Business							
Time Value Software	127 W Worthington Ave Ste 100				Charlotte	NC	28203-0064	
	22 Mauchly				Irvine	CA	92618	

09240327

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TIME WARNER CABLE		PO BOX 9227			Uniondale	NY	11555-9227	
TIME WARNER CABLE		Box 223085			Pittsburgh	PA	15251-2085	
TIME WARNER CABLE		PO BOX 742663			CINCINNATI	OH	45274-2663	
TIME WARNER CABLE		PO Box 742633			Cincinnati	OH	45274-2663	
TIME WARNER CABLE		PO Box 650063			Dallas	TX	75265-0063	
TIME WARNER CABLE		PO BOX 650210			Dallas	TX	75265-0210	
TIME WARNER CABLE		PO Box 60074			City of Industry	CA	91716-0074	
Time, Inc.		PO Box 60001			Tampa	FL	33660-0001	
Times Square Tower Associates LLC		800 Boylston Street	Suite 1900		Boston	MA	02199	
Times Square Tower Associates LLC		PO Box 415917			Boston	MA	02241-5917	
Timothy Brice		Address on File						
Timothy Hotchandani		Address on File						
Timothy Lawler		Address on File						
Timothy Leung		Address on File						
Timothy Spring		Address on File						
TIPS,LLC		Department 34932	PO Box 39000		San Francisco	CA	94139	
TIPS,LLC		File 30578	PO Box 60000		San Francisco	CA	94160	
Title Partners, LLC		5501 LBJ Freeway	Ste 200		Dallas	TX	75240	
TLK Networks		PO Box 202286			Arlington	TX	76006	
TMC Communications, LLC		245 Park Ave, 24th Flr			New York	NY	10167	United Kingdom
TMF Group		400 Capability Green			Luton		LU1 3AE	United Kingdom
TNT INTERNATIONAL		PO BOX 186	RAMSBOTTOM		BURY		BL09GR	United Kingdom
Tobias Lewis		Address on File						
TOBY FELDMAN INC.		ONE PENN PLAZA			New York	NY	10119	
Todd A. Travers		Address on File						
Todd Blatterman		Address on File						
Todd Travers	c/o Jason P. Kathman	Pronske & Kathman, P.C.	2701 Dallas Parkway, Suite 590		Plano	TX	75093	
Todd Travers		Address on File						
Toly Novik		Address on File						
TOM BEACH		Address on File						
TOM LOVELL		Address on File						
Tom Rigatti		Address on File						
Tomasino, Matthew		Address on File						
TOMLIN, WILLIAM		Address on File						
Tony Zaffaro		Address on File						
Total Alternatives		PO Box 5018			Brentwood	TN	37024	
Total Uptime Tech		Post Office Box 2228			Skyland	NC	28776-0000	
Touchstone Securities, Inc		303 Broadway	Suite 1100		Cincinnati	OH	45202-4203	
TOUDOUBEZ, KENNETH		Address on File						
Towers Watson		PO Box 8500	S-6110		Philadelphia	PA	19178-6110	
TPAC		920 Tyne Blvd			Nashville	TN	37220	
TQ ESI, LLC		400 N. St Paul	STE 1230		Dallas	TX	75201	
Tracey Ivey		Address on File						
TradeStation Securities, Inc.	Attn Account Department	8050 SW 10th St -- Ste 2000			Plantation	FL	33324	
TRAHAN, MICHAEL		Address on File						

09240328



Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 155 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TransPerfect Legal Solutions	Altn Accounts Receivable	1250 Broadway Fl 7			New York	NY	10001-3749	
TRANSWESTERN		5001 SPRING VALLEY RD	STE 600W		Dallas	TX	75244	
TRANHAM, AUSTIN		Address on File						
Travel Search Network		8111 LBJ Freeway # 550			Dallas	TX	75251	
TRAVERS, TODD		Address on File						
Travis Kruger		Address on File						
TRC		PO Box 536282			Pittsburgh	PA	15253-5904	
TRC Consultants, LC		120 Dietert Ave	Suite 100		Boerne	TX	78006	
Treasurer of State of Vermont		Securities Division	89 Main Street, 2nd Floor, Drawer 20		Montpelier	VT	05620	
Treasurer of Virginia		Virginia State Corporation Commission	1300 East Main Street, 9th Floor		Richmond	VA	23219	
Treasurer, State of Connecticut		Securities & Business Investment Div	260 Constitution Plaza		Hartford	CT	06103	
Treasurer, State of Maine		Office of Securities	76 Northern Avenue		Gardiner	ME	04345	
TREASURY OF THE UNITED STATES	Austin Campus Disclosure Office	Stop 7000-AUSC	PO Box 2986		Austin	TX	78768	
TREASURY OF THE UNITED STATES	INTERNAL REVENUE SERVICE	3651 SOUTH IH-35, MS 7000AUSC	DISCLOSURE OFFICE		Austin	TX	78741	
TREMOR, LAUREN E.		Address on File			Chicago	IL	60611	
Trend Macrolitics LLC		680 N. Lake Shore Drive	#1412		New York	NY	10022	
Trenkner, Jamie		Address on File			Union	NJ	07083	
Trepp, LLC		477 Madison Ave 18th Flr			Dallas	TX	75207	
Triad Security Systems		971 Lehigh Avenue						
Trial Arts Professional Copy Service		1500 Dragon St, Ste C						
Tricor Evatthouse Corporate Services		8 Cross Street	#11-00 PWC Building		Singapore		048424	SINGAPORE
Tricor Singapore Pte Ltd		8 Cross Street	#11-00 PWC Building		Singapore		048424	SINGAPORE
Trinity River Mission		2060 Singleton Blvd, Ste 104			Dallas	TX	75212	
Triple Threat Cowboy		1430 Regal Row	Suite 320		Dallas	TX	75247	
TRI-RIVER CAPITAL	C/O BEUTEL & JOYCE, LP	ATTN MILTON WALTERS	555 FIFTH AVE - 15TH FLR		New York	NY	10017	
Tritech Communications, Inc.		625 Locust St.			Garden City	NY	11530	
Troutman Sanders LLP		P.O. Box 933652			Atlanta	GA	31193-3652	
TROY BARNETTE		Address on File						
Trump International Hotel & Tower CH		401 North Wabash Ave			Chicago	IL	60611	
Trusway Holdings, Inc.	Kendall Hoyd	9411 Alcorn			Houston	TX	77093-6753	
Trusway Holdings, LLC		7001 Enterprise Ave			Fort Worth	TX	76118	
Trustees of Boston University		1 Silber Way			Boston	MA	02215	
Trustwave		70 W Madison St	Ste. 1050		Chicago	IL	60602	
TSCM AMERICA		PO Box 6743			McKinney	TX	75071	
TSCPA		PO Box 797488			Dallas	TX	75379	
TSG Reporting, Inc		747 Third Ave, Suite 10A			New York	NY	10017	
TSX INC		The Exchange Tower	PO Box 421, 130 King Street West		Toronto	ON	M5X 1E1	CANADA
TTA Research & Guidance		PO Box 71687			Chicago	IL	60694	
Tuan Olona, LLP		One Rockefeller Plaza	Eleventh Floor		New York	NY	10020	
Turf Scapes		368 National Drive			Rockwall	TX	75032-6531	

09240329

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Turing Experts		Birchin Court	20 Birchin Lane		London		EC3V 9DU	United Kingdom
Turtle Bay Resort	Attn Finance Department	57-091 Kamehameha Highway PO Box 910182			Kahuku	HI	96731	
TW Telecom Holdings, llc					Denver	CO	80291-0182	
Twenty-First Securities Corporation		780 Third Avenue	24th Floor		New York	NY	10017	
TXU ENERGY		PO BOX 650638			Dallas	TX	75265-0638	
TXU ENERGY		PO BOX 660409			Dallas	TX	75266-0409	
Tyco Integrated Security		PO Box 371967			Pittsburg	PA	15250-7967	
Tyler Kemp		Address on File						
TYRA GILB TRUST		325M SHARON PARK DR #207			Menlo Park	CA	94025-6804	
U.D.S.TX., LLC		1401 Elm, Suite 4567			Dallas	TX	75202	
U.S. - Japan Council	Attn Dana Fager, Develop. Coordinator	1819 L Street, NW, Suite 800			Washington	DC	20036	
U.S. Bancorp Equipment Finance, Inc.		PO Box 790448			Saint Louis	MO	63179-0448	
U.S. Bank		CM-9690	PO Box 70870		Saint Paul	MN	55170-9690	
U.S. Bank National Association	Attn CDO Unit	One Federal Street	3rd Floor	Mail Code EX-MA-FED	Boston	MA	02110	
U.S. Fund for UNICEF		520 Post Oak Blvd	Suite 280		Houston	TX	77027	
U.S. Securities and Exchange Commission	Fort Worth Regional Office	Burnett Plaza, 19th Floor	801 Cherry Street, Unit 18		Fort Worth	TX	76102	
UBS AG, London Branch	Attn Suzanne Forster, John Lantz	UBS Securities LLC, Jeffrey E. Bjork, Kimberly A. Posin	1285 Avenue of the Americas 355 South Grand Avenue, Ste. 100		New York	NY	10019	
UBS AG, London Branch	Latham & Watkins LLP	Asif Attarwala	330 North Wabash Ave. Suite 2800		Los Angeles	CA	90071	
UBS AG, London Branch	Latham and Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000		Chicago	IL	60611	
UBS AG, London Branch	Latham and Watkins LLP	Attn Suzanne Forster, John Lantz	1285 Avenue of the Americas		Washington	DC	20004-1304	
UBS AG, London Branch	UBS Securities LLC	Latham & Watkins LLP	555 Eleventh Street NW Suite 1000		New York	NY	10019	
UBS AG, London Branch	c/o Andrew Clubock, Esq.	Latham & Watkins LLP			Washington	DC	20004	
UBS Securities LLC	Attn Suzanne Forster, John Lantz	1285 Avenue of the Americas			New York	NY	10019	
UBS Securities LLC	c/o Andrew Clubock	Latham & Watkins LLP	555 11th Street NW #1000		Washington	DC	20004	
UBS Securities LLC	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100		Los Angeles	CA	90071	
UBS Securities LLC	Latham and Watkins LLP	Asif Attarwala	330 North Wabash Ave. Suite 2800		Chicago	IL	60611	
UCG		11300 Rockville Pike	Ste 1100		Rockville	MD	20852-3030	
Uchi Dallas, LLC		701 S. Lamar Blvd	Suite C		Austin	TX	78704	
UDAI DHAWAN		28 SPRAIN VALLEY RD			Scarsdale	NY	10583	
UERMMMC-MAAAI	Dr. Audrey Coo, Treasurer	PO Box 2153			Bedford Park	IL	60499-2153	
Ulf Nofelt		Address on File						
Ulitny, Inc.		92 Amity Drive			Wayne	PA	19087	

002484

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Umari Zugaro, PLLC	Basil A. Umari	1403 Eberhard			Houston	TX	77019	
UMB Bank, N.A.	Attn Trust Fees Dept	PO Box 414589			Kansas City	MO	64114-4589	
UNICOM TECHNOLOGIES, INC		1011 HWY 6 S	STE 200		Houston	TX	77077	
Unimerica Insurance Company	Administrative Office	6300 Olson Memorial Highway			Golden Valley	MN	55427	
Unishippers		800 W Airport Fwy Ste 611 LB 6065			Irving	TX	75062	
Unishippers		800 W Airport Fwy Ste 611 LB 6065			Irving	TX	75062-6294	
United American Reporting Services		1201 Elm Street	Suite 5220		Dallas	TX	75270	
United Capital		5655 S. Yosemite St.	Suite 450		Greenwood Village	CO	80111	
United Carpet Cleaning Systems, Inc.		PO Box 1625			Hurst	TX	76053	
UNITED HEALTHCARE INSURANCE COMPANY	ATTN LISA CARRILLO	5800 GRANITE PKWY, STE 700			Plano	TX	75024	
UNITED HEALTHCARE INSURANCE COMPANY		22561 NETWORK PLACE			Chicago	IL	60673-1225	
United Mechanical		11540 Plano Road	PO Box 551206		Dallas	TX	75355-1206	
United Parcel Service, Inc		55 Glenlake Parkway			Atlanta	GA	30328-0000	
United States Treasury		INTERNAL REVENUE SVC	PO BOX 69		Memphis	TN	38101-0069	
United States Treasury		INTERNAL REVENUE SERVICE			Cincinnati	OH	45999-0039	
United States Treasury		INTERNAL REVENUE SERVICE			Kansas City	MO	64999-0202	
United States Treasury		STOP 5107 NWSAT	4050 ALPHA RD		Farmers Branch	TX	75244-4201	
United States Treasury		PO Box 660443			Dallas	TX	75266-0443	
United States Treasury		INTERNAL REVENUE SERVICE			Ogden	UT	84201-0039	
UNITED VAN LINES		ONE UNITED DRIVE			Fenton	MO	63026-1350	
United Way of Mass. Bay & Merrimack Vily	Attn A/R- Barbara Alexander	PO Box 51381			Boston	MA	02205-1381	
Universal Printing Solutions, Inc.		10573 West Pico Blvd. #610			Los Angeles	CA	90064-2438	
University of Michigan		3003 S. State Street, Suite 8000			Ann Arbor	MI	48109-1288	
University of Pennsylvania		433 Franklin Building	3451 Walnut Street		Philadelphia	PA	19104-6285	
University Pk Sch		3505 Amherst			Dallas	TX	75225	
ParentTeacher Assoc		PO BOX 406834			Atlanta	GA	30384-6834	
Unum Life Insurance Company of America		PO Box 409548			Atlanta	GA	30384-9548	
Unum Life Insurance Company of America		1140 Avenue of the Americas			New York	NY	10036	
Update Legal		1825 Market Center Blvd, Ste 500			Dallas	TX	75207	
Uplift Education	c/o David Jackson							
UPMC HEALTH SYSTEM PENSION TRUST		1 MELLON BANK CTR			Pittsburgh	PA	15258	

0024831

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
UPS Freight		PO Box 730900			Dallas	TX	75373-0900	
UPS Supply Chain Solutions		PO BOX 7247-0244			Philadelphia	PA	19170-0001	
UPS Supply Chain Solutions		28013 Network Place			Chicago	IL	60673-1280	
UPS Supply Chain Solutions		PO Box 730900			Dallas	TX	75373-0900	
UpSwing Performance Improvement, Inc.		PO Box 738			Manchester	MO	63011	
Uptown Energy Partners		2602 McKinney Ave	Suite 330		Dallas	TX	75204	
Urano, Cameron		Address on File						
URBAN, ASHLEY		Address on File						
URBAN, JOHN		Address on File						
URBANIC, MATTHEW		Address on File						
URECH, DANIELLE		Address on File						
URS CORPORATION		PO BOX 121028	DEPT 1028		Dallas	TX	75312-1028	
US Attorneys Office for the Northern District of Texas	Erin Nearly Cox, Donna K. Webb	1100 Commerce St. Suite 300			Dallas	TX	75242	
US Bank		1555 N Rivercenter Dr, Ste 302			Milwaukee	WI	53212	
US BANK NA	ATTN THOMAS BELCHER	ONE FEDERAL STREET	THIRD FLOOR		Boston	MA	02110	
US Foods, Inc.		Box 843202			Dallas	TX	75284-3202	
US Legal Support		Texas Records & Reporting	PO BOX 952172		Dallas	TX	75395-2172	
US Legal Support		Chicago, IL Reporting	PO Box 4772-11		Houston	TX	77210-4772	
US Markets		10 W. 37th St	7th FL		New York	NY	10018	
US Policy Metrics LLC		2001 K St NW Fl 8-11			Washington	DC	20006-1042	
US Postage Meter Center		PO Box 800848			Santa Clarita	CA	91380	
US Securities & Exchange Commission	FOIA Officer & Privacy Act Officer	100 F Street, NE	Mail Stop 2736		WASHINGTON	DC	20549-2000	
US Ski and Snowboard Team Foundation		1 Victory Lane	Box 100		Park City	UT	84060	
USA Shooting	Attn Rob Weekes	1 Olympic Plaza			Colorado Springs	CO	80909	
usfi marketing communications		12100 Ford Rd Ste 100			Dallas	TX	75234	
USTMAAM		104 BIG OAKS RD			STREAMWOOD	IL	60107-1320	
USW LOCAL 870	C/O MARC VILLAFANIA	94 WASHINGTON PLACE			Totwa	NJ	07512	
Utah Division of Securities		Securities Division	160 East 300 South, 2nd Floor		Salt Lake City	UT	84111	
UTAH STATE TAX COMMISSION		210 N 1950 W			Salt Lake City	UT	84134	
Valhalla CLO, Ltd.	c/o Intertrust SPV (Cayman) Limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Valhalla CLO, Ltd. JPMorgan Chase Bank		390 Greenwich Street, 4th Floor	Institutional Trust Services					
Valhalla CLO, Ltd. JPMorgan Chase Bank	JPMorgan Chase Bank	Walker House, PO Box 908GT, Mary Street	George Town, Grand Cayman	Valhalla CLO, Ltd.	New York	NY	10013	Cayman Islands
VALIANT MEDIA	SPY Limited	3116-D COMMERCE ST	The Directors		Grand Cayman			Cayman Islands
Validity, Inc.		200 Clarendon St	22nd Floor		Dallas	TX	75226	
Value Line Publishing	ATTN Matt Jamison	Value Line Publishing, Inc	220 East 42nd Street 6th floor		Boston	MA	02116	
ValueScope, Inc.		1400 Theford Ct.			New York	NY	10017	
VAN HOEF, ASHLEY		Address on File			Southlake	TX	76092	
VANACCOUR, JASON		Address on File						

002488

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1 Address on File	Address2	Address3	City	State	Zip	Country
Vanessa Sea								
Vanguard Brokerage Services	Attn Securities Receipt & Transfer	PO Box 1170			Valley Forge	PA	19482-1170	
Vector One Management		113 E 55th St			New York	NY	10022	
Vela Wood PC	Attention Kevin Vela	5307 E. Mockingbird Lane, Suite 802			Dallas	TX	75206	
Venable LLP		PO Box 630798			Baltimore	MD	21263-0798	
Venable LLP		PO Box 62727			Baltimore	MD	21264-2727	
Vengroff Williams, Inc c/o American Arbitration Association	Vengroff Williams, Inc c/s American Arbitration	2211 Fruitville Rd			Sarasota	FL	34237	
Venture Mechanical, Inc.		1644 W Crosby Rd			Carrollton	TX	75006-6628	
Veritas Backup Exec		2625 Augustine Drive			Santa Clara	CA	95054-0000	
Veritas Enterprise Vault		2625 Augustine Drive			Santa Clara	CA	95054-0000	
Veritas Software Global LLC		PO Box 60000			San Francisco	CA	94160-3667	
Veritext Corp.		3090 Bristol Street	Suite 190		Costa Mesa	CA	92626	
Veritext Los Angeles Reporting Co		3090 Bristol St	Suite 190		Costa Mesa	CA	92626	
Veritext Mid-Atlantic		1801 Market Street	Suite 1800		Philadelphia	PA	19103	
Veritext New York Reporting Co		330 Old Country Rd	Suite 300		Mineola	NY	11501	
Veritext New York Reporting Co		PO Box 71303			Chicago	IL	60694-1303	
Verity Group		885 E Collins Blvd	Ste. 102		Richardson	TX	75081-0000	
Verity Group		PO Box 940361			Plano	TX	75094-0361	
VERIZON		PO BOX 15124			Albany	NY	12212-5124	
VERIZON		PO BOX 1100			Albany	NY	12250-0001	
Verizon Wireless		PO Box 489			Newark	NJ	07101-0489	
Verizon Wireless		PO Box 790406			Saint Louis	MO	63179-0406	
Verizon Wireless		PO Box 660108			Dallas	TX	75266-0108	
Verizon Wireless		PO Box 4001			Inglewood	CA	90313-4001	
Vermont Department of Taxes		PO Box 588			Montpelier	VT	05601	
Vermont Dept of Financial Regulation		Dept of Banking, Insurance & Securities	89 Main Street, 2nd Floor, Drawer 20		Montpelier	VT	05620	
Verrill Dana LLP		One Portland Square	P.O. Box 586		Portland	ME	04112	
VFG Securities, Inc.	Attn Jana Oledzki	100 Corporate Pointe	Suite 382		Culver City	CA	90230-7612	
ViaWest, Inc.	Attn John Greenwood	1200 17th Street, Suite 1150			Denver	CO	80202	
ViaWest, Inc.		PO Box 732368			Dallas	TX	75373-2368	
ViaWest, Inc.		PO Box 912362			Denver	CO	80291-2362	
Vibrancy21		1133 South Clinton Street			Baltimore	MD	21224	
Vickery Meadow Learning Center		6329 Ridgecrest			Dallas	TX	75231	
Victor Chang		Address on File						
Victor Chong		Address on File						
Vigilant Resources		45 Rockefeller Plaza, 20th Floor			New York	NY	10111	
VILLA VERONA, LTD		13330 NOEL RD			Dallas	TX	75240	
Village on the Green		5301 Alpha Road, Suite 44			Dallas	TX	75240	
Vin Thompson		Address on File						

0024839

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 160 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Vincent Lopez Serafino & Jenevein, PC		2001 Bryan St	Suite 2000		Dallas	TX	75201	
VINSON & ELKINS, LLP		A1001 FANNIN ST., STE 2300	FIRST CITY TOWER		Houston	TX	77002-6760	
Vintage Filings		350 Hudson Sireet, Suite 300			New York	NY	10014	
Vintage Filings		350 Hundson Street	Suite 300		New York	NY	10014	
Vintage Filings		PO Box 30719			New York	NY	10087-0719	
Vira, Sagar		Address on File						
VIRGINIA DEPARTMENT OF TAXATION		PO BOX 1500			Richmond	VA	23218-1500	
VIRGINIA DEPARTMENT OF TAXATION		PO BOX 1777			Richmond	VA	23218-1777	
Virginia Retirement System	Attn Control	PO Box 361			Richmond	VA	23218	
Virginia Retirement Systems	Attn Control	PO Box 361			Richmond	VA	23218	
Vishnu Gogiheni		Address on File						
Visix, Inc.		230 Scientific Drive	Suite 800		Norcross	GA	30092	
Vitae Search Group, LLC		6009 Mariposa Drive			McKinney	TX	75070	
Vitello, Stephanie		Address on File						
Vlahakis, Eleni		Address on File						
VODAFONE		PO BOX 549			London		OX17 3ZJ	United Kingdom
Vogel Alcove		200 Crescent Court	Ste 300		Dallas	TX	75201	
Voice of Hope	Attn Ruth Hardesty	PO Box 224845			Dallas	TX	75222-4845	
Volunteers for Youth, Inc.		205 Lloyd Street	Suite 103		Carrboro	NC	27510	
Voya Financial Advisors	Attn Adhiana Mardarie Gagov	909 Locust Street			Des Moines	IA	50309	
Voya Financial Advisors		5780 Powers Ferry Road, NW			Atlanta	GA	30327	
VSI Solutions		203 Dumont ct			Fairview	TX	75069	
VTB Capital plc		14 Cornhill			London		EC3V3ND	United Kingdom
W San Diego		421 West B St			San Deigo	CA	92101	
W. Andrew Hodge Consulting, PA		PO Box 11417			Glendale	AZ	85318	
W.B. Mason Co., Inc.		59 Centre St			Brockton	MA	02301	
Wachovia Insurance Services		5956 Sherry Lane	Suite 2000		Dallas	TX	75225-6531	
Wachovia Secuties LLC		Relationship Management Group-MO1400						
Wachtell, Lipton, Rosen & Katz		1 North Jefferson St			Saint Louis	MO	63103	
Wagner, Grace		51 West 52nd Street			New York	NY	10019	
Wagner, Grace		Address on File						
Wake2O		Rue du Mont Blanc 3			Geneva		01201	SWITZERLAN D
Wakefield Quin		Victoria Place	31 Victoria St		Hamilton		0HM10	Bermuda
Wakefield Quinn		PO BOX HM 809			Hamilton		0HMCX	BERMUJDA
Walek & Associates, Inc.		317 Madison Avenue Suite 2300			New York	NY	10017	
WALIA, AMIT		Address on File						
Walker Dumlop		Address on File						
Walker Kobelan		Address on File						

002488

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Walkers		PO Box 265GT, Walker House	87 Mry Street		George Town		KY1-9001	Cayman Islands
Walkers - Ireland		The Exchange, Georges Dock, IFSC			Dublin		1	Ireland
Walkers Fund Services Limited	c/o Intertrust Cayman	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Wall Street Tax Association	c/o OConnor Davies Munns & Dobbins LLP	60 East 42nd Street			New York	NY	10165	
WALLS, DAVID		Address on File						
WALTER JARMAN		Address on File						
WAN, QIAN		Address on File						
WANG, ALICE		Address on File						
WANG, CHEN-HAN		Address on File						
Wang, Ruozhou		Address on File						
Warehouse Store Fixture Co.		84 Progress Lane			Watebury	CT	06705	
Warner Stevens LLP		1700 City Center Tower II	301 Commerce Street		Fort Worth	TX	76102	
Warren Posner		Address on File						
Washington Speakers Bureau Inc.		1663 Prince Street			Alexandria	VA	22314	
Washington State Treasurer		WA Dept of Finan Inst. Securities Div	150 Israel Road SW		Tumwater	WA	98501	
Waterhouse, Frank	Ross & Smith, PC	Plaza of the Americas	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
WATERHOUSE, FRANK		Address on File						
WaterView Advisors		14800 Quorum Dr Ste 450			Dallas	TX	75254-7531	
Watson Wyatt & Co		PO Box 277665			Atlanta	GA	30384	
WATSON, ERIN		Address on File						
Watts, Andrew		Address on File						
WATTS, KEITH R		Address on File						
Wayne Bell		Address on File						
WC-4641 Production, LLC	C/o Great Value Storage	4641 Production Drive			Dallas	TX	75235	
WCDABG	Attn Sharon Popham, Reservations Chair	3 Carmarthen Court			Dallas	TX	75225	
Wealthforge Securities, LLC		6800 Paragon Place	Ste 200		Richmond	VA	23230	
Wealthmaster Group, LLC		18881 Von Karman Ave	Suite 720		Irvine	CA	92612	
Weatherly, Brian		Address on File						
Weaver and Tidwell, LLP		2821 West 7th Street	Suite 700		Fort Worth	TX	76107	
Webb, Justin		Address on File						
WebsiteBackup Company		2375 E. Camelback Rd	Suite 600		Phoenix	AZ	85016	
WEBSTER, GREGORY W		Address on File						
WEIJUN ZANG		Address on File						
Weinstein, Clower & Associates		PO Box 795001			Dallas	TX	75379	
Welch Consulting Ltd		1716 Briarcrest Drive #700			Bryan	TX	77802-2760	
Wells Fargo Advisors FBO Bezilla	Attn Alan Kinney	200 Stephenson Ave, Suite 301			Savannah	GA	31405	
Wells Fargo Advisors, LLC	Attn Andrew Black	280 Park Avenue, FL 29W			New York	NY	10017	
Wells Fargo Advisors, LLC	Attn April Johnson	10900 Wilshire Blvd, 11th Floor			Los Angeles	CA	90024	

0024835



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
Wells Fargo Advisors, LLC	Attn Dan Racicot WF - Finet	4275 Executive Square, Ste 910			Lajolla	CA	92037	
Wells Fargo Advisors, LLC	Attn Denise Bare	9665 Wilshire Blvd, Ste 100			Beverly Hills	CA	90212	
Wells Fargo Advisors, LLC	Attn Greg Shumaker	700 Ackerman Rd, Ste 400			Columbus	OH	43202	
Wells Fargo Advisors, LLC	Attn Kathy Buckley	6060 South American Plaza St East			Tulsa	OK	74135	
Wells Fargo Advisors, LLC	Attn Kevin Dailey	100 East Wisconsin Ave, 12th Floor			Milwaukee	WI	53202	
Wells Fargo Advisors, LLC	Attn Mike McChesney	2500 Legacy Dr, Ste 200			Frisco	TX	75034	
Wells Fargo Advisors, LLC	Attn Nicole Stenquist	450 Post Road East			Westport	CT	06880	
Wells Fargo Advisors, LLC	Attn Operations Manager	20 William Street, Ste 300			Wellesley	MA	02481	
Wells Fargo Advisors, LLC	Attn Operations Manager	331 Newman Springs Rd, Ste 230			Red Bank	NJ	07701	
Wells Fargo Advisors, LLC	Attn Operations Manager	222 East Main St, Ste 106			Smithtown	NY	11787	
Wells Fargo Advisors, LLC	Attn Operations Manager	13621 University Ave			Clive	IA	50325	
Wells Fargo Advisors, LLC	Attn Operations Manager	909 Fannin St, Suite 1200			Houston	TX	77010	
Wells Fargo Advisors, LLC	Attn Operations Manager	1200 17th St, Ste 2000			Denver	CO	80202	
Wells Fargo Advisors, LLC	Attn Operations Mgr Gamer Mabry	6400 South Fiddlers Green Cir, Ste 1840			Greenwood Village	CO	80111	
Wells Fargo Advisors, LLC	Attn Paula Curry, Control Specialist	2 International Place, 20th Fl			Boston	MA	02110	
Wells Fargo Advisors, LLC	Attn Rita Borchers	7400 West 130th St, Ste 200			Overland Park	KS	66213	
Wells Fargo Advisors, LLC	Attn Tracy Lusk	8115 Preston Rd, Suite 300			Dallas	TX	75225	
Wells Fargo Advisors, LLC	Attn Web Wang	5820 Canoga Ave, #100			Woodland Hills	CA	91367	
Wells Fargo Advisors, LLC	c/o David Elfenbein	1211 Avenue of the Americas, 27th Flr			New York	NY	10036	
Wells Fargo Advisors, LLC	c/o Heiter Leshem Margolis	500 Lake Cook Rd, Ste 100			Deerfield	IL	60015	
Wells Fargo Advisors, LLC	c/o Shannon Walker	695 E. Arlington Blvd., Ste 201			Greenville	NC	27858	
Wells Fargo Advisors, LLC		180 Glastonbury Blvd			Glastonbury	CT	06033	
Wells Fargo Advisors, LLC		1 North Jefferson Ave.	Suite 301		Saint Louis	MO	63103	
Wells Fargo Advisors, LLC		3501 W Rosemont Ave			Chicago	IL	60659-2207	
Wells Fargo Advisors, Westwood		10900 Wilshire Blvd	11th Floor		Los Angeles	CA	90024	
WELLS FARGO BANK		WF 8113	PO BOX 1450		Minneapolis	MN	55485-8113	
Wemple, Stefanie		Address on File						
WEN, JING		Address on File						
WENDELL, MORTON		Address on File						
Wendy Harper		Address on File						
WENTWORTH, KEVIN J.		Address on File						
Wesley Golie		Address on File						
West Court Reporting Services		West Payment Center	P.O. Box 6292		Carol Stream	IL	60197-6292	
West Payment Center		PO Box 6292			Carol Stream	IL	60197-6292	
West Publishing Corporation		P.O. Box 12421			Newark	NJ	07101	
West Virginia State Auditor Office	Securities Division	1900 Kanawha Blvd. E	State Capital Building 1, Room W-100		Charleston	WV	25305-0230	Cayman Islands
Westchester CLO, Ltd.	The Directors	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman		KY1-1108	

002490

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Westchester CLO, Ltd.		P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town			Cayman Islands
Westchester CLO Ltd.			COO Services Group					
Investors Bank & Trust Company	Investors Bank & Trust Company	200 Claredon Street	Ref Westchester CLO, Ltd.		Boston	MA	02116	
Western International Securities, Inc.		70 S. Lake Ave	Ste 700		Pasadena	CA	91101	
Westley McGeoghegan		49 Chetwynd Road			Somerville	MA	02144	
WESTMINSTER CITY COUNCIL		PO BOX 397			London		WA55 1GG	United Kingdom
WestPark Capital, Inc.		1900 Avenue of the Stars	Suite 310		Los Angeles	CA	90067	
Westwood Professional Services, Inc.		7699 Anagram Drive			Eden Prairie	MN	55334	
WHARF, PAUL		Address on File						
WHARF, PAUL C.		Address on File						
Whalley, David		Address on File						
WHERRY, SHANNON M.		Address on File						
Wheatstone, Laurie		Address on File						
Whitaker, Chalk, Swindler, & Sawyer		Address on File						
White & Case LLP		301 Commerce St. Suite 3500			Ft. Worth	TX	76102	
White & Williams LLP		1155 Avenue of the Americas			New York	NY	10036-2787	
White, Jeremy		1800 One Liberty Place			Philadelphia	PA	19103-7395	
White, Kelly		Address on File						
WhiteGlove House Call Health, Inc.		Address on File						
WhiteGlove House Call Health, Inc.		5300 Bee Cave Rd, Bldg One	Ste 100		Austin	TX	78746	
Whitehall-Parker Securities, Inc.		PO Box 845720			Dallas	TX	75284-5720	
Whitney Smith Co		477 Pacific Ave, 2nd Floor			San Francisco	CA	94133	
WhitneySmith Company		301 Commerce St	Suite 1950		Fort Worth	TX	76102	
WICK PHILIPS LLP		301 Commerce Street, Suite 1950						
Wick Phillips Gould & Martin, LLP	Jason M. Rudd. Lauren K. Drawhorn	500 North Akward Street	Suite 2100		Fort Worth	TX	76102	
Wicks Business Information		3131 McKinney Avenue, Suite 500			Dallas	TX	75201	
Wild Rose Floral Design Studio		1375 Kings Highway East Ste 450			Dallas	TX	75204	
Wild Rose Floral Design Studio		PO Box 541			Fairfield	CT	06824	
Wilentz Goldman & Spitzer		720 E Lamar St			Rockwall	TX	75087	
Wiley, Grant		90 Woodbridge Center Dr.			Royse City	TX	75189	
Wilkinson Center	Attn Andrea Jones	Address on File			Woodbridge	NJ	07095	
Wilkinson Center	Attn Cathy Rosson	PO Box 720248			Dallas	TX	75372	
Wilks, Lukoff & Bracegirdle, LLC		PO Box 720248			Dallas	TX	75372	
Will Pryor Mediation & Arbitration	Thad J. Bracegirdle	4250 Lancaster Pike, Suite 200			Wilmington	DE	19805	
		5420 LBJ Frwy Ste 626			Dallas	TX	75240	

0024937

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
WILLIAM CORNELIUS		Address on File						
William Gosserand	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
William Ikard		Address on File						
William Keeney		Address on File						
William M. Cobb & Associates, Inc.		12770 Coit Rd, Ste 907			Dallas	TX	75251	
William Mabry	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
William Oliveira		Address on File						
William R. Welch		Address on File						
William Todd Westenburg		Address on File						
Williams, Andrew		Address on File						
WILLIAMS, MEREDITH		Address on File						
Willis of New York, Inc.		PO Box 4557			New York	NY	10249-4557	
Willis of Texas, Inc.		Dallas/Ft. Worth Division	PO Box 730310		Dallas	TX	75373-0310	
Willis of Texas, Inc.		PO Box 731739			Dallas	TX	75373-1739	
Willkie Farr & Gallagher LLP		787 Seventh Ave			New York	NY	10019-6099	
WILLMORE, DAVID		Address on File						
Willoughby McCabe Agents Co		3409 Rosedale Avenue			Dallas	TX	75205	
WILLOUGHBY-MCCABE, PATRICK		Address on File						
Wilmer Cutler Pickering Hale and Dorr LLP	Timothy F. Silva	60 State Street			Boston	MA	02109	
Wilmer Cutler Pickering Hale Dorr LLP		1875 Pennsylvania Avenue NW			Washington	DC	20006	
Wilmer Cutler Pickering Hale Dorr LLP		PO Box 7247-8760			Philadelphia	PA	19170-8760	
Wilmington Trust Company		Rodney Square North	1100 North Market St		Wilmington	DE	19890-0001	
Wilshire Associates Incorporated	Attn Accounts Receivable	1299 Ocean Avenue, Suite 700			Santa Monica	CA	90401-1085	
WILSON SMITH		Address on File						
WILSON, ANDREW		Address on File						
WILSON, ANTHONY		Address on File						
Wilson, Owen		Address on File						
WILSON, SCOTT		Address on File						
Wilson, Sonsini, Goodrich, & Rosati		PO Box 742866			Los Angeles	CA	90074-2866	
Wilson, Sonsini, Goodrich, & Rosati		File # 73672	PO Box 60000		San Francisco	CA	94160-3672	
WILSON, STEVE L.		Address on File						
Wilson, William		Address on File						
WINGS Ventures LLC		172304 Preston Rd	Ste 800		Dallas	TX	75252	
Winn Media		Address on File						
WINSTEAD P.C.		5400 RENAISSANCE TOWER	1201 ELM ST		Dallas	TX	75270	
WINSTEAD P.C.		2728 N Harwood Street	Suite 500		Dallas	TX	75201-1743	
Winston & Strawn LLP		2121 North Pearl Street	Suite 900		Dallas	TX	75201	
Wired		PO Box 37704			Boone	IA	50037-0704	

0024938

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Wisconsin Office of Comm of Securities	Division of Securities	201 West Washington Avenue, Suite 300			Madison	WI	53703	
WISE, CHRIS	Address on File							
Wiseman & Hoffman	460 Park Ave South, 4th Flr				New York	NY	10016	
WISER, JASON	Address on File							
Withers Bergman LLP	157 Church Street, 12th Floor		PO Box 426		New Haven	CT	06502	
Withers Bergman LLP	PO Box 1685				New Haven	CT	06507	
WM Fund Associates Co., Ltd.	Kakimi Kojimachi Annex Bldg 6F		3-2 Kojimachi, Chiyoda-ku		Tokyo		102-0083	JAPAN
Wolters Kluwer	1999 Bryan Street		Ste 900		Dallas	TX	75201-0000	
Wolters Kluwer Legal & Regulatory US	PO Box 71882				Chicago	IL	60694-1882	
Wombat Security Technologies	3030 Penn Avenue		Suite 200		Pittsburgh	PA	15201	
Womens Auxiliary Childrens-Six Flags	7315 Centenary Ave				Dallas	TX	75225	
Womens Auxiliary Childrens-Six Flags	Attn Jenny Garberding							
Wonderlic	7506 Greenbrier				Dallas	TX	75225	
WOOD, HANNAH	1795 N. Butterfield Rd				Libertyville	IL	60048-1212	
Woodall Rodgers Park Foundation	Address on File							
Woodbury Financial Services, Inc.	Attn Erika White	1909 Woodall Rodgers Fwy	Suite 403		Dallas	TX	75201	
Woodruff-Sawyer & Co.	ATTN Reimb Processing	PO Box 64284			Saint Paul	MN	55164	
WOOTTON, JENNIFER	PO Box 45057				San Francisco	CA	94145-9950	
World Affairs Council	Address on File							
World Data Products	325 N. St. Paul St.		Suite 4200		Dallas	TX	75201	
	M & I 196 PO Box 1414				Minneapolis	MN	55480-1414	
Worldwide Financial Solutions	16140 Northcross Drive				Huntersville	NC	28078	
Worldwide Insurance Services	ATTN INDIVIDUAL UNDERWRITING DEPT	100 MATSONFORD RD						
WP Engine	504 Lavaca Street		STE 100 Suite 1000		Radnor	PA	19087	
	Victoria Place, 31 Victoria Street				Austin	TX	78701-0000	
WQ International Ltd.	3181 Clearwater Dr.		Ste A		Hamilton		0HM10	BERMUDA
Wright Wealth Management	2407 Timberloch Place		Suite B		Prescott	AZ	86305	
Wrights Media	Address on File				The Woodlands	TX	77380-1039	
Wuiz, Brandon	Securities Division, State Capitol Bldg		2020 Carey Avenue, Suite 700		Cheyenne	WY	82001	
Wyoming Secretary of State	5800 Foxridge Dr		Suite 406		Mission	KS	66202	
Xact Data Discovery -DATX	45 Glover Ave				Norwalk	CT	06856-0000	
Xerox	2553 Collections Center Dr.				Chicago	IL	60693	
Xerox Corporation	PO Box 650361				Dallas	TX	75265	
Xerox Corporation	PO Box 827598				Philadelphia	PA	19182-7598	
Xerox Corporation	PO Box 802555				Chicago	IL	60680-2555	
Xerox Corporation	PO Box 7405				Pasadena	CA	91109-7405	
Xignite, Inc	1825 South Grant St		Suite 100		San Mateo	CA	94404	
Xignite, Inc	Dept 3344		PO Box 123344		Dallas	TX	75312-3344	

0024939

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
XIOTECH CORPORATION		DEPT CH 17326			Palentine	IL	60055-7326	
XO Communications		PO Box 530471			Atlanta	GA	30353-0471	
XPISTI LLC		2807 Allen Street # 382			Dallas	TX	75204	
Xtract Research		330 Hudson Street	4th Floor		New York	NY	10013	
YAGNISIS, AIRLIA		Address on File						
YANG, JOHN		Address on File						
YAROSLAV JERRY LVOVICH		Address on File						
Yehia, Josef		Address on File						
Yelibelly, Inc.		2364 Northwest Pkwy			Southlake	TX	76092	
YINGHUI HE		Address on File						
YMCA of Metropolitan Dallas		5101 Tennyson Pkwy.			Plano	TX	75024	
YOON, CHRISTOPHER K.		Address on File						
York & Chapel, Corp.		2 Trap Falls Road	Suite 410		Shelton	CT	06484	
YOUNG CONAWAY								
STARGATT & TAYLOR, LLP	Bruce L. Silverstein	Elena C. Norman	1000 North King Street		Wilmington	DE	19801	
Young Life	C/O Lee Anne Bingham	3304 Beckham Ct			Plano	TX	75075	
YOUNG LIFE ALBUQUERQUE		PO BOX 91894			Albuquerque	NM	87199-1894	
YOUNG LIFE, NORTH CENTRAL TEXAS		11300 N CENTRAL EXPWY	STE 600		Dallas	TX	75243	
Young Womens Preparatory Network		1722 Routh Street	Suite 720		Dallas	TX	75201	
Young, Priya		Address on File						
YTAC-Dallas		2807 Allen St., Box 347			Dallas	TX	75204	
Zacks Investment Research, Inc.		111 North Canal Street	Suite 1101		Chicago	IL	60606	
ZANG, WEIJUN		Address on File						
ZANG, WEIJUN		Address on File						
ZARIN, GREGORY		Address on File						
Zayo Group		1821 30th Street	Unit A		Boulder	CO	80301-0000	
Zayo Group, LLC		PO Box 952136			Dallas	TX	75395-2136	
Zendes		1019 Market St			San Francisco	CA	94103-0000	
Zenprise Inc		6120 Stevenson Blvd			Fremont	CA	94538	
ZEPHYR ASSOCIATES		4 Westchester Park Dr	2nd Floor		White Plains	NY	10604	
ZEPHYR ASSOCIATES		Dept 2215	PO Box 2121		Memphis	TN	38159	
ZEPHYR ASSOCIATES		PO Box 12368	312 Dorla Court		Zephyr Cove	NV	89448	
ZEPHYR ASSOCIATES		PO Box 416014			Boston	MA	02241-6014	
ZEPHYR ASSOCIATES		P.O. Box 2153	Dept. 1899		Birmingham	AL	35287-1899	
ZIEGENHAGEN, RANDALL		Address on File						
ZIEGLER, JASON		Address on File						
ZIMMERMANN, JOHN		Address on File						
ZOHO Corporation		File No #31469	PO Box 60000		San Francisco	CA	94160	
ZOHO Corporation		PO Box 742760			Los Angeles	CA	90074-2760	
ZOHO Corporation		4900 Hopyard Road	Suite 310		Pleasanton	CA	94588-7100	
Zosel, August		Address on File						
Zscaler		110 Rose Orchard Way			San Jose	CA	95134-0000	
Zuckerman Spaeder LLP		1800 M Street NW			Washington	DC	20036-5802	
Zuluaga, Juan Camilo		Address on File						
Zurich North America	ATTN HOWARD BULGATZ	8745 PAYSOPHERE CIRCLE			Chicago	IL	60674	

002494

**Exhibit C**

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Zurich North America		8712 Innovation Way			Chicago	IL	60682-0087	
Zyrka		1408 N. Riverfront Blvd. #106			Dallas	TX	75207	

002494

**EXHIBIT D**



**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Advisors Equity Group, LLC		300 Crescent Court, Ste. 700		Dallas	TX	75201
Canis Major Trust		300 Crescent Ct	Ste 700	Dallas	TX	75201
DONDERO, JAMES		300 Crescent Ct, Suite 700		DALLAS	TX	75201
Eagle Equity Advisors, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
ELLINGTON, SCOTT		300 Crescent Ct, Suite 700		DALLAS	TX	75201
Fanshaw Bay, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Four Rivers Co-Invest, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
Gunwale, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
HCRE Partner, LLC		300 Crescent Court Ste 700		Dallas	TX	75201
HFP GP, LLC	Attn Highland Capital Management, L.P. as sole member	300 Crescent Court Ste 700		Dallas	TX	75201
Highland HCF Advisor, Ltd.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Acquisition Corporation		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Funds Distributor, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Insurance Solutions, L.P.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Management (Singapore)		300 Crescent Ct.	Suite 700	Dallas	TX	75201
Highland Capital Management Fund Advisors, L.P.	Attn General Counsel	300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Management Fund Advisors, L.P.		300 Crescent Court Suite 700		Dallas	TX	75201
Highland Capital Management Services, Inc.		300 Crescent Court, Suite 700		Dallas	TX	75201
HIGHLAND CAPITAL MANAGEMENT, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Mgmt Fund Advisors		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland CLO Funding, Ltd.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland CLO Management, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Energy MLP Fund		300 Crescent Court, Ste 700		Dallas	TX	75201
Highland First Foundation Income Fund		300 Crescent Court	Suite 700	Dallas	TX	75201

0024949

**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Highland Fixed Income Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Floating Rate Fund		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Funds I		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Funds II		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Global Allocation Fund		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Healthcare Opportunities Fund						
Highland Income Fund HFRO		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Latin America Consulting, LTD		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Long/Short Equity Fund						
Highland Merger Arbitrage Fund		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Opportunistic Credit Fund		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Prometheus		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland RCP Offshore, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland RCP, LP		300 Crescent Ct.	Suite 700	Dallas	TX	75201
Highland Small-Cap Equity Fund		300 Crescent Ct.	Suite 700	Dallas	TX	75201
Highland Socially Responsible Equity Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Tax-Exempt Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Tax-Exempt Fund	Highland Energy MLP Fund	300 Crescent Court Suite 700		Dallas	TX	75201
Highland Total Return Fund	Highland Energy MLP Fund	300 Crescent Court	Suite 700	Dallas	TX	75201
Highland/iBoxx Senior Loan ETF		300 Crescent Court Ste 700		Dallas	TX	75201
Honis, Trevor		300 Crescent Court	Suite 700	Dallas	TX	75201
James D. Dondero		300 Crescent Ct.	Ste. 700	Dallas	TX	75201
James D. Dondero		300 Crescent Court Ste 700		Dallas	TX	75201
James Dondero, as the successor-in-interest to the Canis Major Trust		300 Crescent Court Ste 700		Dallas	TX	75201
LEE BLACKWELL PARKER, III						
Mark K. Okada	Attn Melissa Schroth	300 Crescent Court Ste 700		Dallas	TX	75201
Mark K. Okada		300 Crescent Court	Suite 700	Dallas	TX	75201
NexBank Advisors, L.P		300 Crescent Ct, Suite 700		Dallas	TX	75201

002498

**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
NexBank Capital, Inc		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank Securities, Inc		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank SSB		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank Title, Inc.		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexPoint Advisors, L.P.		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Cap Escrow		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Capital, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Discount Strategies Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Energy and Material Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Event-Driven Fund	Highland Energy MLP Fund	300 Crescent Court Ste 700		Dallas	TX	75201
NexPoint Healthcare Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Healthcare Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Latin America Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Real Estate Strategies Fund	Highland Energy MLP Fund	300 Crescent Court Ste 700		Dallas	TX	75201
NexPoint Strategic Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
OKADA, MARK		300 Crescent Ct. Suite 700		DALLAS	TX	75201
PARKER, LEE		300 Crescent Ct. Suite 700		DALLAS	TX	75201
Penant Management GP, LLC	c/o Highland Capital Management, L.P.	300 Crescent Court Ste 700		Dallas	TX	75201
PetroCap Operating, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
PetroCap Partners II, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
PRILICK, GUSTAVO		300 Crescent Court	STE 700	Dallas	TX	75201
Ragen, Spencer		300 Crescent Ct.	Ste. 700	Dallas	TX	75201
SE Multifamily Holdings, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Strand Advisors Inc.		300 Crescent Court		Dallas	TX	75201
Strand Advisors, Inc.	Attn Isaac Leventon	300 Crescent Court, Suite 700		Dallas	TX	75201
Strand Advisors, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
The Dugaboy Investment Trust		300 Crescent Court Suite 700		Dallas	TX	75201

002495

**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
The Dugaboy Investment Trust, as successor-in-interest to the Canis Major Trust		300 Crescent Court Ste 700		Dallas	TX	75201
The Get Good Non-Exempt Trust No. 1		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Get Good Non-Exempt Trust No. 1, Individually and as Successor-In-Interest of the Canis Minor Trust		300 Crescent Court, Ste. 700		Dallas	TX	75201
The Get Good Non-Exempt Trust No. 2		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Get Good Non-Exempt Trust No. 2, Individually and as Successor-In-Interest of the Canis Minor Trust		300 Crescent Court, Ste. 700		Dallas	TX	75201
The Get Good Trust		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Mark and Pamela Okada Family Exempt Trust #1	Attn Melissa Schroth	300 Crescent Court Suite 700		Dallas	TX	75201
The Mark and Pamela Okada Family Exempt Trust #2	Attn Melissa Schroth	300 Crescent Court Suite 700		Dallas	TX	75201
The Mark and Pamela Okada Family Trust	Exempt Trust #1	300 Crescent Court	Suite 700	Dallas	TX	75201
The Mark and Pamela Okada Family Trust	Exempt Trust #2	300 Crescent Court	Suite 700	Dallas	TX	75201
The Mark and Pamela Okada Family Trust - Exempt Descendants Trust #1		300 Crescent Court		Dallas	TX	75201
The Mark and Pamela Okada Family Trust - Exempt Descendants Trust #2		300 Crescent Court		Dallas	TX	75201

APP 20146  
 002500

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 173 of  
175

## **EXHIBIT E**

APPX 00447  
002501

**Exhibit E**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	Address1	Address2	City	State	Zip
AMY JENKINS	13455 NOEL RD	STE 800	Dallas	TX	75240
Amy Mitts	13455 Noel Rd	Suite 800	Dallas	TX	75240
BENTLEY CALLAN	13455 NOEL RD	STE 800	Dallas	TX	75240
BILL CORNELIUS	13455 NOEL RD	STE 800	Dallas	TX	75240
BOYD GOSSERAND	13455 NOEL RD	STE 800	Dallas	TX	75240
CLINT GILCHRIST	13455 NOEL RD	STE 800	Dallas	TX	75240
COURTNEY ORENT	13455 NOEL RD	STE 800	Dallas	TX	75240
Cummings Bay Capital Management, LP	13455 Noel Rd, Ste 800		Dallas	TX	75240
DAVID CRULL	13455 NOEL RD	STE 800	Dallas	TX	75240
DAVID SMITH	13455 Noel Rd	Ste 800	Dallas	TX	75240
EMERALD ORCHARD	13455 NOEL RD	STE 800	Dallas	TX	75240
GUSTAVO PRILICK	13455 Noel Rd, Ste 800		Dalals	TX	75240
HCM ACQUISITION COMPANY	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND ALL CAP EQUITY VALUE FUND	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CAPITAL REAL ESTATE ADVISORS	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CDO HOLDING COMPANY	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND CDO OPPORTUNITY FUND	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND CREDIT OPPORTUNITIES FUND	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CREDIT STRATEGIES FUND RIC	13455 NOEL RD STE 800		Dallas	TX	75240
HIGHLAND CRUSADER FUND	13455 NOEL RD	STE 800	Dallas	TX	75240
Highland Employee Retention Assets LLC	13455 Noel Rd	Ste 800	Dallas	TX	75240
HIGHLAND FINANCIAL CORP	13455 NOEL RD		Dallas	TX	75240
HIGHLAND FINANCIAL REAL ESTATE CORP	13455 NOEL RD		Dallas	TX	75240
HIGHLAND FINANCIAL TRUST	13455 NOEL RD		Dallas	TX	75240
Highland Funds Asset Management	13455 Noel Rd	Ste 800	Dallas	TX	75240
HIGHLAND LOAN FUNDING V	13455 NOEL RD	STE 800	Dallas	TX	75240

APP 20148  
 002502

**Exhibit E**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	Address1	Address2	City	State	Zip
HIGHLAND SELECT EQUITY FUND	13455 NOEL RD		Dallas	TX	75240
Highland Special Situations Fund	13455 Noel Rd		Dallas	TX	75204
JASON GREEN	13455 NOEL RD	STE 800	Dallas	TX	75240
JENNIFER JURRIUS	13455 NOEL RD	STE 800	Dallas	TX	75240
KEN KAPADIA	13455 NOEL RD	STE 800	Dallas	TX	75240
LARRY LINDSEY	13455 NOEL RD	STE 800	Dallas	TX	75240
LAURA KNIPP	13455 NOEL RD	STE 800	Dallas	TX	75240
Lauren Okada	13455 Noel Rd	suite 800	Dallas	TX	75240
LESLIE HARRIS	13455 NOEL RD	STE 800	Dallas	TX	75240
LINDY HEATHERINGTON	13455 NOELRD	STE 800	Dallas	TX	75240
Lisa Miller	13455 Noel Rd		Dallas	TX	75240
Luke Okada	13455 Noel St	Suite 800	Dallas	TX	75240
Michael Hasenauer	13455 Noel Rd	Suite 800	Dallas	TX	75240
Michael McLochlin	13455 Noel Rd. Ste 800		Dallas	TX	75240
MICKEY MINCES	13455 NOEL RD	STE 800	Dallas	TX	75240
MULTI-STRATEGY SUB FUND	13455 NOEL RD		Dallas	TX	75240
NATALIE HARALSON	13455 NOEL RD	STE 800	Dallas	TX	75240
NGUYEN, TIFFANY	13455 NOEL RD #800		DALLAS	TX	75240
REAL ESTATE FUND 2002-A	13455 NOEL RD	STE 800	Dallas	TX	75240
SCOTT BASHRUM	13455 NOEL RD	STE 800	Dallas	TX	75240
Scott Groff	13455 Noel Rd Suite 800		Dallas	TX	75240
SCOTT WILSON	13455 NOEL RD		Dallas	TX	75240
SHELBY NOBLE	13455 NOEL RD		Dallas	TX	75240
TAMRA APPELEGATE	13455 NOEL RD		Dallas	TX	75240
WILLIAM SMITH	13455 NOEL RD	STE 800	Dallas	TX	75240

APP 20149  
 002503



## **EXHIBIT 9**

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

<b>THE CHARITABLE DAF FUND, LP.,</b>	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	<b>Cause No. 3:21-cv-01710-N</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	
	§	
<i>Defendant.</i>	§	

**PLAINTIFF’S MOTION TO STAY ALL PROCEEDINGS**

**I.**

**NECESSITY OF MOTION**

Plaintiff submits this Motion as a result of the effective date, August 11, 2021, of Defendant Highland Capital Management L.P.’s Chapter 11 plan of reorganization (the “Plan”). The Plan purports to exculpate Defendant from liability and enjoin Plaintiff from pursuing actions against them. It also contains an assertion of exclusive jurisdiction by the bankruptcy court.

An appeal of the Plan, which the Fifth Circuit certified for direct appeal under 28 U.S.C. § 158(d), is now before the Court of Appeals and captioned *In re Highland Capital Management, L.P.*, No. 21-10449 (the “Fifth Circuit Appeal”). Each of the issues noted above is raised in the appeal. If successful, the appeal will overturn the exculpation, injunction, and assertion of exclusive jurisdiction in the Plan, allowing Plaintiff to proceed with this action in this Court.

In the meantime, however, Plaintiff is enjoined from participating further in this pending case and therefore asks that it be stayed pending the outcome of the Fifth Circuit Appeal.

## II.

### **BACKGROUND**

On August 9, 2021, Plaintiff received notice that the Plan was now effective. *In re Highland Capital Management, L.P.*, No. 19-34054, Doc. 2700. Although one condition precedent to the effectiveness of the Plan is finality of the confirmation order, which can only happen once all appeals are resolved, that and all other conditions are waivable by the Debtor. *Id.*, Doc. 1943 at pdf 142-43 (Art. VIII at pp. 45-46). The Debtor's notice, which waived finality and any other unsatisfied conditions, makes the Plan's exculpation provisions and injunctions immediately effective.

As to exculpation, the Plan states,

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

*Id.* at pdf 144-45 (Art. IX.C at pp. 47-48 (emphasis added)). “Exculpated Parties” is a defined term in the Plan that includes the Defendant in this action. *Id.* at pdf 106 (Art. I at p. 9).

As to the injunction, the Plan states,

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation SubTrust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; provided, however, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the

date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

*Id.* at pdf 147-48 (Art. IX.F at pp. 50-51 (emphasis added)). “Enjoined Parties” is a defined term in the Plan that includes Plaintiff. *Id.* at pdf 105 (Art. I; ¶ 56 at p.8).

Because these provisions are currently in force and prohibits Plaintiff from continuing this action, and because the Fifth Circuit Appeal includes direct challenges to the validity of these very provisions, Plaintiff respectfully submits that the most efficient course of action is for this Court to stay this action until the Fifth Circuit Appeal is resolved. Plaintiff expects that any resolution of the Fifth Circuit Appeal will necessarily determine that the Plan’s exculpation and injunction provisions absolves Defendant of any liability or, alternatively, that this action can proceed.

### III.

#### ARGUMENT

This Court should exercise its inherent powers to stay all proceedings in the case until the Fifth Circuit Appeal is decided.

The Fifth Circuit has long held that “[t]he district court possesses the inherent power to control its docket.” *Marine Chance Shipping v. Sebastian*, 143 F.3d 216, 218 (5th Cir. 1998). The exercise of that power is a discretionary one. *E.g.*, *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) (“A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.”)

Here, Plaintiff asks this Court to exercise discretion in favor of efficiency and to stay all proceedings. Plaintiff respectfully submits that, until the appeal is resolved, many complex legal questions exist that may affect the viability of this action or the forum in which it should be

litigated. Those questions—including the validity of the exculpation and injunction provisions quoted above—will likely be resolved by the Fifth Circuit Appeal. And therefore, Plaintiff submits, judicial economy may be gained by staying all proceedings in this action pending that appeal.

#### IV.

#### CONCLUSION

Plaintiff appears to be wholly prohibited from participating further in this action by the now-effective terms of the Plan that purport to enjoin Plaintiff and exculpates Defendant. In light of its inability to conduct the litigation and the pending Fifth Circuit Appeal, which that court has certified for direct appeal, Plaintiff respectfully submits that the most appropriate course for this Court is to stay all proceedings until the appeal is decided. Plaintiff therefore respectfully requests a stay and all further relief to which it may be entitled.

Dated: August 26, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Jonathan Bridges*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Plaintiffs**

**CERTIFICATE OF CONFERENCE**

I hereby certify that, in a series of communications between August 13 and 26, 2021, I conferred with Defendant’s counsel regarding this Motion, and counsel indicated that they are opposed to the relief sought in this Motion.

*/s/ Jonathan Bridges*

\_\_\_\_\_  
Jonathan Bridges



## **EXHIBIT 10**

DOCKET TEXT:7 ELECTRONIC ORDER granting 6 Motion to Stay. (Ordered by Judge David C Godbey on 9/7/2021) (chmb) [ORIGINALLY FILED IN 21-CV-1710 AS #7 ON 09/7/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)

## **EXHIBIT 11**



**HIGHLAND CAPITAL MANAGEMENT, L.P.’S MOTION FOR  
RECONSIDERATION OF STAY ORDER**

Highland Capital Management, L.P., a defendant in the above-captioned case (the “Debtor” or “Highland”), by and through its undersigned counsel, files this motion (the “Motion”) seeking reconsideration of the Stay Order (as defined below) that was recently entered by the Court without notice to, or opposition by, Highland. In support of its Motion, Highland states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), and Rule 59(a) of the Federal Rules of Civil Procedure.

**RELIEF REQUESTED**

4. Through this Motion, Highland requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Motion for Reconsideration of Stay Order* (the “Memorandum of Law”) filed contemporaneously with this Motion, Highland requests that the Court: (a) re-open the Stay Order, amend the findings and conclusions, and issue a new order denying the Stay Motion, and (b) grant such other and further relief as the Court deems just and proper.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of the Motion Highland is filing: (a) its Memorandum of Law, and (b) the *Appendix in*

*Support of Motion for Reconsideration of Stay Order* (the “Appendix”), together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Appendix and the arguments contained in the Memorandum of Law, Highland is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. Highland submits that no other or further notice need be provided.

WHEREFORE, Highland respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Highland such other and further relief as the Court may deem proper.

*[Remainder of Page Intentionally Blank]*

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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



**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Motion was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*  
\_\_\_\_\_  
Zachery Z. Annable

**EXHIBIT A**

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

\_\_\_\_\_  
THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.  
\_\_\_\_\_

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**ORDER GRANTING MOTION FOR  
RECONSIDERATION OF STAY ORDER**

Before the Court is *Highland Capital Management L.P.’s Motion for Reconsideration of Stay Order* [Docket No. \_\_] (the “Motion”)<sup>1</sup> Having considered: (a) the Motion; (b) *Highland Capital Management, L.P.’s Memorandum of Law in Support of Motion for Reconsideration of Order to Enforce the Order of Reference* [Docket No. \_\_] (the “Memorandum of Law”); and (c) the *Appendix in Support of Motion for Reconsideration of Stay Order* [Docket No. \_\_] (the “Appendix”), and the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that (a) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; (b) Highland was not served with the Stay Motion and had no opportunity to contest it; (c) the Court was presented with new facts and arguments in the Motion, the Memorandum of Law, and the Appendix of which it was unaware when it entered the Stay Order; (d) based on those new facts,

\_\_\_\_\_  
<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Memorandum of Law.

the Court finds and determines that Plaintiff has not met its burden of proving that a stay of the Action is warranted; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. Pursuant to Rule 59, the Court re-opens and vacates the Stay Order and enters this new Order **DENYING** the Stay Motion.

**It is so ordered** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

The Honorable David C. Godbey  
United States District Judge

## **EXHIBIT 12**

PACHULSKI STANG ZIEHL & JONES LLP  
 Jeffrey N. Pomerantz (CA Bar No. 143717)  
 Robert J. Feinstein (NY Bar No. 1767805)  
 John A. Morris (NY Bar No. 266326)  
 Gregory V. Demo (NY Bar No. 5371992)  
 Hayley R. Winograd (NY Bar No. 5612569)  
 10100 Santa Monica Blvd., 13th Floor  
 Los Angeles, CA 90067  
 Telephone: (310) 277-6910  
 Facsimile: (310) 201-0760  
 Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[rfeinstein@pszjlaw.com](mailto:rfeinstein@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

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

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

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

-----  
 THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

-----

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**HIGHLAND CAPITAL MANAGEMENT, L.P.’S MOTION TO DISMISS**

Highland Capital Management, L.P. (“Highland”), the putative defendant in the above-captioned case (the “Action”), by and through its undersigned counsel, files this motion (the “Motion”) to dismiss the Action. In support of its Motion, Highland states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), and Rules 12(b)(1), (3), (4), and (6) of the Federal Rules of Civil Procedure, made applicable in this Action pursuant to Bankruptcy Rule 7012.

### **RELIEF REQUESTED**

4. Through this Motion, Highland requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Motion to Dismiss* (the “Memorandum of Law”) filed contemporaneously with this Motion, Highland requests that the Court: (a) dismiss the Action with prejudice, and (b) grant such other and further relief as the Court deems just and proper.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of the Motion Highland is filing: (a) its Memorandum of Law, and (b) the *Appendix in Support of Motion to Dismiss* (the “Appendix”), together with the exhibits annexed thereto.



7. Based on the exhibits annexed to the Appendix and the arguments contained in the Memorandum of Law, Highland is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. Highland submits that no other or further notice need be provided.

WHEREFORE, Highland respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Highland such other and further relief as the Court may deem proper.

*[Remainder of Page Intentionally Blank]*

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Motion was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*  
\_\_\_\_\_  
Zachery Z. Annable

**EXHIBIT A**

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

---

THE CHARITABLE DAF FUND, L.P.,	§	
	§	
Plaintiff,	§	
	§	Case No. 3:21-cv-01710-N
vs.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	
	§	
	§	

---

**ORDER GRANTING MOTION TO DISMISS**

Before the Court is *Highland Capital Management L.P.’s Motion to Dismiss* [Docket No. \_\_] (the “Motion”).<sup>1</sup> Having considered: (a) the Motion; (b) *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Motion to Dismiss* [Docket No. \_\_] (the “Memorandum of Law”); and (c) the *Appendix in Support of Motion to Dismiss* [Docket No. \_\_] (the “Appendix”), and the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that (a) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1409; (b) the Effective Date has occurred; (c) the Confirmation Order and Plan enjoin Plaintiff from continuing any action or suit against Highland and mandate that claims against Highland be brought in the Bankruptcy Court following the Effective Date pursuant to the Injunction Provision; (d) the purported claims asserted against Highland arise from transactions that took place post-petition and, to the extent

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Memorandum of Law.

002529

valid, would constitute post-petition administrative claims; (e) the Plan provides a specific procedure through which holders of purported administrative claims, such as Plaintiff, can file an application with the Bankruptcy Court for allowance of its administrative expense claims; and (f) based on the foregoing, under the Confirmation Order and Plan, this Court is not the appropriate venue for this Action; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. The Action is **DISMISSED** with prejudice.

**It is so ordered** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

The Honorable David C. Godbey  
United States District Judge

## EXHIBIT 13



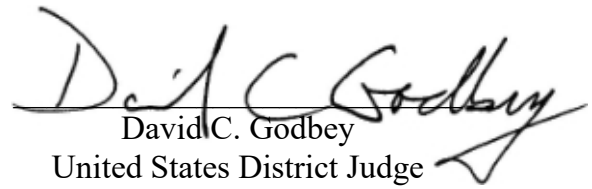
IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CHARITABLE DAF FUND, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:21-CV-1710-N
	§	
HIGHLAND CAPITAL	§	
MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	

**ORDER**

This Order addresses Defendant Highland Capital Management, L.P.’s (“HCM”) motion for reconsideration of this Court’s earlier order staying this case [8]. This case challenges a transaction consummated in the course of a consolidated bankruptcy proceeding and names as the sole defendant the debtor in that bankruptcy. The Court therefore concludes that this case constitutes a matter “related to” a case in the bankruptcy court under the meaning of this District’s Miscellaneous Order No. 33. Accordingly, the Court grants Defendant’s motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 19-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case.

Signed May 19, 2022.

  
David C. Godbey  
United States District Judge

## **EXHIBIT 14**

# **Highland Multi Strategy Credit Fund, L.P.**

A Delaware Limited Partnership

## **Fourth Amended and Restated Limited Partnership Agreement**

November 1, 2014

---

**TABLE OF CONTENTS**

	<b>Page</b>
Article I DEFINITIONS .....	1
Article II ORGANIZATION.....	10
2.1 Continuation of Limited Partnership .....	10
2.2 Name of Partnership .....	11
2.3 Principal Office; Registered Office.....	11
2.4 Term of Partnership.....	11
2.5 Object and Powers of Partnership.....	11
2.6 Liability of Partners .....	12
2.7 Actions by Partnership.....	12
2.8 Reliance by Third Parties.....	12
2.9 UCC Status of Limited Partner Interests .....	12
2.10 Series of Interests.....	12
Article III CAPITAL.....	13
3.1 Contributions to Capital.....	13
3.2 Rights of Partners in Capital.....	14
3.3 Capital Accounts .....	14
3.4 Allocations of Net Profit and Net Loss.....	15
3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures .....	15
3.6 Reserves; Adjustments for Certain Future Events .....	16
3.7 Performance Allocation .....	17
3.8 Limited Participation Investments and New Issues .....	17
3.9 Allocation to Avoid Capital Account Deficits .....	18
3.10 Regulatory Allocations.....	18
3.11 Allocations for Income Tax Purposes .....	19
3.12 Individual Partner’s Tax Treatment.....	21
3.13 Distributions.....	21
Article IV MANAGEMENT .....	22
4.1 Duties and Powers of the General Partner .....	22
4.2 Expenses .....	23
4.3 Rights of Limited Partners.....	25
4.4 Other Activities of Partners.....	25
4.5 Exculpation; Indemnification.....	26
4.6 Advisory Committee.....	28
4.7 Alternative Investment Vehicles .....	29
Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS .....	29
5.1 Admission of Limited Partners .....	29
5.2 Admission of Additional General Partners .....	29
5.3 Transfer of Interests of Limited Partners .....	30
5.4 Transfer of Interest of the General Partner .....	30
5.5 Withdrawal of Interests of Partners .....	31

Article VI SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION.....	35
6.1 Soft Wind Down .....	35
6.2 Dissolution of Partnership.....	36
6.3 Liquidation of Assets .....	36
Article VII ACCOUNTING AND VALUATION; BOOKS AND RECORDS .....	37
7.1 Accounting and Reports.....	37
7.2 Valuation of Partnership Assets and Interests .....	38
7.3 Determinations by the General Partner .....	38
7.4 Books and Records .....	39
7.5 Confidentiality .....	39
Article VIII GENERAL PROVISIONS.....	41
8.1 Amendment of Partnership Agreement.....	41
8.2 Special Power-of-Attorney .....	43
8.3 Notices .....	44
8.4 Agreement Binding Upon Successors and Assigns; Delegation .....	44
8.5 Governing Law .....	44
8.6 Not for Benefit of Creditors .....	45
8.7 Dispute Resolution.....	45
8.8 Consents and Voting.....	47
8.9 Merger and Consolidation.....	48
8.10 Miscellaneous .....	48
8.11 BHCA Subject Persons .....	48
8.12 RIC Limited Partners .....	49
8.13 Bad Actor Limited Partners .....	50
8.14 Entire Agreement .....	50

THIS FOURTH AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of Highland Multi Strategy Credit Fund, L.P., dated effective as of November 1, 2014, is by and among Highland Multi Strategy Credit Fund GP, L.P., as General Partner, and certain Persons who were admitted as Limited Partners in accordance with the Prior Agreement and those Persons who are hereafter admitted as additional Limited Partners in accordance with this Agreement. Capitalized terms have the meanings set forth in Article I below.

#### PRELIMINARY STATEMENTS

- (A) The General Partner and certain of the Limited Partners have heretofore formed a limited partnership pursuant to the Act (as defined herein) by filing a Certificate of Limited Partnership with the office of the Secretary of State of the State of Delaware on December 1, 2005, and previously entered into a Limited Partnership Agreement, dated effective as of December 1, 2005, as last amended and restated by the Third Amended and Restated Limited Partnership Agreement dated as of December 31, 2007 (the “*Prior Agreement*”).
- (B) The General Partner filed an amendment to the Certificate of Limited Partnership of the Fund on August 26, 2014, changing the name of the Fund to “Highland Multi Strategy Credit Fund, L.P.”
- (C) The parties hereto desire to continue the Partnership as a limited partnership under the Act and to make certain modifications to the Prior Agreement, as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Prior Agreement is amended and restated in its entirety to read as follows:

#### Article I DEFINITIONS

For purposes of this Agreement:

“*Act*” means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17-101, et seq., as in effect on the date hereof and as amended from time to time, or any successor law.

“*Accounting Period*” means each period that starts on the day immediately following the last day of the preceding Accounting Period, and that ends on the earliest of the following dates:

- (a) the last day of a calendar month;
- (b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;



(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

“*Advisers Act*” means the U.S. Investment Advisers Act of 1940, as amended, and the rules promulgated thereunder.

“*Advisory Committee*” has the meaning set forth in Section 4.6.

“*Affiliate*” means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, “control” (including “controlled by” and “under common control”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“*Affiliated Investor*” means any Limited Partner that is an Affiliate of the General Partner or the Investment Manager, including their respective employees, members or partners and their respective immediate family members.

“*Agreement*” means this Fourth Amended and Restated Limited Partnership Agreement of the Partnership, as amended from time to time.

“*Alternative Investment Vehicle*” has the meaning set forth in Section 4.7.

“*Arbitration Rules*” has the meaning set forth in Section 8.7(b)(i).

“*Authorized Representative*” has the meaning set forth in Section 7.5(a).

“*Bad Actor Limited Partner*” means a Limited Partner that (i) would cause the disqualification of the Partnership from using Rule 506 under the Securities Act due to the operation of paragraph (d) thereof (or its successor) if such Limited Partner were to beneficially own 20% or more of the outstanding voting interest of all of the Partners (excluding any other Interests that are Non-Voting Interests) or (ii) the General Partner determines is likely to become subject to a conviction, order, judgment, finding or that would be likely to cause the disqualification described in clause (i).

“*BHCA*” means the U.S. Bank Holding Company Act of 1956, as amended.

“*BHCA Subject Person*” means any Limited Partner that is subject, directly or indirectly, to the provisions of Section 4 of the BHCA and the regulations of the Board of Governors of the Federal Reserve System promulgated thereunder.

“*Business Day*” means any day other than (a) Saturday and Sunday and (b) any other day on which banks located in New York, New York are required or authorized by law to be closed.

“*Calculation Period*” means, with respect to each Capital Account, the period commencing as of the date of the establishment of the Capital Account (in the case of the initial Calculation

Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period with respect to such Capital Account, and ending as of the close of business on the first to occur of the following:

- (a) the last day of a calendar year;
- (b) the withdrawal of all or a portion of the Interest attributable to such Capital Account (but only with respect to such withdrawn amount);
- (c) the permitted Transfer of all or any portion of such Limited Partner's Interest; or
- (d) the final distribution to such Limited Partner following the dissolution of the Partnership.

**“Capital Account”** means, with respect to each Partner, the capital account established and maintained on behalf of such Partner as described in Section 3.3.

**“Carryforward Account”** means a memorandum account to be recorded in the books and records of the Partnership with respect to each Capital Account that has an initial balance of zero and that is adjusted as follows:

- (a) As of the first day after the close of each Calculation Period for such Capital Account, the balance of the Carryforward Account is (i) increased by the amount, if any, of such the Negative Performance Change with respect to such Capital Account for such Calculation Period and (ii) reduced (but not below zero) by the amount, if any, of the Positive Performance Change with respect to such Capital Account for such Calculation Period.
- (b) As of the close of the Calculation Period, any positive balance of the Carryforward Account is further adjusted if such Capital Account has been reduced during such Calculation Period as a result of a distribution or withdrawal, by reducing such positive balance (but not below zero) by an amount determined by multiplying (i) such positive balance by (ii) a fraction, of which (A) the numerator is equal to the amount so distributed or withdrawn, and (B) the denominator is equal to the balance of such Capital Account immediately before giving effect to such distribution or withdrawal.

The Carryforward Account attributable to each Series A Capital Account shall be reset to zero on the Effective Date. For the avoidance of doubt, any gains or losses allocated by the Partnership to any Capital Account of a Limited Partner prior to the Effective Date will be inapplicable in the calculation of the Carryforward Account following the Effective Date.

**“Certificate”** means the Certificate of Limited Partnership of the Partnership referred to in Section 2.1(b).

**“Code”** means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

“**Dispute**” has the meaning set forth in Section 8.7.

“**Effective Date**” means the date set forth above as the effective date of this Agreement.

“**Election Notice**” has the meaning set forth in Section 8.11(c).

“**FAA**” has the meaning set forth in Section 8.7(b)(ii)

“**FATCA**” means Sections 1471 through 1474 of the Code, as amended, and any Regulations thereunder or official interpretations thereof, including any successor Regulations or interpretations, and any intergovernmental agreement implementing the foregoing.

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

“**Fiscal Year**” means each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner elects another fiscal year; provided that any such other fiscal year is permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, “**Fiscal Year**” means the portion of the calendar year ending on the date on which the Partnership is terminated.

“**GAAP**” means generally accepted accounting principles in the United States, as amended.

“**General Partner**” means Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership, any successor thereto, and any Person hereafter admitted as an additional general partner, in its capacity as general partner of the Partnership.

“**Indemnified Person**” has the meaning set forth in Section 4.5(a).

“**Interest**” means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

“**Investment Company Act**” means the U.S. Investment Company Act of 1940, as amended, and the regulations promulgated thereunder.

“**Investment Management Agreement**” means the investment management agreement between the Investment Manager, the General Partner, the Offshore Fund and the Partnership.

“**Investment Manager**” means Highland Capital Management, L.P., a Delaware limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership in accordance with the Investment Management Agreement.

“**Investments**” means investment in securities, assets and other financial or intangible investment instruments, contracts or products made as described in the Partnership’s offering memorandum.

“**Limited Partners**” means any Person who is a limited partner of the Partnership (which, except as otherwise indicated, will include a substituted Limited Partner) at the time of reference thereto, in such Person’s capacity as a limited partner of the Partnership. For all purposes of the Act, the Limited Partners of the Partnership will constitute a single class or group of limited partners.

“**Majority-in-Interest of Limited Partners**” means Limited Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all Limited Partners.

“**Management Fee**” means, with respect to each Capital Account, an amount equal to one fourth of (i) 1.5% of each Series A Capital Account balance; (ii) 1.5% of each Series B Capital Account balance; (iii) 1.0% of each Series C Capital Account balance; and (iv) 2.0% of each Series D Capital Account balance, which amounts are calculated on the first Business Day of each calendar quarter. Management Fees shall be appropriately adjusted for contributions during any partial quarter.

“**Negative Basis**” means, with respect to any Partner and as of any time of calculation, the excess of such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest) over the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership.

“**Negative Basis Partner**” means any Partner who withdraws from the Partnership and who has a Negative Basis as of the Withdrawal Date, but such Partner shall cease to be a Negative Basis Partner at such time as it has received allocations pursuant to Section 3.11(d) equal to such Partner’s Negative Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

“**Net Assets**” means the total value, as determined by the General Partner or its delegate(s) in accordance with Section 7.2, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6.). Except as otherwise expressly provided herein, Net Assets as of the first day of any Accounting Period are determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Accounting Period, but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Accounting Period, and after giving effect to Management Fee charges, and Net Assets as of the last day of any Accounting Period are determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

- (a) any Performance Allocation as of the date on which such determination is made;

(b) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(c) withholding or other taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves, holdbacks or other amounts recorded pursuant to Section 3.6 and any increases or decreases in the value of any Restricted New Issues pursuant to Section 3.8(b) and other amounts specially allocated pursuant to Section 3.8 during the Accounting Period ending as of the date on which such determination is made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Accounting Period.

“**Net Loss**” means any amount by which the Net Assets as of the first day of an Accounting Period exceed the Net Assets as of the last day of the same Accounting Period.

“**Net Profit**” means any amount by which the Net Assets as of the last day of an Accounting Period exceed the Net Assets as of the first day of the same Accounting Period.

“**New Issue Rules**” has the meaning set forth in Section 3.8(b).

“**Nonrecourse Deductions**” has the meaning set forth in Regulations Section 1.704-2(b)(1) and (c).

“**Non-Voting Interest**” means an Interest, the holder of which is not entitled to vote, consent or withhold consent with respect to any Partnership matter (including but not limited to mergers, sales of substantially all assets or consolidations of the Partnership), except as otherwise expressly provided in this Agreement.

“**Offshore Fund**” means Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company and a Limited Partner of the Partnership.

“**Orderly Realization**” has the meaning set forth in Section 6.1.

“**Other Account**” means any assets or investments of the General Partner, or any assets managed by the General Partner or any Affiliate of the General Partner for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

“**Partner**” means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and “**Partners**” means the General Partner and all of the Limited Partners.

“**Partnership**” means the limited partnership governed by this Agreement.

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

**“Partnership Percentage”** means a percentage established for each Capital Account on the Partnership’s books as of the first day of each Accounting Period. The Partnership Percentage of a Capital Account for an Accounting Period is determined by dividing the amount of such Capital Account as of the beginning of the Accounting Period by the sum of the Capital Accounts of all of the Partners as of the beginning of the Accounting Period. The numerator and denominator of the above shall be calculated after crediting all capital contributions to the Capital Account or Partnership, as appropriate, which are effective as of such date, net of all deductions, including Management Fees. The sum of the Partnership Percentages of all Capital Accounts for each Accounting Period shall equal 100%.

**“Performance Allocation”** means, for each Capital Account of a Limited Partner, 20% of the amount by which (a) the Positive Performance Change for such Calculation Period for such Capital Account, if any, exceeds (b) any positive balance in the Carryforward Account for such Capital Account as of the most recent prior date as of which any adjustment has been made thereto.

**“Performance Change”** means, with respect to each Capital Account of a Limited Partner for each Calculation Period, the difference between:

(a) the sum of (i) the balance of such Capital Account as of the close of the Calculation Period (after giving effect to Management Fees and all allocations to be made to such Capital Account as of such date, including such Capital Account’s allocable share of any profits or losses pursuant to Section 3.8 and any credits or debits of any applicable carrying charge associated therewith other than any Performance Allocation to be debited against such Capital Account), plus (ii) any debits to such Capital Account during the Calculation Period to reflect any actual or deemed distributions or withdrawals with respect to such Capital Account, plus (iii) any debits to such Capital Account during the Calculation Period to reflect any items allocable to such Capital Account pursuant to Section 3.5(b) or (c); and

(b) the balance of such Capital Account as of the commencement of the Calculation Period.

If the amount specified in clause (a) exceeds the amount specified in clause (b) such difference is a **“Positive Performance Change,”** and if the amount specified in clause (b) exceeds the amount specified in clause (a), such difference is a **“Negative Performance Change.”**

The Performance Change will be computed separately for each Capital Account (and thus each separately maintained capital sub-account created to reflect an additional contribution to a Capital Account). Thus, if a Limited Partner has multiple Capital Accounts, the Performance Change will be calculated separately for each Capital Account and the resulting “Positive Performance Change” and “Negative Performance Change” shall be separately allocated to each such Capital Account and shall not be netted against each other.

**“Person”** means any individual, partnership, corporation, limited liability company, trust or other entity or any government (including a governmental agency or political subdivision thereof).



“**Positive Basis**” means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership over such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest).

“**Positive Basis Partner**” means any Partner who withdraws from the Partnership and who has a Positive Basis as of the Withdrawal Date, but such Partner ceases to be a Positive Basis Partner at such time as it has received allocations pursuant to Section 3.11(c) equal to such Partner’s Positive Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

“**Prior Agreement**” has the meaning set forth in the Preliminary Statements to this Agreement.

“**Realization Period**” has the meaning set forth in Section 6.1.

“**Recent Amendments**” means the changes to the terms of an investment in the Partnership as contemplated in this Agreement and the constituent documents related thereto, including, but not limited to, the re-designation of all Interests held by Limited Partners on the Effective Date as Series A Interests.

“**Regulations**” means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

“**Regulatory Allocations**” has the meaning set forth in Section 3.10(d).

“**Restricted Capital Accounts**” has the meaning set forth in Section 3.8(b).

“**Restricted Issues**” has the meaning set forth in Section 3.8(b).

“**Revocation Notice**” has the meaning set forth in Section 8.11(c).

“**RIC Limited Partner**” means a Limited Partner that is registered as an investment company under the Investment Company Act.

“**Schedule of Partners**” means a schedule to be maintained by the General Partner containing the following information with respect to each Partner: (a) name; (b) address; (c) date of admission; (d) amount and date of all capital contributions and withdrawals; and (e) the amount and date of any permitted Transfers.

“**Series**” means a designated series of Interests established in accordance with this Agreement and having such terms as the General Partner determines.

“**Series A Capital Account**” means the Capital Account attributable to a Limited Partner’s Series A Interest.



“**Series A Interests**” means a Series of Interests having the rights and obligations applicable to Series A Interests as set forth in this Agreement.

“**Series A Lock-Up**” has the meaning set forth in Section 5.5(c)(i).

“**Series A Withdrawal Date**” has the meaning set forth in Section 5.5(c)(i).

“**Series B Capital Account**” means the Capital Account attributable to a Limited Partner’s Series B Interest.

“**Series B Interests**” means a Series of Interests having the rights and obligations applicable to Series B Interests as set forth in this Agreement.

“**Series B Withdrawal Date**” has the meaning set forth in Section 5.5(c)(ii).

“**Series C Capital Account**” means the Capital Account attributable to a Limited Partner’s Series C Interest.

“**Series C Interests**” means a Series of Interests having the rights and obligations applicable to Series C Interests as set forth in this Agreement.

“**Series C Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iii).

“**Series D Capital Account**” means the Capital Account attributable to a Limited Partner’s Series D Interest.

“**Series D Interests**” means a Series of Interests having the rights and obligations applicable to Series D Interests as set forth in this Agreement.

“**Series D Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iv).

“**Sub-Series of Shares**” refers to sub-series of the shares of the Offshore Fund, as created from time to time, for purposes of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received from shareholders at different times.

“**Suspension**” has the meaning set forth in Section 5.5(1).

“**Super-Majority-in-Interest of Limited Partners**” means Limited Partners whose Partnership Percentages represent more than 75% of the aggregate Partnership Percentages of all Limited Partners.

“**Transfer**” means any direct, indirect or synthetic sale, exchange, transfer, assignment, pledge, encumbrance, charge, exchange, hypothecation, placing of a lien or a security interest on an Interest or any other disposition by a Partner of its Interest to or in favor of another party, whether voluntary or involuntary (including, but not limited to, being offered or listed on or through any placement agent, intermediary, online service, site, agent or similar Person).

“*Withdrawal Date*” means, as applicable, the Series A Withdrawal Date, the Series B Withdrawal Date, the Series C Withdrawal Date, and the Series D Withdrawal Date or any other effective date of withdrawal pursuant to Section 5.5.

## Article II ORGANIZATION

### 2.1 Continuation of Limited Partnership

- (a) The General Partner and the Limited Partners hereby agree to continue the Partnership as a limited partnership under and pursuant to the Act and this Agreement.
- (b) The General Partner has executed and filed with the Secretary of State of the State of Delaware a Certificate, and shall execute, acknowledge and file with the Secretary any amendments thereto as may be required by the Act, and any other instruments, documents and certificates which, in the opinion of the Partnership’s legal counsel, may from time to time be required by the laws of the United States of America, the State of Delaware or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership. The General Partner shall cause any required amendment to the Certificate to be filed promptly following the event requiring such amendment. All amendments may be signed by the General Partner (as required by the Act) and may be signed either personally or by an attorney-in-fact.
- (c) The parties hereto agree to operate the Partnership as a limited partnership pursuant to the provisions of the Act and of this Agreement and agree that the rights and liabilities of the Limited Partners and the General Partner are as provided in the Act, for limited partners and the general partner except as provided herein.
- (d) The parties hereto acknowledge and agree that the Partnership shall be classified as a “partnership” and not as an association taxable as a corporation for U.S. federal income tax purposes. No election may be made by the Partners or the Partnership to treat the Partnership as other than a “partnership” for U.S. federal, state and/or local income tax purposes and, to the extent necessary, the Partners or Partnership shall make any election to treat the Partnership as a “partnership.” The Partners shall treat the Partnership consistently with its status as a “partnership” for U.S. federal income tax purposes and agree to undertake any further action which is necessary to treat the Partnership as such, and shall not undertake any action that is inconsistent with the Partnership’s status as a “partnership” for U.S. federal, state and/or local income tax purposes.
- (e) The General Partner may change the domicile of the Partnership to another state, country or other jurisdiction where advisable due to legal, tax or other

considerations; provided that no such change of domicile would reasonably be expected to have a material adverse effect on the Limited Partners.

## **2.2 Name of Partnership**

- (a) The name of the Partnership is Highland Multi Strategy Credit Fund, L.P. or such other name as the General Partner may hereafter adopt, subject to causing an amendment to the Certificate to be filed with the Secretary of State of the State of Delaware in accordance with the Act. The General Partner shall send a notice of any change of name to the Limited Partners. All business of the Partnership shall be conducted under such name or under such other name as the General Partner deems appropriate.
- (b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's termination or at such time as there ceases to be a general partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner without payment by the assignee(s) of any consideration therefor.

## **2.3 Principal Office; Registered Office**

- (a) The Partnership's principal office shall be at such location as the General Partner may designate from time to time.
- (b) The Partnership's registered office in the State of Delaware is at 1209 Orange Street, County of New Castle, Wilmington, Delaware 19801, and the registered agent of the Partnership in the State of Delaware is The Corporation Trust Company, unless a different registered office or agent is designated from time to time by the General Partner.

## **2.4 Term of Partnership**

The term of the Partnership commenced on the date on which the Certificate was filed with the Secretary of State of the State of Delaware and continues until the Partnership is dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1). The legal existence of the Partnership as a separate legal entity continues until the cancellation of the Certificate.

## **2.5 Object and Powers of Partnership**

- (a) The object and business of the Partnership is (i) to purchase, sell (including short sales), invest and trade in Investments, (ii) to engage in financial transactions, including borrowing, financing, pledging, hedging and other derivative transactions relating thereto for the benefit of the Partnership, (iii) to engage in any lawful act or activity of which limited partnerships may be formed under the Act and (iv) to engage in any and all activities necessary or incidental to the foregoing.

- (b) The Partnership possesses and may exercise all such powers and privileges as the General Partner considers necessary, convenient or incidental to the conduct, promotion or attainment of the object of the Partnership.

## **2.6 Liability of Partners**

In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any liability for the repayment or discharge of the debts and obligations of the Partnership except to the extent provided herein or as required by the Act.

## **2.7 Actions by Partnership**

The Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out its objects.

## **2.8 Reliance by Third Parties**

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

## **2.9 UCC Status of Limited Partner Interests**

- (a) For purposes of the grant, pledge, attachment or perfection of a security interest in an Interest or otherwise, the Interests are deemed to be “securities” within the meaning of Section 8-102(a)(15) and as provided by Section 8-103(c) of the Uniform Commercial Code as in effect from time to time in the State of Delaware or analogous provisions in the Uniform Commercial Code in effect in any other jurisdiction.
- (b) Any Interest may be evidenced by a certificate of partnership interest issued by the Partnership in such form as the General Partner may approve. Every certificate representing an Interest shall bear a legend substantially in the following form:

“For the purposes of Section 8-103 of the Uniform Commercial Code of the United States of America in effect in any relevant jurisdiction, the certificates representing an interest in the Limited Partnership constitute “securities” within the meaning of Section 8-102 and Section 8-103 of the Uniform Commercial Code.”

## **2.10 Series of Interests**

- (a) The General Partner, at any time, may without notification to or consent of the other Limited Partners, create and offer different Series of Interests in the Partnership with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, Management Fees, Performance Allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other

differences) as the General Partner may determine upon the issuance of such Series; provided that such Series would not reasonably be expected to have a material adverse effect on the existing Limited Partners. The terms and rights of such Series may be set forth in a supplement to the Partnership's offering memorandum or a "side letter" or other agreement, which the General Partner may incorporate by reference.

- (b) All Interests in the Partnership held by Limited Partners (including Affiliated Investors) as of the Effective Date are hereby designated as Series A Interests.

### **Article III CAPITAL**

#### **3.1 Contributions to Capital**

- (a) The minimum required initial capital contribution of each Limited Partner is the amount determined by the General Partner. The General Partner may change the required minimum initial contribution amount at any time with respect to any, all or less than all Limited Partners.
- (b) The Partnership may accept additional contributions at such times as the General Partner may permit, but no Limited Partner shall be obligated to make any additional capital contribution to the Partnership, subject to the provisions of Section 3.5(b) and any contrary provision of the Act. The minimum required additional capital contribution of any existing Limited Partner to the Partnership shall be the amount the General Partner may determine. The General Partner may change the required minimum additional contribution amount at any time with respect to any, all or less than all Limited Partners.
- (c) The General Partner or an Affiliate has made a capital contribution to the Partnership as set forth in the Schedule of Partners. Except as required by the Act, the General Partner is not required to make any additional capital contributions to the Partnership. The General Partner may, however, make capital contributions to the Partnership in such amounts and at such times as it may determine. The General Partner or any of its Affiliates have the right at any time to make additional capital contributions as a Limited Partner or General Partner. If the General Partner or any of its Affiliates (including their associated Persons, such as officers, directors, partners, members or employees or any of their family members) makes a capital contribution as a Limited Partner, the General Partner or the Investment Manager shall have authority to waive the Management Fee and/or Performance Allocation with respect to such Limited Partner.
- (d) Except as otherwise permitted by the General Partner (i) initial or additional capital contributions by each Partner shall be paid in one installment with cash and/or Investments having an aggregate value as set forth in the Partnership's books and records, and (ii) initial contributions are due as of the date of admission of such Person as a Limited Partner of the Partnership. Whether Investments may be

accepted as a contribution to the capital of the Partnership is determined by the General Partner.

### **3.2 Rights of Partners in Capital**

- (a) No Partner shall be entitled to interest on its capital contributions to the Partnership. For the avoidance of doubt, interest income, if any, earned on subscription amounts remitted to the Partnership prior to the date that an Interest is issued to a Partner shall be payable to the Partnership and not applied toward the purchase of an Interest.
- (b) No Partner shall have the right to the return of any capital contribution to the Partnership except (i) upon withdrawal of such Partner pursuant to Section 5.5 or (ii) upon the dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return is limited to the value of the Capital Account(s) of the Partner. The General Partner shall not be liable for the return of any such amounts.

### **3.3 Capital Accounts**

- (a) The Partnership shall maintain a separate Capital Account for each Partner. In the event a Limited Partner invests in more than one Series of Interests, the Partnership will maintain a separate Capital Account with respect to each Series of Interests held by such Limited Partner, with each such Capital Account being treated as if it were the Capital Account of a separate Partner for purposes of computing the Performance Allocation, the Management Fee and the withdrawal rights attributable to the Series.
- (b) The General Partner may, in its discretion, maintain a separate sub-account for such purposes as the General Partner may determine appropriate, including for recordkeeping, accounting or reporting or to otherwise give effect to the provisions of this Agreement. Each Capital Account shall reflect the aggregate sum of the balances in such Partner's Capital Account.
- (c) If a Partner makes an additional capital contribution to an existing Capital Account, the Capital Account will be sub-divided into separate capital sub-accounts attributable to each separate capital contribution, with each capital sub-account treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights and restrictions applicable to each capital sub-account. References herein to a Partner's "Capital Account" include any such separately maintained capital sub-accounts.
- (d) The Partnership will issue to the Offshore Fund an Interest and maintain capital sub-accounts that correspond to each Sub-Series of Shares and each capital sub-account is treated separately for determining Management Fees, the Performance Allocations and withdrawal rights.



- (e) Each Capital Account has an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to such Capital Account.
- (f) Each Capital Account shall be increased by such Capital Account's allocable share of the Net Profits allocated by the Partnership to such Capital Account pursuant to Section 3.4.
- (g) Each Capital Account shall be reduced by (i) the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 5.5 or 6.3, including any amount deducted from any such withdrawal or distribution pursuant to Section 5.5(h), (ii) such Capital Account's allocable share of the Net Losses allocated by the Partnership to such Capital Account pursuant to Section 3.4, (iii) such Capital Account's *pro rata* portion of the expenses allocable (or specially allocable) by the Partnership pursuant to Section 3.5, (iv) such Capital Account's allocable share of the Performance Allocation allocable pursuant to Section 3.7, and (v) such Capital Account's *pro rata* portion of the expenses payable by the Partnership pursuant to Section 4.2(b).
- (h) The Capital Account of the Investment Manager, as a special Limited Partner of the Partnership, shall be increased by the amount of the Performance Allocation allocated to such Capital Account and the investment gains therein.
- (i) Each Capital Account shall also be adjusted to reflect all other allocations and other changes in the value of such Capital Account not otherwise described in this Section 3.3 in the manner specified in the remaining provisions of this Article III.

### **3.4 Allocations of Net Profit and Net Loss**

Subject to Sections 3.5 through 3.10, as of the last day of each Accounting Period, any Net Profit or Net Loss of such Accounting Period shall be separately allocated among and credited to or debited against the Capital Accounts of the Partners in proportion to their respective Partnership Percentages for such Accounting Period.

### **3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures**

- (a) As of the first Business Day of each calendar quarter, each Capital Account's Management Fee for such calendar quarter shall be debited against such Capital Account and paid by the Partnership to the Investment Manager. Capital contributions accepted after the commencement of the calendar quarter shall be subject to a prorated Management Fee reflecting the time remaining during that quarter. The Investment Manager may reduce or eliminate the Management Fee with respect to any Partner (or Capital Account) in its sole discretion; provided that such reduction or elimination shall not increase the Management Fee payable by any other Partner (or Capital Account).
- (b) To the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely



conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments on behalf of or with respect to any Partner or Partners (including backup withholding or withholding under FATCA), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership pays or incurs any withholding tax or other tax obligation (including under FATCA) with respect to the income allocable or distributable to one or more Partners, then the amount of such withholding tax or tax obligation shall be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount shall be debited against the Capital Account(s) of such Partner or Partners as of the close of the Accounting Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors shall make a contribution to the capital of the Partnership, within 10 days following request by the General Partner, the amount of such excess. The General Partner is not obligated to apply for or obtain a reduction of or exemption from withholding tax on behalf of any Partner that may be eligible for such reduction or exemption, or be otherwise obligated to structure Investments so as to reduce or avoid any such withholding tax.

- (c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership, to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be specially allocated only to the Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such allocations shall be debited from the relevant Capital Accounts of such Partners as of the close of the Accounting Period during which any such items were accrued by the Partnership.

### **3.6 Reserves; Adjustments for Certain Future Events**

- (a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets and proportionately against the Capital Accounts for contingent liabilities or probable losses, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be debited or credited, as the General Partner deems appropriate, to the Capital Accounts of current Partners that (i) are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or (ii) were Partners, or are transferees from Persons who were Partners, at the time of the act or omission giving rise to the contingent liability for which the reserve has been established by the General Partner.

- (b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately debited or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period.

### 3.7 Performance Allocation

- (a) The Performance Allocation shall be debited against each Capital Account of each Limited Partner as of the last day of each Calculation Period with respect to such Capital Account, and the amount so debited shall simultaneously be credited to the Capital Account of the Investment Manager, as a special Limited Partner of the Partnership.
- (b) The Investment Manager may waive or alter the Performance Allocation with respect to any Limited Partner.

### 3.8 Limited Participation Investments and New Issues

- (a) If the General Partner determines that for legal, tax, regulatory or bona fide other reasons as to which the General Partner and any Partner may agree such Partner should not participate (or should receive a reduced participation) in the Net Profit or Net Loss with respect to any Investment, the General Partner may allocate Net Profit or Net Loss, if any, with respect to such Investment only to Partners to whom the restrictions on participating in that Investment do not apply. In order to allocate Net Profit or Net Loss accordingly, the General Partner may establish and maintain a memorandum account in the accounting records of the Partnership on a Partner-by-Partner basis with respect to each such Investment. The Net Profit and Net Loss and expenses relating to such Investment will be separately calculated and allocated based on each participating Partner's balance in such memorandum account for such Investment divided by the sum of the balances of all memorandum accounts for all participating Partners. In order to compensate a Limited Partner who is not participating in an Investment pursuant to this Section 3.8 for the use of such Partner's share of Partnership capital to purchase the Investment, the General Partner may credit the non-participating Partner's Capital Account (and correspondingly debit the Capital Account of the participating Partners with a carrying charge). Any distributions from the memorandum account will be based on the participating Partner's respective percentage interest in such Investment.
- (b) Pursuant to certain rules of FINRA ("*New Issue Rules*"), members of FINRA are permitted to sell to the Partnership certain publicly-offered securities ("*Restricted Issues*") only if the Capital Accounts of Partners connected with the securities industry or executive officers or directors of investment banking clients of underwriters ("*Restricted Capital Accounts*") are not restricted from sharing a beneficial interest in such Restricted Issues in accordance with the provisions of the New Issue Rules. Notwithstanding the provisions of Section 3.4, if the Partnership chooses to invest in Restricted Issues, the Partnership shall not allocate any items

of income, gain, loss, deduction and credit that relate to investments in Restricted Issues to Restricted Capital Accounts except to the extent permitted by the New Issue Rules, and shall instead allocate such items among the other Capital Accounts on a *pro rata* basis. To the extent the New Issue Rules permit certain Persons with Restricted Capital Accounts to participate in profits and losses from Restricted Issues, the General Partner shall allocate such profits and losses from Restricted Issues among such Restricted Capital Accounts on a *pro rata* basis or on such other basis that the General Partner reasonably determines ensures compliance with the New Issue Rules. To the extent consistent with the New Issue Rules, the General Partner shall determine when all Capital Accounts may participate in the Net Profit and Net Loss from any Restricted Issue. The General Partner shall value any Restricted Issue at such time at the then-current price of the security in the secondary market.

### 3.9 Allocation to Avoid Capital Account Deficits

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Accounting Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.9 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.9 not previously recovered.

### 3.10 Regulatory Allocations

Notwithstanding anything to the contrary in this Agreement:

- (a) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; provided that an allocation pursuant to this Section 3.10(a) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.10(a) were not in this Agreement. This Section 3.10(a) is intended to constitute a “qualified income offset” within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations and is to be interpreted consistently therewith.
- (b) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 3.10, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, the Partners shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an

amount equal to the portion of any such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Sections 1.704-2(f) and (g). This Section 3.10(b) is intended to comply with the minimum gain chargeback requirement in such Sections of the Regulations and shall be interpreted consistently therewith.

- (c) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner shall be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 3.10(c) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.10(a) and this Section 3.10(c) were not in this Agreement.
- (d) Curative Allocations. The allocations set forth this Section 3.10 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.10. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Partnership Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).
- (e) Nonrecourse Deductions. Any Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Partners in accordance with their Partnership Percentages.
- (f) Section 704(b) Compliance. The allocations provided in this Section 3.10 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith.

### 3.11 Allocations for Income Tax Purposes

- (a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for U.S. federal

income tax purposes in each Fiscal Year shall be allocated among the Partners in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Account, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership shall establish and maintain records which shall show the extent to which the Capital Account of each Partner comprises amounts that have not been reflected in the taxable income of such Partner as of the last day of each Fiscal Year. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Foreign tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement shall be determined by the General Partner.

- (b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations; provided that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, shall be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.
- (c) Positive Basis Allocations. If the Partnership recognized gains or items of gross income (including short-term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, *pro rata* in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the



liquidating share of any Positive Basis Partner, that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), then such Positive Basis Partner may be allocated an amount of such gains or items of gross income equal to the amount, if any, by which its or its Positive Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(c).

- (d) Negative Basis Allocations. If the Partnership recognizes net losses or items of gross loss or deduction (including short-term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Negative Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, *pro rata* in proportion to the respective Negative Basis of each such Negative Basis Partner, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner has been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its or its Negative Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(d).

### 3.12 Individual Partner's Tax Treatment

Each Partner agrees not to treat, on any U.S. federal, state, local and/or non-U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership or which would result in inconsistent treatment, and each Partner further agrees to treat, on any U.S. federal, state, local and/or non-U.S. income tax return in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner consistent with the treatment of such item by the Partnership.

### 3.13 Distributions

- (a) The Partnership shall make distributions in respect of withdrawals in accordance with Section 5.5 and liquidation in accordance with Section 6.3. In addition, the General Partner may make other distributions at the times and in the amounts the

General Partner determines. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

- (b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner on any account of its Interest if such distribution would violate Section 17-607 of the Act or other applicable law.

#### **Article IV MANAGEMENT**

##### **4.1 Duties and Powers of the General Partner**

- (a) Subject to the terms and conditions of this Agreement, the General Partner has complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for (i) all investment and investment management decisions to be undertaken on behalf of the Partnership and (ii) managing and administering the affairs of the Partnership, and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership, whether or not such action or authority is expressly provided for in this Agreement. Without limiting the foregoing generality, the General Partner's powers include the power to borrow, obtain leverage or otherwise incur indebtedness with respect to the Partnership's capital.
- (b) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner has full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1.
- (c) The General Partner may delegate to any other Person, including the Investment Manager, any power and authority vested in the General Partner pursuant to this Agreement.
- (d) The General Partner is the "tax matters partner" for purposes of Section 6231(a)(7) of the Code. The General Partner has the exclusive authority in its determination to make any elections required or permitted to be made by the Partnership under any provisions of the Code or any other revenue laws. The General Partner shall be entitled to be reimbursed by the Partnership for all costs and expenses incurred by it in connection with any administrative or judicial proceeding affecting tax matters of the Partnership and/or the Partners in their capacity as such and to be indemnified by the Partnership (solely out of Partnership assets) with respect to any



action brought against it in connection with any judgment in or settlement of any such proceeding.

- (e) Every power vested in the General Partner pursuant to this Agreement and any decision or determination that it is permitted to make is to be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein, and the General Partner shall be entitled to consider in making such decisions or determinations only such interests and factors as it desires, including its own interests. No provision of this Agreement is to be construed to require the General Partner to violate the Act, the Advisers Act, or any other law, regulation or rule of any self-regulatory organization. Notwithstanding any other provision of this Agreement, whenever in this Agreement, the General Partner is permitted or required to make a decision in its “good faith” or under another expressed standard, the General Partner must act under such express standard and will not be subject to any other or different standards.
- (f) Each Limited Partner shall deliver to the General Partner, upon a reasonable request, (i) an affidavit or certificate in form satisfactory to the General Partner that is sufficient to establish that the applicable Partner (and its partners, members, and/or beneficial owners, as the case may be) is not subject to withholding under the provisions of any U.S. federal, state, local, non-U.S. or other tax laws, or with respect to such Partner’s tax status under such laws, and (ii) any information or documentation prescribed under FATCA or as may be necessary, as reasonably determined by the General Partner, for the Partnership to comply with its obligations under FATCA (including, but not limited to, information with respect to citizenship, residency, ownership or control of such Partner). Each Limited Partner shall reasonably cooperate with the General Partner in connection with any tax audit of the Partnership, or any existing or former Investment.

## 4.2 Expenses

- (a) Except as otherwise provided herein, and in consideration of the Management Fee, the General Partner and the Investment Manager shall each pay all of its own operating and overhead costs, without reimbursement by the Partnership.
- (b) The Partnership shall pay, or reimburse the General Partner and the Investment Manager for, all other reasonable costs, fees and expenses arising in connection with the Partnership’s operations. Such expenses payable by the Partnership include the following:
  - (i) all costs, fees and expenses directly related to Investments or prospective Investments (whether or not consummated) of the Partnership, including research and due diligence costs related to an Investment; brokerage commissions and other execution and transaction costs, interest on, and commitment fees and expenses arising out of, debit balances or borrowings; exchange, clearing and settlement charges; fees and expenses of any third-party providers of “back office” and “middle office” services relating to

trade settlement; travel expenses; appraisal fees; investment banking fees and expenses; borrowing charges on Investments sold short; custody fees; and fees of consultants and finders relating to Investments or prospective Investments of the Partnership; the costs, fees and expenses of any appraisers, accountants or other experts engaged by the General Partner or the Investment Manager as well as other expenses directly related to the Partnership's Investments;

- (ii) any withholding, transfer or other taxes imposed on the Partnership;
- (iii) the reasonable, out-of-pocket fees, costs and expenses (including legal fees and expenses) incurred to comply with any applicable law, rule or regulation (including regulatory filings or other expenses of the Partnership and the pro rata portion of any regulatory and other expenses of the General Partner or the Investment Manager, which benefit or are attributable to the Partnership);
- (iv) the reasonable, out-of-pocket costs, fees and expenses for financial and tax accounting, bookkeeping and reporting services, and administrative services performed by any Person on behalf of the Partnership (e.g., the administrator of the Partnership), including the cost of any audit of the Partnership's financial statements and the preparation of its tax returns (including with respect to FATCA compliance);
- (v) Management Fees;
- (vi) the reasonable, out-of-pocket costs, fees and expenses of legal counsel and any other litigation or investigation involving Partnership activities;
- (vii) specific expenses incurred in obtaining, maintaining or performing systems, research and other information, including information service subscriptions, utilized with respect to the Partnership's Investments including without limitation for portfolio management, valuations and accounting purposes, including the costs of statistics and pricing services, service contracts for quotation equipment and related hardware, software, phone and internet charges;
- (viii) the reasonable, out-of-pocket costs, fees and expenses associated with the Recent Amendments, including legal and accounting fees, printing costs, reporting and providing information to existing and prospective Partners, obtaining requisite consent from Limited Partners, travel fees and expenses related to the Partnership's offering, filing fees (including any "blue sky" filing fees) and other out-of-pocket expenses and compliance with any applicable federal and state laws;
- (ix) the costs and expenses associated with meetings of Partners;

- (x) the expenses of the Advisory Committee and the members thereof, including any indemnification expenses;
  - (xi) the costs associated with maintaining “directors and officers” or similar liability insurance for the benefit of the Partnership, the General Partner, the Investment Manager, or any other Indemnified Person; and
  - (xii) any costs or expenses of winding up and liquidating the Partnership and
  - (xiii) all costs, fees and expenses associated with the ongoing offering of Limited Partner Interests.
- (c) Expenses with respect to Section 4.2(b)(viii) above will be amortized by the Partnership over a period of 36 months from the Effective Date; however, the General Partner may limit the amount of expenses amortized so that the Partnership’s audited financial statements do not contain qualification.
- (d) Except as otherwise provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6, 3.8 and 5.5(i), expenses are generally borne *pro rata* by the Partners in accordance with their respective Partnership Percentages.
- (e) If the General Partner or the Investment Manager, as appropriate, incurs any Partnership expenses for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Partnership and any Other Account, the General Partner or the Investment Manager, as appropriate, shall allocate such expense among the Partnership and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.
- (f) The General Partner and the Investment Manager may, to the extent disclosed in the Partnership’s offering memorandum or otherwise disclosed to the Limited Partners, use “soft dollars” generated by the Partnership. Use of “soft dollars” by the General Partner or the Investment Manager as disclosed herein shall not constitute a breach by either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

#### **4.3 Rights of Limited Partners**

The Limited Partners may not take any part in the management, control or operation of the Partnership’s business, and have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law.

#### **4.4 Other Activities of Partners**

- (a) The General Partner is not required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs

of the Partnership as it may determine to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

- (b) Each Partner acknowledges and agrees that the General Partner, its Affiliates and their respective partners, managers, directors, officers, shareholders, members or employees may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, Investments, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other issuers, partners of any partnership, or trustee of any trust, or entering into any other commercial arrangements, whether or not any such activities may conflict with any interest of the parties with respect to the Partnership. Without in any way limiting the foregoing, each Partner hereby acknowledges that none of the General Partner, its Affiliates or their respective partners, managers, directors, officers, shareholders, members or employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the Partnership, but may refer the same to any other party or keep such opportunities for their own benefit.
- (c) The General Partner and its Affiliates shall act in a manner that each considers fair, reasonable and equitable on an overall basis in allocating investment opportunities to the Partnership and any Other Account. The General Partner and its Affiliates shall allocate investment opportunities as set forth in their policies and procedures, as may be amended from time to time, and as communicated to Limited Partners through the Partnership's private offering memorandum for Interests or otherwise.
- (d) Each of the Partners hereby waives and covenants not to sue on the basis of any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners *inter se* which is or may be inconsistent with this Section 4.4.

#### 4.5 Exculpation; Indemnification

- (a) The General Partner, the Investment Manager, any of their Affiliates, each direct or indirect member, manager, partner, director, officer, shareholder and employee of any of the foregoing and, with the approval of the General Partner, any agent of any of the foregoing (including their respective executors, heirs, assigns, successors or other legal representatives) (each an "***Indemnified Person***") shall not be liable to the Partnership or to any of the Limited Partners for any loss or damage occasioned by any acts or omissions in the performance of services under this Agreement or the Investment Management Agreement, or otherwise in connection with the Partnership, its Investments or operations, unless such loss or damage has occurred by reason of the willful misconduct, fraud or gross negligence of such Indemnified Person or as otherwise required by law; provided that nothing in this Agreement is to be construed as waiving any legal rights or remedies which the Partnership may have under state or federal securities laws.

- (b) The Partnership (but not the Partners individually) shall indemnify each Indemnified Person to the fullest extent permitted by law against any cost, expense (including reasonable attorneys' fees), judgment or liability incurred by or imposed upon it in connection with any action, suit or proceeding (including any proceeding before any judicial, administrative or legislative body or agency) to which it may be made a party or otherwise be involved or with which it shall be threatened by reason of being or having been General Partner, having been the Investment Manager pursuant to the Investment Management Agreement or its having provided services to the Partnership; provided that the Indemnified Person is not so indemnified to the extent such cost, expense, judgment or liability has been finally determined (i) in a non-appealable decision on the merits in any such action, suit or proceeding, or (ii) on a plea of *nolo contendere*, to have been incurred or suffered by the Indemnified Person solely by reason of willful misconduct, fraud or gross negligence by the Indemnified Person.
- (i) The right to indemnification granted by this Section 4.5 shall be in addition to any rights to which the Indemnified Person may otherwise be entitled and shall inure to the benefit of the successors or assigns of such Indemnified Person. The Partnership shall pay the expenses incurred by the Indemnified Person in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by the Indemnified Person to repay such payment if there is an adjudication or determination that it is not entitled to indemnification as provided herein; provided that no such advance shall be made in connection with any action brought by a Majority-in-Interest of the Limited Partners.
- (ii) In any suit in the name of the Partnership to recover expenses advanced pursuant to the terms of an undertaking, the Partnership shall be entitled to recover such expenses upon a final adjudication that the Indemnified Person or other Person claiming a right to indemnification hereunder has not met the applicable standard of conduct set forth in Section 4.5(a). In any such suit brought to enforce a right to indemnification or to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnified Person or other Person claiming a right to indemnification shall not be entitled to be indemnified, or to an advancement of expenses, hereunder shall be on the Partnership (or any Limited Partner acting derivatively or otherwise on behalf of the Partnership or the Limited Partners) unless otherwise required by applicable law.
- (iii) Each Indemnified Person may not satisfy any right of indemnity or reimbursement granted in this Section 4.5 or to which it may be otherwise entitled except out of the assets of the Partnership, and no Partner shall be personally liable with respect to any such claim for indemnity or reimbursement. The General Partner may obtain appropriate insurance on behalf, and at the expense, of the Partnership to secure the Partnership's obligations hereunder.

- (iv) Nothing in this Agreement is to be construed as to provide for the indemnification of an Indemnified Person for any liability (including liability under U.S. federal securities laws) to the extent that such indemnification would be in violation of applicable law but is to be construed so as to effectuate this Section 4.5 to the fullest extent permitted by law.
- (v) Each Indemnified Person shall be deemed a third-party beneficiary (to the extent not a direct party hereto) of this Agreement and, in particular, the provisions of this Section 4.5. The General Partner and/or the Investment Manager may enter into agreements on behalf of the Partnership with an Indemnified Person to provide an indemnity to the same extent provided in this Section 4.5.

#### 4.6 Advisory Committee

- (a) The General Partner and/or the Investment Manager may appoint a committee (the “*Advisory Committee*”) composed of one or more individuals selected from time to time by the General Partner. No member of the Advisory Committee may be an Affiliate of the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in an Affiliate of the Partnership).
- (b) If established, the Advisory Committee will meet with the General Partner and/or the Investment Manager from time to time as requested by and deemed appropriate by the General Partner and/or the Investment Manager to consult with and advise the General Partner and/or the Investment Manager on any matter deemed appropriate by the General Partner and/or the Investment Manager, including any circumstances involving conflicts of interest between the General Partner and/or the Investment Manager (and their Affiliates), on the one hand, and the Limited Partners and the Partnership, on the other.
- (c) The General Partner and/or the Investment Manager may in its discretion seek the approval of the Advisory Committee or establish any other reasonable mechanism in connection with (i) approvals that are or would be required under the Investment Advisers Act (including Section 206(3)) or (ii) any other matter deemed appropriate by the General Partner and/or the Investment Manager. Each Limited Partner agrees that, except as otherwise specifically provided herein and to the extent permitted by applicable law, the approval of a majority of the members of the Advisory Committee at such time is binding upon the Partnership and each Partner with respect to any approval sought under this Section 4.6(c).
- (d) As determined by the General Partner and/or the Investment Manager, meetings of the Advisory Committee may be held in person or by telephone. Approval of the Advisory Committee is deemed to have been given if given by a majority of those members present at a meeting or by a majority of all members of the Advisory Committee if given pursuant to a written consent without a meeting.



- (e) The Partnership agrees to reimburse members of the Advisory Committee for their out-of-pocket expenses relating to their services as Advisory Committee members and to indemnify each Advisory Committee member to the maximum extent permitted by law
- (f) In the event an Advisory Committee is not appointed, the General Partner and/or the Investment Manager may obtain the approval of an unaffiliated third party, as is determined advisable by the General Partner and/or the Investment Manager, and any such approval by such third party shall, to the extent permitted under applicable law, serve as the approval of the Advisory Committee and shall be binding on the Partnership and the Limited Partners.

#### **4.7 Alternative Investment Vehicles**

The General Partner shall have the right in connection with any Investment to direct the capital contributions of some or all of the Partners to be made through one or more alternative investment vehicles (“*Alternative Investment Vehicles*”) and to exchange a portion of the Interests of one or more Limited Partners for similar equity interests in one or more Alternative Investment Vehicles if, in the judgment of the General Partner, the use of such vehicle or vehicles would allow the Partnership to overcome legal or regulatory constraints or invest in a more tax efficient manner and/or would facilitate participation in certain types of Investments; provided that the General Partner shall not employ the use of an Alternative Investment Vehicle in any manner that would reasonably be expected to have a material adverse effect on the participating Limited Partners. Any Alternative Investment Vehicle shall contain terms and conditions substantially similar to those of the Partnership and shall be managed by the General Partner or an Affiliate thereof, and such controlling Person is required to comply with the provisions of this Agreement applicable to Alternative Investment Vehicles. Expenses related to an Alternative Investment Vehicle on behalf of less than all of the Partners shall not be borne by the Partners that do not participate in such Alternative Investment Vehicle.

### **Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS**

#### **5.1 Admission of Limited Partners**

The General Partner may, at such times as the General Partner may determine, without advance notice to or consent from the Limited Partners, admit to the Partnership any Person who executes this Agreement or any other writing evidencing the intent of such Person to become a Limited Partner. Such admission shall be effective when the General Partner enters the name of such Person on the books and records of the Partnership as a Partner and does not require the consent or approval of any other Partner. The General Partner has the authority to reject subscriptions for Interests in whole or in part.

#### **5.2 Admission of Additional General Partners**

- (a) Except as provided in Section 5.2(b), the General Partner may admit one or more Persons as additional general partners to the Partnership. No additional general



partner shall be added unless such additional general partner agrees to be bound by all of the terms of this Agreement.

- (b) Any Person to whom the General Partner has transferred its general partner interest in accordance with Section 5.4 shall be admitted to the Partnership as a substitute General Partner without the consent of the Limited Partners unless otherwise provided for in Section 5.4.

### 5.3 Transfer of Interests of Limited Partners

- (a) No Transfer of any Limited Partner's Interest, whether voluntary or involuntary, shall be valid or effective, and no transferee may become a substituted Limited Partner, unless the prior written consent of the General Partner has been obtained, which consent may be granted, withheld or conditioned for any reason by the General Partner. Any attempted Transfer not made in accordance with this Section 5.3, to the fullest extent permitted by law, shall be void *ab initio*.
- (b) Prior to recognizing any Transfer in accordance with this Section 5.3, the General Partner may require the transferring Limited Partner to execute and acknowledge an instrument of Transfer in form and substance satisfactory to the General Partner, and may require the transferee to make certain representations and warranties to the Partnership and Partners and to accept, adopt and approve in writing all of the terms and provisions of this Agreement.
- (c) In the event of a Transfer of a Partner's Interest or in the event of a distribution of assets of the Partnership to any Partner, the Partnership may, but shall not be required to, file an election under Section 754 of the Code and in accordance with the applicable Regulations, to cause the basis of the Partnership's assets to be adjusted for U.S. federal income tax purposes as provided by Section 734 or 743 of the Code.
- (d) In the event of a Transfer at any time other than the end of a Fiscal Year, items of income, gain, loss, deduction or credit recognized by the Partnership for U.S. federal income tax purposes shall be allocated between the transferring parties, as determined by the General Partner, using any permissible method under Code Section 706(d) and the Regulations thereunder. To the extent the transferring parties have given the General Partner written notice prior to the consent by the General Partner pursuant to Section 5.3(a) of their agreement to apply a particular and reasonable method, then the General Partner may elect to use such method. The transferring parties agree to reimburse the General Partner and the Partnership for any incidental accounting fees and other expenses incurred by the General Partner and the Partnership in making allocations pursuant to this Section 5.3(d).

### 5.4 Transfer of Interest of the General Partner

The General Partner may Transfer its Interest as a General Partner in the Partnership; provided that if any such proposed Transfer would result in an "assignment" (as such term is

defined under the Advisers Act), the General Partner shall obtain the consent of Limited Partners constituting a Majority-in-Interest of Limited Partners that are not Affiliated Investors.

## 5.5 Withdrawal of Interests of Partners

- (a) The Interest of a Limited Partner may not be withdrawn from the Partnership prior to its dissolution except as provided in this Section 5.5.
- (b) Withdrawal rights are determined separately with respect to each Capital Account (and each capital sub-account, if applicable). Each capital contribution shall be accounted for using a separate capital sub-account, and, in the case of a Limited Partner for which more than one capital sub-account is maintained, the withdrawals from any such capital sub-accounts shall be processed on a “first-in, first-out” basis based upon the date on which each capital contribution was made, unless otherwise agreed between the General Partner and such Partner. Each capital sub-account relating to a contribution of capital from a Limited Partner will be treated as if it were the separate Capital Account of a separate Partner for the purposes of applying the withdrawal provisions of this Section 5.5.
- (c) Subject to a Suspension and the other provisions of this Section 5.5:
  - (i) A Limited Partner may make a complete or partial withdrawal from its Series A Capital Account effective on the last Business Day of each calendar quarter occurring at least 36 calendar months after the contribution of the capital to be withdrawn (each, a “**Series A Withdrawal Date**”) by providing written notice to the General Partner at least 90 days prior to the proposed Series A Withdrawal Date (such restriction, the “**Series A Lock-Up**”). For purposes of calculating the Series A Lock-Up, each Limited Partner holding Series A Interests on of the Effective Date is deemed to have made its initial contribution for Series A Interests as of the Effective Date. Additional contributions for Series A Interests after the Effective Date will also be subject to the Series A Lock-Up, which lock-up period shall commence on the date of each such additional contribution.
  - (ii) A Limited Partner may make a complete or partial withdrawal from its Series B Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series B Withdrawal Date. The “**Series B Withdrawal Date**” means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Withdrawal Date (or the last Business Day of such month).
  - (iii) A Limited Partner may make a complete or partial withdrawal from its Series C Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series C Withdrawal Date. The “**Series C Withdrawal Date**” means: (i) the end of the day on the last Business Day of

the calendar month that immediately precedes the two-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Withdrawal Date (or the last Business Day of such month).

- (iv) A Limited Partner may make a complete or partial withdrawal from its Series D Capital Account effective on the last Business Day of each calendar quarter (each, a “***Series D Withdrawal Date***”) occurring at least 12 calendar months after the contribution of the capital to be withdrawn by providing written notice to the General Partner at least 90 days prior to the proposed Series D Withdrawal Date.
- (d) Any notice of withdrawal shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. For the avoidance of doubt, if a Limited Partner notifies the General Partner of its intent to withdraw and later chooses not to withdraw (with the General Partner’s consent), any transaction costs incurred by the Partnership or the General Partner in connection therewith may be charged to such withdrawing Limited Partner. The General Partner may refuse to honor any Limited Partner’s request for a full or partial withdrawal if such request is not accompanied by such additional information as the General Partner may reasonably require, including any information required to determine the “adjusted basis” for U.S. federal income tax purposes in the Limited Partner’s Interest withdrawn.
- (e) With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Partnership or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable Withdrawal Date, and withdrawn amounts will be fixed as of the applicable Withdrawal Date, except as provided in Section 3.6. For the avoidance of doubt, none of the Partnership, the General Partner or the Investment Manager shall be liable to a Limited Partner for interest on the proceeds of any withdrawal.
- (f) At least 90% of the estimated amount due with respect to the Partnership’s marketable investments is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Partnership, within 30 Business Days after the Withdrawal Date, provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Partnership or the remaining Capital Accounts. The General Partner is entitled to deduct from such settlement payment an amount equal to the pro rata portion of any Performance Allocation (based on the portion of the withdrawal being settled) payable to the Investment Manager with respect to such withdrawn amount. Any balance will be held back and distributed, without interest thereon, promptly following completion of the audit of the Partnership’s financial statements for such Fiscal Year, or sooner in the General Partner’s discretion.
- (g) In the case of a complete withdrawal, or a partial withdrawal that cannot be fully funded out of the Limited Partner’s interest in the Partnership’s marketable

investments, no settlements occur with respect to any of such Limited Partner's interest in the Partnership's non-marketable investments until the occurrence of liquidity events with respect to such non-marketable investments after the scheduled payment date for the withdrawal (without interest thereon). Notwithstanding the foregoing, the General Partner may, however, make settlements in such cases prior to the occurrence of a liquidity event if such settlement would, in the good faith opinion of the General Partner, not have a material adverse effect on the Partnership. Generally, a liquidity event will be a sale of the relevant investment for cash, in which case the settlement will be funded in cash within 90 days after the liquidity event (without interest). If the liquidity event is not a sale for cash, the General Partner may effect the settlement either by making a distribution in kind of the Limited Partner's ratable share of the relevant investment or by distributing the net proceeds derived from a sale of such investment. The General Partner is entitled to withdraw from each such settlement an amount equal to the remaining portion of any Performance Allocation (pro rata based on the portion of such withdrawal being distributed) to be credited to the Investment Manager at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Limited Partner.

- (h) The General Partner may effect withdrawal payments (i) in cash, (ii) in kind, by transfer of marketable or non-marketable Investments to the Limited Partner, the value of which, as determined in accordance with Section 7.2, would satisfy the Limited Partner's request for withdrawal, or (iii) in any combination of the foregoing.
- (i) The General Partner may deduct from any withdrawal proceeds due to any Limited Partner pursuant to this Section 5.5 an amount representing the Partnership's actual or estimated expenses, as determined by the General Partner, associated with processing the withdrawal. Any such withdrawal deduction shall be retained by the Partnership for the benefit of the remaining Limited Partners.
- (j) The right of any Partner to withdraw or receive distributions pursuant to the provisions of this Section 5.5 is subject to all Capital Account allocations and adjustments contemplated by this Agreement and to the provision by the General Partner for all Partnership liabilities and for reserves and holdbacks for contingencies provided in Section 3.6.
- (k) The General Partner may suspend or limit, in whole or in part, (i) the right of the Partners to withdraw or receive distributions from the Partnership and/or (ii) the valuation of the Partnership's Net Assets:
  - (i) during any period when any exchange or over-the-counter market on which the Partnership's Investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended;

- (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of, or withdrawals or redemptions from, Investments by the Partnership, or the determination of the value of the assets of the Partnership, would not be reasonably practicable;
  - (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Partnership's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Partnership cannot reasonably be accurately ascertained within a reasonable time frame;
  - (iv) during any period when the transfer of funds involved in the realization or acquisition of any Investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange;
  - (v) in other circumstances where the General Partner is unable to fairly value the Partnership's assets due to extreme market conditions; or
  - (vi) automatically upon liquidation of the Partnership.
- (l) In the event of any such suspension or limitation described above in Section 5.5(k) (a "**Suspension**"), the General Partner shall promptly notify each Limited Partner. Any Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted is not given any priority with respect to the withdrawal of such Interests or portions thereof after the cause for such Suspension ceases to exist. The General Partner may, however, allow any such Partners to rescind their withdrawal requests to the extent of any portion thereof for which withdrawal proceeds have not yet been remitted. Upon the reasonable determination by the General Partner that conditions leading to Suspension no longer apply, withdrawal rights for all Limited Partners shall be promptly reinstated, and any pending withdrawal requests (or new, timely withdrawal requests) shall be honored as of the last Business Day of the calendar quarter in which withdrawals have recommenced, subject to the application of the withdrawal limitations described herein.
- (m) The General Partner may, notwithstanding any Suspension, upon not less than five days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Partnership may cause the Partnership, the Investment Manager or the General Partner to violate any applicable law), require any Limited Partner's Interest to be withdrawn in part or in its entirety from the Partnership (including, but not limited to, for reasons relating to FATCA) and for the Limited Partner to cease to be a Limited Partner of the Partnership (in the case of a withdrawal of a Limited Partner's Interest in its entirety) pursuant to this Section 5.5(m). Except as otherwise provided herein, settlements of withdrawals pursuant to this Section 5.5(m) are made in the same manner as voluntary withdrawals.

- (n) Notwithstanding the foregoing, the General Partner may waive any restrictions on any Limited Partner's ability to withdraw.

**Article VI**  
**SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION**

**6.1 Soft Wind Down**

- (a) The General Partner may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued (whether or not the General Partner has implemented a Suspension). Having made such determination, the Investment Manager may recommend to the General Partner to cause the Partnership to return the Partnership's assets to Limited Partners in an orderly manner (without proceeding with a liquidation of the Partnership) (an "**Orderly Realization**"). The General Partner may, in such circumstances, resolve to effect an Orderly Realization should it determine that doing so is in the best interests of the Partnership as a whole. Such Orderly Realization shall not constitute a dissolution or winding up of the Partnership for any purposes, but rather only the continued management of the Partnership's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Partnership to the Limited Partners.
- (b) The General Partner will notify the Limited Partners of any decision to proceed with an Orderly Realization of the Partnership. During an Orderly Realization, the Investment Manager may, in consultation with the General Partner, take such steps as are considered appropriate in the best interests of the Partnership as a whole to effect the Orderly Realization. The General Partner, in consultation with the Investment Manager, shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the "**Realization Period**"). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Partnership and may be carried out without recourse to a formal process of liquidation under Delaware law or any other applicable bankruptcy or insolvency regime.
- (c) The General Partner, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued.
- (d) Management Fees, and all other fees and expenses, shall be payable and Performance Allocations shall be made during an Orderly Realization on the same basis as provided herein.



## 6.2 Dissolution of Partnership

- (a) The Partnership shall be dissolved upon the first to occur of the following dates:
- (i) any date on which the General Partner shall elect in writing to dissolve the Partnership; or
  - (ii) the occurrence of any other event causing (A) the General Partner (or a successor to its business) to cease to be the general partner of the Partnership or (B) the dissolution of the Partnership under the Act.
- (b) In the event an Orderly Realization lasts longer than three years, a Super-Majority-in-Interest of the Limited Partners may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Partnership. The Limited Partners will not have any other right to bring an action in court to dissolve the Partnership. The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein.

## 6.3 Liquidation of Assets

- (a) Upon dissolution of the Partnership, the General Partner shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible, except that if the General Partner is unable to perform this function, a liquidator elected by a Majority-in-Interest of Limited Partners shall liquidate the business and administrative affairs of the Partnership. Net Profit and Net Loss during any Accounting Period, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:
- (i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith), up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);
  - (ii) such debts as are owing to the Partners as Partners are next paid; and
  - (iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the



Accounting Period ending on the date of the distributions under this Section 6.1(a)(iii).

- (b) Notwithstanding this Section 6.3 and the priorities set forth in the Act, the General Partner or liquidator may distribute ratably in kind rather than in cash, upon dissolution, any assets of the Partnership; provided, however, that if any in kind distribution is to be made, (i) the assets distributed in kind shall be valued pursuant to Section 7.2, and charged as so valued and distributed against amounts to be paid under Section 6.3(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in kind shall be included in the Net Profit or Net Loss for the Accounting Period ending on the date of such distribution.

## **Article VII**

### **ACCOUNTING AND VALUATION; BOOKS AND RECORDS**

#### **7.1 Accounting and Reports**

- (a) The Partnership may adopt for tax accounting purposes any accounting method that the General Partner shall decide is in the best interests of the Partnership and that is permissible for U.S. federal income tax purposes.
- (b) As soon as practicable after the end of each Fiscal Year thereafter, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of each such period to be made by a firm of independent accountants selected by the General Partner. As soon as is practicable thereafter, but subject to Section 7.4, the General Partner shall furnish to each Limited Partner a copy of the set of financial statements prepared in accordance with GAAP, with such adjustments thereto as the General Partner determines appropriate, including the report of such independent accountants.
- (c) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each Limited Partner properly to report for U.S. federal, state and local income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.
- (d) As soon as practicable after the end of each calendar month, but subject to Section 7.5, the General Partner shall arrange for the preparation and delivery to each Limited Partner of an interim report containing such information concerning the affairs of the Partnership (which need not include any financial statements) as the General Partner considers appropriate.

## 7.2 Valuation of Partnership Assets and Interests

- (a) The General Partner (or its delegate, including the Investment Manager or the administrator of the Partnership) shall value the assets of the Partnership as of the close of business on the last day of each Accounting Period. Such valuations will generally be in accordance with GAAP, with such adjustments thereto as the General Partner reasonably determines appropriate. In addition, the General Partner shall value the assets which are being distributed in kind as of the close of the Business Day immediately preceding the distribution date in accordance with Section 5.5(c) or Section 6.3(b). In determining the value of the assets of the Partnership, no value shall be placed on the goodwill or name of the Partnership, or the office records, files, statistical data or any similar intangible assets of the Partnership not normally reflected in the Partnership's accounting records, but there shall be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.
- (b) To the extent readily available, valuations will be based on independent market quotations obtained by the General Partner from recognized pricing services, market participants or other sources. In the case of any Investment for which a quotation from an independent source is not available or is determined by the General Partner to be unreliable or inadequate, the General Partner (i) shall be authorized, to the extent permitted by applicable law, to value such positions at their fair value in such manner as the General Partner determines in good faith, or (ii) may (but shall not be required to) obtain an appraisal, at the expense of the Partnership, by an independent third party selected by the General Partner. Except as otherwise determined by or at the direction of the General Partner, investment and trading transactions shall be accounted for on the trade date.
- (c) Accounts shall be maintained in U.S. dollars, and except as otherwise determined by or at the direction of the General Partner: (i) assets and liabilities denominated in currencies other than U.S. dollars shall be translated at the rates of exchange quoted by an independent pricing service as in effect as of the close of business on the relevant valuation dates (and exchange adjustments shall be recorded in the results of operations); and (ii) investment and trading transactions and income and expenses shall be translated at the rates of exchange in effect at the time of each transaction.

## 7.3 Determinations by the General Partner

- (a) All matters concerning the determination and allocation among the Partners of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final

and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

- (b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss or any other allocations with respect to any Limited Partner, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or sub-account as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

#### 7.4 Books and Records

- (a) The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and all transactions entered into by the Partnership. The General Partner shall afford to the Partnership's independent auditors reasonable access to such documents during customary business hours and shall permit the Partnership's auditors to make copies thereof or extracts therefrom at the expense of the Partnership.
- (b) The General Partner shall establish such standards as it deems appropriate regarding the access of Limited Partners to the books and records of the Partnership and shall not be obliged to permit access by a Limited Partner to the name or address of any other Limited Partner.

#### 7.5 Confidentiality

- (a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Interest or for purposes of filing such Limited Partner's tax returns) or disclose to any Person, any information or matter relating to the Partnership and its affairs and any information or matter related to any Investment (other than disclosure to such Limited Partner's directors, employees, agents, advisors, or representatives responsible for matters relating to the Partnership or to any other Person approved in writing by the General Partner (each such Person being hereinafter referred to as an "***Authorized Representative***")); provided that (i) such Limited Partner and its Authorized Representatives may make such disclosure to the extent that (A) the information to be disclosed is publicly available at the time of proposed disclosure by such Limited Partner or Authorized Representative, (B) the information otherwise is or becomes legally available to such Limited Partner other than through disclosure by the Partnership or the General Partner, or (C) such disclosure is required by law or in

response to any governmental agency request or in connection with an examination by any regulatory authorities; provided that such governmental agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) such Limited Partner and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners; and (iii) each Limited Partner will be permitted, after written notice to the General Partner, to correct any false or misleading information which becomes public concerning such Limited Partner's relationship to the Partnership or the General Partner. Prior to making any disclosure required by law, each Limited Partner shall use its best efforts to notify the General Partner of such disclosure. Prior to any disclosure to any Authorized Representative or beneficial owner, each Limited Partner shall advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 7.5(a) and each such Authorized Representative or beneficial owner shall agree to be bound by such obligations.

- (b) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, any information, including the identity of the Partners or information regarding the Partners or Investments, which the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or agreement with a third party to keep confidential.
- (c) Subject to applicable legal and regulatory considerations, the General Partner shall use reasonable efforts to keep confidential any information relating to a Limited Partner obtained by the General Partner in connection with or arising out of the Partnership which the Limited Partner requests to be kept confidential.
- (d) Notwithstanding the provisions of this Section 7.5, Partners (and their employees, representatives and other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Partnership and its transactions and all materials of any kind (including tax opinions or other tax analyses) that are provided to such Person by, or on behalf of the Partnership. For this purpose, "tax treatment" is the purported or claimed U.S. federal income tax treatment of a transaction and "tax structure" is limited to any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of a transaction. For this purpose, the names of the Partnership, the Partners, their affiliates, the names of their partners, members or equity holders and the representatives, agents and tax advisors of any of the foregoing are not items of tax structure.
- (e) The General Partner may disclose to prospective investors such information relating to the Partnership or the Investments as it believes in good faith will benefit the Partnership and facilitate investment in the Partnership by such prospective investors.

- (f) The Investment Manager and a Person acting as a service provider to the Partnership shall have the right to access all information belonging to the Partnership.

## Article VIII GENERAL PROVISIONS

### 8.1 Amendment of Partnership Agreement

- (a) Except as otherwise provided in this Section 8.1, this Agreement may be amended, in whole or in part, with the written consent of (i) the General Partner and (ii) the consent of a Majority-in-Interest of Limited Partners (which approval may be obtained by negative consent affording the Limited Partners at least 30 calendar days to object).
- (b) Any amendment that would:
  - (i) increase the obligation of a Partner to make any contribution to the capital of the Partnership;
  - (ii) reduce the Capital Account of a Partner other than in accordance with Article III;
  - (iii) adversely alter any Partner's rights with respect to the allocation of Net Profit or Net Loss or with respect to distributions and withdrawals; or
  - (iv) change the respective liabilities of the General Partner and the Limited Partners;

may only be made if the consent of each Partner adversely affected thereby is obtained (which consent may be obtained by negative consent affording the Partner at least 30 calendar days to object).

- (c) Notwithstanding paragraphs (a) and (b) of this Section 8.1, this Agreement may be amended by the General Partner without the consent of the Limited Partners, at any time and without limitation, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Partnership as of a date determined by the General Partner that is not less than 30 calendar days after the General Partner has furnished written notice of such amendment to each affected Limited Partner and that is prior to the effective date of the amendment. The admission and withdrawal of Limited Partners will not require notice or disclosure to, or the approval of, the other Limited Partners.
- (d) The General Partner may at any time without the consent of the other Partners:

- (i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner under this Agreement, for the benefit of the Limited Partners;
  - (ii) cure any ambiguity or correct or supplement any conflicting provisions of this Agreement;
  - (iii) change the name of the Partnership;
  - (iv) make any changes required by a governmental body or agency which is deemed to be for the benefit or protection of the Limited Partners, provided, however, that no such amendment may be made unless such change (A) is for the benefit of, or not adverse to, the interests of Limited Partners, (B) does not affect the right of the General Partner to manage and control the Partnership's business, (C) does not affect the allocation of profits and losses among the Partners and (D) does not affect the limited liability of the Limited Partners;
  - (v) amend this Agreement to reflect a change in the identity of the General Partner which has been made in accordance with this Agreement;
  - (vi) amend this Agreement (other than with respect to the matters set forth in Section 8.1(b)) to effect compliance with any applicable laws, regulations or administrative actions;
  - (vii) subject to Section 8.1(b), amend this Agreement to reflect the creation, and terms, of any new Series of Interests;
  - (viii) effect any other amendment which would not, in the good faith judgment of the General Partner, adversely affect any of the existing Limited Partners; and
  - (ix) restate this Agreement together with any amendments hereto which have been duly adopted in accordance herewith to incorporate such amendments in a single, integrated document.
- (e) Following the adoption of any amendments to this Agreement pursuant to 8.1(d), the General Partner shall promptly deliver a copy of such amendments to this Agreement to the Limited Partners.
- (f) The General Partner may agree with a Limited Partner to waive or modify the application of any provision of this Agreement with respect to such Limited Partner without notifying or obtaining the consent of any other Limited Partner (other than a Limited Partner whose rights as a Limited Partner pursuant to this Agreement would be materially and adversely changed by such waiver or modification). Any such waiver or modification may be evidenced by a "side letter" or other document which will govern with respect to the applicable Limited Partner and be incorporated as part of this Agreement.



## 8.2 Special Power-of-Attorney

- (a) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner (and each of its successors and permitted assigns), with full power of substitution, the true and lawful representative and attorney-in-fact of, and in the name, place and stead of, such Limited Partner with the power from time to time to make, execute, sign, acknowledge, swear to, verify, deliver, record, file or publish:
- (i) an amendment to this Agreement that complies with the provisions of this Agreement (including the provisions of Section 8.1);
  - (ii) the Certificate and any amendment thereof required because this Agreement is amended, including an amendment to effectuate any change in the membership of the Partnership or in the capital contributions of the Partners;
  - (iii) any financing statement or other filing or document required or permitted to perfect the security interests contemplated by any provision hereof; and
  - (iv) all such other instruments, documents and certificates which, in the opinion of legal counsel to the Partnership, may from time to time be required by the laws of the United States of America, the State of Delaware, or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership as a limited partnership, exchange a portion of a Limited Partner's Interest for similar equity interests in an Alternative Investment Vehicle, or to effect the dissolution or termination of the Partnership.
- (b) Each Limited Partner is aware that the terms of this Agreement permit certain amendments to this Agreement to be effected and certain other actions to be taken or omitted by or with respect to the Partnership without that Limited Partner's consent. If an amendment of the Certificate or this Agreement or any action by or with respect to the Partnership is taken by the General Partner in the manner contemplated by this Agreement, each Limited Partner agrees that, notwithstanding any objection which such Limited Partner may assert with respect to such action, the General Partner in its sole discretion is authorized and empowered, with full power of substitution, to exercise the authority granted above in any manner which may be necessary or appropriate to permit such amendment to be made or action to be lawfully taken or omitted. Each Partner is fully aware that each other Partner relies on the effectiveness of this special power-of-attorney with a view to the orderly administration of the affairs of the Partnership. This power-of-attorney is a special power-of-attorney and is coupled with an interest in favor of the General Partner and as such:
- (i) is irrevocable and continues in full force and effect notwithstanding the subsequent death or incapacity of any party granting this power-of-attorney,



regardless of whether the Partnership or the General Partner has had notice thereof; and

- (ii) survives the delivery of an assignment by a Limited Partner of the whole or any portion of such Limited Partner's Interest, except that where the assignee thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, this power-of-attorney given by the assignor survives the delivery of such agreement for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

### **8.3 Notices**

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the register of Partners maintained by the General Partner or to such other addresses, facsimile numbers or electronic addresses as may be designated by any party hereto by notice addressed to (a) the General Partner, in the case of notice given by any Limited Partner, and (b) each of the Limited Partners, in the case of notice given by the General Partner. Notices will be deemed to have been given (i) when delivered by hand, transmitted by facsimile or transmitted electronically or (ii) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service.

### **8.4 Agreement Binding Upon Successors and Assigns; Delegation**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder are not assignable, transferable or delegable except as provided in Sections 4.1(c), 5.3 and 5.4, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections will be null and void *ab initio*.

### **8.5 Governing Law**

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in the courts located in Dallas County, Texas. Each Partner consents to service of process in any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the register of Partners maintained by the General Partner.

## 8.6 Not for Benefit of Creditors

The provisions of this Agreement are intended only for the regulation of relations among Partners and between Partners and former or prospective Partners and the Partnership. Except for the rights of the Indemnified Persons hereunder, this Agreement is not intended for the benefit of non-Partner creditors and no rights are granted to non-Partner creditors under this Agreement.

## 8.7 Dispute Resolution

The following procedures shall be used to resolve any controversy or claim (“*Dispute*”) arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Indemnified Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

### (a) Mediation

- (i) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.
- (ii) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- (iii) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (iv) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

### (b) Arbitration

- (i) If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney’s fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the

mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect (“*Arbitration Rules*”). In the event of a conflict, the provisions of this document will control.

- (ii) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the U.S. Federal Arbitration Act (“*FAA*”), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality, non-competition, non-solicitation or non-recruitment covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this Agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.
- (iii) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party’s actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.
- (iv) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement.
- (v) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes

it. In any event, there shall be no more than (a) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (b) one non-party deposition of six hours; (c) twenty-five interrogatories; (d) twenty-five requests for admission; (e) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; and (f) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

- (vi) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.
- (vii) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

## 8.8 Consents and Voting

- (a) Except as provided in Section 5.4, Limited Partners do not have any right to vote for the admission or removal of any General Partner and, except for the right to vote on certain amendments proposed by the General Partner and as otherwise expressly set out herein, have no other voting rights. Upon the request of any Limited Partner, the General Partner may designate an Interest as a Non-Voting Interest, in which case the Limited Partner shall not have the right to vote on any matter including amendments.
- (b) Any and all consents, agreements or approvals provided for or permitted by this Agreement shall be in writing and a copy thereof shall be filed and kept with the books of the Partnership. For the avoidance of doubt, an amendment made pursuant to Section 8.1(c) or pursuant to negative consent under Section 8.1(a) or Section 8.1(b) shall not require any affirmative written response by any Limited Partner who is not electing to withdraw from the Partnership.
- (c) In the event the Partnership seeks the approval, vote or consent of the Offshore Fund with respect to any matter to which it would be entitled to vote as a Limited

Partner of the Partnership under this Agreement, the Offshore Fund will: (i) submit such matter for the consent of the shareholders and (ii) shall vote its Limited Partner interest proportionally for and against such matter in the same proportion that the shareholders voted for and against such matter.

## **8.9 Merger and Consolidation**

- (a) The Partnership may merge or consolidate with or into one or more limited partnerships formed under the Act or other business entities pursuant to an agreement of merger or consolidation which has been approved in the manner contemplated by Section 17-211(b) of the Act.
- (b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Act may, to the extent permitted by Section 17-211(g) of the Act, (i) effect any amendment to this Agreement, (ii) effect the adoption of a new limited partnership agreement for the Partnership if it is the surviving or resulting limited partnership in the merger or consolidation, or (iii) provide that the limited partnership agreement of any other constituent partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating the merger or consolidation) shall be the limited partnership agreement of the surviving or resulting limited partnership.

## **8.10 Miscellaneous**

- (a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word “including” in this Agreement means in each case “without limitation,” whether or not such term is explicitly stated.
- (b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.
- (c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

## **8.11 BHCA Subject Persons**

Notwithstanding any other provision of this Agreement to the contrary:

- (a) Solely for purposes of any provision of this Agreement that confers voting rights on the Limited Partners and any other provisions hereof regarding consents of or action by the Limited Partners, any BHCA Subject Person that shall have given the General Partner an Election Notice and shall not thereafter have given the General Partner a Revocation Notice, and that at any time has a Partnership Percentage in

excess of 4.9% of the aggregate Partnership Percentages of the Limited Partners entitled to participate in such voting or the giving of any consent or the taking of any action, shall be deemed to hold a Partnership Percentage of only 4.9% of the aggregate Partnership Percentages of the Limited Partners (after giving effect to the limitations imposed by this Section 8.11 on all such Limited Partners), and such Partnership Percentage in excess of said 4.9% shall be deemed held by the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages; provided that this limitation shall not prohibit a Limited Partner from voting or participating in giving or withholding consent or taking any action under any provision of this Agreement up to the full amount of its Partnership Percentage in situations where such Limited Partner's vote or consent or action is of the type customarily provided by statute or stock exchange rules with regard to matters that would significantly and adversely affect the rights or preference of the Limited Partner's Interest. The foregoing voting restriction shall continue to apply with respect to any assignee or other transferee of such BHCA Subject Person's Interest; provided, however, that the foregoing voting restriction shall not continue to apply if the Interest is transferred: (i) to the Partnership; (ii) to the public in an offering registered under the Securities Act; (iii) in a transaction pursuant to Rule 144 or Rule 144A under the Securities Act in which no Person acquires more than 2% of the Partnership's outstanding Interests; or (iv) in a single transaction to a third party who acquires at least a majority of the Partnership's outstanding Interests without regard to the Transfer of such Interests.

- (b) Except as specifically provided otherwise in this Agreement, a Limited Partner that is a BHCA Subject Person that shall have given the General Partner an Election Notice, and shall not thereafter have given the General Partner a Revocation Notice, shall not be entitled to exercise any rights to consent to actions to be taken with respect to the Partnership, including rights conferred by any applicable law. Such right to consent shall be deemed granted to the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages.
- (c) A Limited Partner that is a BHCA Subject Person and that elects to be subject to Section 8.11(a) and (b) shall notify the General Partner thereof (an "***Election Notice***") and, on the General Partner's receipt of such Election Notice, such Limited Partner shall be subject to Section 8.11(a) and (b) until 10 calendar days after such Limited Partner notifies the General Partner that it elects no longer to be subject to Section 8.11(a) and (b) (a "***Revocation Notice***"), which period may be reduced by the General Partner.

## 8.12 RIC Limited Partners

An Interest of a RIC Limited Partner does not entitle the RIC Limited Partner to vote or consent with respect to any Partnership matter unless the RIC Limited Partner's vote or consent with respect to its Interest would not be considered to be "voting securities" as defined under Section 2(a)(42) of the Investment Company Act. Except as provided in this Section 8.12, an Interest held by a RIC Limited Partner as a Non-Voting Interest is identical in all regards to all other Interests held by Limited Partners.



### **8.13 Bad Actor Limited Partners**

Under Rule 506(d) under the Securities Act, the Partnership may be banned from selling Interests under Rule 506 if a Limited Partner beneficially owning 20% or more of the Partnership's voting securities engages in a "bad act" set forth in Rule 506. Accordingly, each Limited Partner agrees that the General Partner may deem the portion of any Bad Actor Limited Partner's Interests to be, or convert any Bad Actor Limited Partner's Interests into, Non-Voting Interests (except for the purposes of voting on any amendment to this Agreement that would materially and adversely change the Bad Actor Limited Partner's rights and preferences as a Limited Partner other than pursuant to an amendment under Section 8.1(c)) to the extent that the General Partner determines that such portion is in excess of 19.99% of the outstanding aggregate voting Interests of all Partners excluding any Interests that are Non-Voting Interests.

### **8.14 Entire Agreement**

The parties acknowledge and agree that, this Agreement, together with any other agreement with a Limited Partner pursuant to Section 8.1(e), constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

[Signature Page Follows]



The parties hereto have executed this Agreement as of the day and year first above written.

**GENERAL PARTNER:**

HIGHLAND MULTI STRATEGY CREDIT FUND GP,  
L.P.

By: HIGHLAND MUTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

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

Name: James Dondero

Title: President

**LIMITED PARTNERS:**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

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

Name: James Dondero

Title: President

*Signature Page to the Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy  
Credit Fund, L.P.*

APP 00534  
002588

## **EXHIBIT 15**

**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES**

**AMENDED AND RESTATED  
MEMORANDUM AND ARTICLES OF ASSOCIATION**

**OF**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**



Uploaded: 03-Nov-2014 14:05 EST

Filed: 05-Nov-2014 18:02 EST

**002590**

**THE COMPANIES LAW (2013 REVISION)**  
**OF THE CAYMAN ISLANDS**  
**COMPANY LIMITED BY SHARES**  
  
**AMENDED AND RESTATED**  
**MEMORANDUM OF ASSOCIATION**  
**OF**  
**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**  
**(As Adopted by Special Resolution on 1 November 2014)**

- 1 The name of the Company is **Highland Multi Strategy Credit Fund, Ltd.**
- 2 The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, or at such other place within the Cayman Islands as the Directors may decide.
- 3 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the laws of the Cayman Islands.
- 4 The liability of each Member is limited to the amount unpaid on such Member's Shares.
- 5 The share capital of the Company is US\$50,000 divided into 100 Management Shares of US\$0.01 par value each and 49,999,000 Participating Shares of US\$0.001 par value each.
- 6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.
- 7 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.



Uploaded: 03-Nov-2014 14:05 EST

Filed: 05-Nov-2014 18:02 EST

**002597**

**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES**

**AMENDED AND RESTATED  
ARTICLES OF ASSOCIATION  
OF**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**

**1 Interpretation**

1.1 In these Articles, Table A in the First Schedule to the Statute does not apply and unless there is something in the subject or context inconsistent therewith:

- "Administrator"** means the person, firm or corporation appointed and from time to time acting as administrator of the Company.
- "Articles"** means these articles of association of the Company.
- "Auditor"** means the person (if any) for the time being performing the duties of auditor of the Company.
- "Business Day"** means any day normally treated as a business day in such places and/or on such markets as the Directors may from time to time determine.
- "Cayman Islands"** means the British Overseas Territory of the Cayman Islands.
- "Class"** means a separate class of Participating Share (and includes any sub-class of any such class).
- "Company"** means the above-named Company.
- "Directors"** means the directors for the time being of the Company.
- "Dollars" or "US\$"** refers to the currency of the United States.
- "Electronic Record"** has the same meaning as in the Electronic Transactions Law.



Uploaded: 03-Nov-2014 14:05 EST  
Filed: 05-Nov-2014 18:02 EST

002592

**"Electronic Transactions Law"** means the Electronic Transactions Law (2003 Revision) of the Cayman Islands.

**"Eligible Investor"** means a person eligible to hold Participating Shares, as determined from time to time by the Directors.

**"FATCA"** means:

- (i) sections 1471 to 1474 of the US Internal Revenue Code of 1986 and any associated legislation, regulations or guidance, or similar legislation, regulations or guidance enacted in any jurisdiction which seeks to implement similar tax reporting and/or withholding tax regimes;
- (ii) any intergovernmental agreement, treaty, regulation, guidance or any other agreement between the Cayman Islands (or any Cayman Islands government body) and the US, the UK or any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement or implement the legislation, regulations or guidance described in paragraph (i); and
- (iii) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding paragraphs.

**"Gross Negligence"** shall have the meaning ascribed thereto under the laws of the State of Delaware, USA.

**"Investment Manager"** means the person, firm or corporation appointed and for the time being acting as the investment manager of the Company.

**"Management Share"** means a voting non participating Share in the capital of the Company of US\$0.01 par value designated as a Management Share and having the rights provided for in these Articles.

**"Master Fund"** means Highland Multi Strategy Credit Fund, L.P., or any other entity in which all, or substantially all, of the assets of the Company are invested.

**"Member"** means each person whose name is, from time to time and for the time being, entered in the Register of Members as the holder of one or more Shares.



**"Memorandum"** means the memorandum of association of the Company.

**"Net Asset Value"** means the value of the assets less the liabilities of the Company, or of a Separate Account (as the context may require), calculated in accordance with these Articles.

**"Net Asset Value per Participating Share"** means the amount determined in accordance with these Articles as being the Net Asset Value per Participating Share of a particular Class and/or Series.

**"New Issue"** has the meaning ascribed thereto by Rule 2790 adopted by the National Association of Securities Dealers, Inc.

**"New Issue Investment"** means any New Issue acquired by the Company.

**"New Issue Shares"** means a class of Participating Shares issued and designated as "New Issue Shares" and which may be issued in any one or more Series having the rights and restrictions set out in these Articles

**"Offering Memorandum"** means an offering memorandum relating to Participating Shares of any Class and/or Series as amended or supplemented from time to time subject to and in accordance with these Articles.

**"Ordinary Resolution"** means a resolution passed by a simple majority of the votes of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution.

**"Participating Share"** means a participating redeemable Share in the capital of the Company of US\$0.001 par value and having the rights provided for in these Articles. Participating Shares may be divided into Classes in the discretion of the Directors in accordance with the provisions of these Articles and each Class may be further divided into different Series of Participating Shares and the term "Participating Share" shall include all such Classes and Series of Participating Share.

**"Prohibited Person"** means any person who is restricted from participating in a New Issue pursuant to the Free-Riding and Withholding Interpretation adopted by the Board of Governors of the National Association of Securities Dealers Inc.

**"Redemption Date"** means, in relation to any Class and/or Series of Participating Shares, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time, upon which a Member is entitled to require the redemption of Participating Shares.





of that Class and/or Series.

- "Redemption Fee"** means such fee (if any) payable by a Member to the Company on a redemption of Participating Shares, as the same may be determined by the Directors and disclosed to the Member at the time of its subscription for such Participating Shares.
- "Redemption Notice"** means a notice in a form approved by the Directors by which a holder of Participating Shares is entitled to require the Company to redeem its Participating Shares.
- "Redemption Price"** means the price determined in accordance with these Articles at which redeemable Participating Shares of the relevant Class and/or Series may be redeemed.
- "Register of Members"** means the register of Members, which shall be maintained in accordance with the Statute and includes (except where otherwise stated) any branch or duplicate Register of Members.
- "Registered Office"** means the registered office for the time being of the Company.
- "Sales Charge"** means such sales charge (if any) determined by the Directors as being payable by a subscriber on a subscription for Participating Shares of any Class and/or Series.
- "Seal"** means the common seal of the Company and includes every duplicate seal.
- "Separate Account"** means a separate internal account of the Company which the Directors may establish and cause to be maintained in accordance with these Articles.
- "Series"** means a separate series of Participating Share (and includes any sub-series of any such series).
- "Share" and "Shares"** means a share or shares of any class or series in the Company, including a Management Share, a Participating Share or a New Issue Share, as well as any fraction of a Share.
- "Share Rights"** means, with respect to the Participating Shares of any Class or Series in issue, the class rights for the time being applicable to such Participating Shares or other terms of offer for the time being applicable to such Participating Shares whether set out in the Offering Memorandum, any subscription agreement or otherwise (including any representations, warranties or other disclosure relating



- to the offer or holding of such Participating Shares).
- "Special Resolution"** has the same meaning as in the Statute and includes a unanimous written resolution.
- "Statute"** means the Companies Law (2013 Revision) of the Cayman Islands.
- "Subscriber"** means the subscriber to the Memorandum.
- "Subscription Date"** means, in relation to Participating Shares of any Class and/or Series, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time upon which a person may subscribe for Participating Shares of that Class and/or Series.
- "Subscription Price"** means the price determined in accordance with these Articles at which Participating Shares of the relevant Class and/or Series may be subscribed.
- "Suspension"** means a determination by the Directors to postpone or suspend (i) the calculation of the Net Asset Value of Participating Shares of any one or more Classes and/or Series (and the applicable Valuation Date) (a **"Calculation Suspension"**); (ii) the issue of Participating Shares of any one or more Classes and/or Series (and the applicable Subscription Date) (an **"Issue Suspension"**); (iii) the redemption by Members (in whole or in part) of Participating Shares of any one or more Classes and/or Series (and the applicable Redemption Date) (a **"Redemption Suspension"**); and/or (iv) the payment (in whole or in part) of any redemption proceeds (even if Valuation Dates and Redemption Dates are not postponed) (a **"Payment Suspension"**).
- "Transfer"** means, in respect of any Share, any sale, assignment, exchange, transfer, pledge, encumbrance or other disposition of that Share, and **"Transferred"** shall be construed accordingly.
- "Treasury Share"** means a Share held in the name of the Company as a treasury share in accordance with the Statute.
- "Valuation Date"** means, in relation to each Class and/or Series of Participating Shares, the day or days determined from time to time by the Directors to be the day or days on which the Net Asset Value per Participating Share of that Class and/or Series is calculated.
- "Valuation Point"** means, with respect to any Class and/or Series, the time or times on the Valuation Date of such Class and/or Series at which the Directors



determine that the Net Asset Value per Participating Share of that Class and/or Series shall be calculated.

1.2 In these Articles:

- (a) the singular number includes the plural number and vice versa;
- (b) the masculine gender includes the feminine gender;
- (c) persons includes corporations;
- (d) "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (e) "shall" shall be construed as imperative and "may" shall be construed as permissive;
- (f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;
- (g) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) the term "and/or" is used herein to mean both "and" as well as "or." The use of "and/or" in certain contexts in no respects qualifies or modifies the use of the terms "and" or "or" in others. "Or" shall not be interpreted to be exclusive, and "and" shall not be interpreted to require the conjunctive — in each case, unless the context otherwise requires;
- (i) any reference to the powers of the Directors shall include, when the context admits, the service providers or any other person to whom the Directors may delegate their powers;
- (j) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;
- (k) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Law;
- (l) sections 8 and 19(3) of the Electronic Transactions Law shall not apply; and
- (m) headings are inserted for reference only and shall be ignored in construing these Articles.



## 2 Commencement of Business

- 2.1 The business of the Company may be commenced as soon after incorporation as the Directors shall see fit.
- 2.2 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and operation of the Company, including the expenses of registration and the initial offering of Participating Shares.

## 3 Service Providers

- 3.1 The Directors may appoint any person, firm or corporation to act as a service provider to the Company (whether in general or in respect of any Class and/or Series of Shares) and may entrust to and confer upon any such service providers any of the functions, duties, powers and discretions exercisable by them as Directors, upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit. Without limiting the generality of the foregoing, such service providers may include managers, investment advisers, administrators, registrars, transfer agents, custodians and prime brokers.
- 3.2 Without prejudice to the generality of the preceding Article, the Directors may appoint any person, firm or corporation to act as the Investment Manager with respect to the assets of the Company (whether in general or in respect of any Class and/or Series of Shares). The Directors may entrust to and confer upon the Investment Manager any of the functions, duties, powers and discretions exercisable by them as Directors upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit.

## 4 Rights attaching to Shares

- 4.1 The Management Shares shall have the following rights:
- (a) as to voting: the holder of a Management Share shall (in respect of such Management Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company; and
  - (b) as to capital: a Management Share shall confer upon the holder the right in a winding up to repayment of capital as provided in these Articles but shall confer no other right to participate in the profits or assets of the Company; and
  - (c) as to income: no dividends shall be payable on the Management Shares.
- 4.2 The Participating Shares shall have the following rights:



- (a) as to voting: the holder of a Participating Share shall not (in respect of such Participating Share) have the right to receive notice of, attend at or vote as a Member at any general meeting of the Company, but may vote at a separate Class meeting convened in accordance with these Articles; and
- (b) as to capital: a Participating Share shall confer upon the holder thereof the right in a winding up to participate in the surplus assets of the Company by reference to the Separate Account attributable to the relevant Class or Series of Participating Shares as provided in these Articles; and
- (c) as to income: the Participating Shares shall confer on the holders thereof the right to receive dividends as provided in these Articles.

4.3 Notwithstanding Articles 4.1(a) and 4.2(a), if the Company, in its capacity as a limited partner of the Master Fund, is called upon to approve, vote or consent to any matter to which it would be entitled to vote as a limited partner of the Master Fund and is required to seek the consent of the holders of Participating Shares in connection with any such approval, vote or consent pursuant to the constitutional documents of the Master Fund (a "**Master Fund Consent Transaction**"), each holder of a Participating Share shall have the right (in respect of such Participating Share), to the exclusion of the holders of the Management Shares (in respect of such Management Shares), to receive notice of, and vote on, the Master Fund Consent Transaction (the "**Special Voting Right**"). The voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote. For every Master Fund Consent Transaction, the Directors shall cause the Company to vote its limited partnership interest in the Master Fund proportionally for and against such matter in the same proportion that the Members holding Participating Shares voted for and against such matter pursuant to the Special Voting Right.

4.4 In relation to any Special Voting Right pursuant to Article 4.3, unless otherwise determined by the Directors in their sole discretion, the procedure in this Article 4.4 shall be invoked. The Directors shall provide written notice of the proposed Master Fund Consent Transaction to the Members holding Participating Shares and shall specify a deadline (the "**Consent Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written refusal to consent to the proposed Master Fund Consent Transaction. The holders of Participating Shares in respect of which an express written refusal to consent has not been received by the Consent Date shall be deemed to have consented in writing to the proposed Master Fund Consent Transaction.

## 5 Share Capital

5.1 Subject to these Articles, the Directors may allot, issue, grant options or warrants over, or otherwise dispose of Shares in separate classes and/or series with different terms, preferences, privileges or special rights including, without limitation, with respect to investment strategy and/or policy, participation in assets, profits and losses of the Company, voting, fees charged (including



management, performance and incentive fees), redemption privileges, allocation of costs and expenses (including, without limitation, the costs and expenses incurred in any hedging activities and any profits and losses arising therefrom) as they think proper. Subject to the Statute, these Articles and any applicable subscription agreement, any Share Rights (other than those set out in these Articles or set out in a Special Resolution) may be varied by either the Directors or by Ordinary Resolution. Notwithstanding the foregoing, the Subscriber shall have the power to:

- (a) issue one Share to itself;
- (b) transfer that Share by an instrument of transfer to any person; and
- (c) update the Register of Members in respect of the issue and transfer of that Share.

5.2 On or before the allotment of any Participating Share the Directors shall resolve the Class and/or Series to which such Participating Share shall be classified and may, prior to the issue of any Participating Share, reclassify such Participating Share. Each Class and/or Series shall be specifically identified. Subject to the Statute and these Articles, the Directors may at any time re-name any Participating Share.

5.3 Notwithstanding the currency in which the par value of the Participating Shares is denominated, the Directors may specify any currency as the currency in which the Subscription Price, Redemption Price and Net Asset Value of Participating Shares of a Class and/or Series is calculated.

5.4 The Company shall not issue Shares to bearer.

5.5 Fractional Shares may be issued.

5.6 Shares shall only be issued as fully paid-up.

5.7 No right of pre-emption or first refusal shall attach to any Shares.

5.8 New Issue Shares shall not be issued to a Prohibited Person.

## **6 Allotment and Issue of Participating Shares**

6.1 The Directors may from time to time allot and issue Participating Shares of any Class and/or Series. The Directors may, in their discretion, refuse to allot and issue any Participating Shares, and shall not issue any Participating Shares to or for the account of an investor who is not an Eligible Investor. If the Directors have declared a Calculation Suspension or Issue Suspension, no Participating Shares of that Class or Series (as appropriate) shall be issued until the relevant Suspension has ended.

6.2 The Directors shall determine the Subscription Price at the time of issue of the first issue of Participating Shares of any Class and/or Series. Thereafter, the Directors may allot and issue



Participating Shares of the same Class and/or Series on any Subscription Date provided that such additional Participating Shares are issued at a Subscription Price equal to not less than the Net Asset Value per Participating Share of such Class and/or Series calculated on the relevant Subscription Date (or if the Subscription Date is not also a Valuation Date then on the immediately preceding Valuation Date).

- 6.3 The Directors may add to the Subscription Price per Participating Share (before making any rounding adjustment) an amount which they consider to be an appropriate allowance to reflect fiscal and purchase charges which would be incurred for the account of the Company in investing an amount equal to the Subscription Price. The Directors may also add, in their discretion, a Sales Charge and/or an amount equal to any stamp duty and any other governmental taxes or charges payable by the Company with respect to the issue of such Participating Shares.
- 6.4 An applicant for Participating Shares shall pay for such Participating Shares in such currencies, in such manner, at such time, in such place and to such person acting on behalf of the Company as the Directors may from time to time determine.
- 6.5 Subject to the terms of any subscription agreement, an application for Participating Shares shall be irrevocable by an applicant for Participating Shares once it has been received by the Company. Participating Shares shall be treated as having been issued with effect from the relevant Subscription Date notwithstanding that the subscriber for those Participating Shares may not be entered in the Register of Members until after the Subscription Date.
- 6.6 Participating Shares shall be issued in such minimum numbers as the Directors may specify either generally or in any particular case; likewise the Directors may from time to time prescribe an amount as the minimum subscription amount.
- 6.7 The Directors may resolve to accept non-cash assets in satisfaction (in whole or in part) of the Subscription Price.
- 6.8 The Directors may require an applicant for Participating Shares to pay to the Company for the benefit of any selling agent such selling commissions or such organisational charges as may have been disclosed to such applicant. The Directors may differentiate between applicants as to the amount of such selling commissions or such organisational charges.
- 6.9 The Company may, in so far as the Statute permits, pay a commission to any person in consideration of that person subscribing or agreeing to subscribe whether absolutely or conditionally for any Participating Shares. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Participating Shares. The Company may also on any issue of Participating Shares pay such brokerage as may be lawful.

## **7 Separate Accounts**

- 7.1 The Directors shall have the power to establish and maintain, with respect to Participating Shares of any Class and/or Series, a Separate Account, to record (purely as an internal accounting





matter) the allocation, on a differentiated basis, of the assets and liabilities of the Company to the holders of Participating Shares of any such Class and/or a Series in a manner consistent with the methodology set forth in the Offering Memorandum and the rights otherwise attaching to the Participating Shares.

- 7.2 The proceeds from the issue of Participating Shares of any Class and/or Series shall be applied in the books of the Company to the Separate Account established for Participating Shares of that Class and/or Series. The assets and liabilities and income and expenditure attributable to that Separate Account shall be applied to such Separate Account and, subject to the provisions of these Articles, to no other Separate Account. In the event that the assets of a Separate Account referable to any Class and/or Series are exhausted, any and all unsatisfied claims which any Members or former Members referable to that Class and/or Series have against the Company shall be extinguished. The Members or former Members referable to a Class and/or Series shall have no recourse against the assets of any other Separate Account established by the Company.
- 7.3 Where any asset is derived from another asset (whether cash or otherwise), such derivative asset shall be applied in the books of the Company to the same Separate Account as the asset from which it was derived, and on each revaluation of an asset the increase or diminution in value shall be applied to the same Separate Account and, subject to the provisions of these Articles, to no other Separate Account.
- 7.4 In the case of any asset or liability of the Company which the Directors do not consider is attributable to a particular Separate Account, the Directors shall have discretion to determine the basis upon which any such asset or liability shall be allocated between or among Separate Accounts.
- 7.5 The Directors may, in the books of the Company, allocate assets and liabilities to and from Separate Accounts if, as a result of a creditor proceeding against certain of the assets of the Company or otherwise, a liability would be borne in a different manner from that in which it would have been borne if applied under the foregoing Articles.
- 7.6 The Directors may from time to time transfer, allocate or exchange an asset or liability from one Separate Account to another Separate Account provided that at the time of such transfer, allocation or exchange the Directors form the opinion (in good faith) that the value in money or money's worth of each such asset or liability transferred, allocated or exchanged is not significantly less or more than the value in money or money's worth (referred to in these Articles as "proper value") received by the Separate Account from which such asset or liability is transferred, allocated or exchanged except only as is otherwise provided by these Articles.

## **8 Determination of Net Asset Value**

- 8.1 The Net Asset Value and Net Asset Value per Participating Share of each Class and/or Series shall be determined by or on behalf of the Directors as at the relevant Valuation Point on each relevant Valuation Date.



- 8.2 In calculating the Net Asset Value and the Net Asset Value per Participating Share, the Directors shall apply such generally accepted accounting principles as they may determine.
- 8.3 The assets and liabilities of the Company shall be valued in accordance with such policies as the Directors may determine. Absent bad faith or manifest error, any valuation made pursuant to these Articles shall be binding on all persons.
- 8.4 Unless otherwise determined by the Directors in any resolution creating a Class and/or Series of Participating Shares or as otherwise disclosed in any Offering Memorandum, the Net Asset Value per Participating Share of each Class (or Series) shall be determined by allocating *pro rata* the Net Asset Value, as at the relevant Valuation Point, of the Company and/or of the relevant Separate Account among each Class and/or Series, adjusting the amount so calculated to reflect any fees, costs, foreign exchange items or other assets or liabilities which are properly attributable to a specific Class and/or Series and then by dividing the resultant amount by the number of Participating Shares of such Class and/or Series then in issue.
- 8.5 The Directors may determine that the Net Asset Value of any Class and/or Series shall be definitively determined on the basis of estimates and that such determination shall not be modified to reflect final valuations.
- 8.6 Any expense or liability may be amortised over such period as the Directors may determine.
- 8.7 The Directors may establish such reserves as they deem reasonably necessary for Company expenses and any other contingent Company assets or liabilities, and may, upon the reversal or release of such reserves, apply any monies resulting therefrom in such manner as they may, in their absolute discretion, determine.
- 8.8 Net Asset Value per Participating Share shall be rounded to the nearest cent or such other amount as the Directors may determine and the benefit of any such roundings may be retained by the Company.
- 8.9 The Directors may cause the Company to issue new Participating Shares at par or to compulsorily redeem at par such number of Participating Shares as they consider necessary to address, in such manner as they consider equitable, any prior miscalculation of Net Asset Value or Net Asset Value per Participating Share. The Company shall not be required to pay to the holder the redemption proceeds of any such compulsorily redeemed Participating Shares, which proceeds shall be retained by the Company.

## 9 Suspensions

- 9.1 The Directors may, from time to time, in the circumstances disclosed in the Offering Memorandum, declare a Suspension with respect to any one or more Classes and/or Series of Participating Shares.



9.2 The Directors shall promptly notify all affected Members of any such Suspension and shall promptly notify such Members upon termination of such Suspension.

## 10 Transfer of Shares

10.1 Subject to Article 5.1, Shares may not be Transferred without the prior written approval of the Directors (which may be withheld for any or no reason) provided that the Directors may waive this requirement to the extent that they deem appropriate in connection with the listing of any Class or Series of Share on a stock exchange.

10.2 The Directors shall not register any Transfer of any Share to any person who is, in the opinion of the Directors, not an Eligible Investor.

10.3 Any proposed transferee shall provide to the Directors such information and documents as the Directors may request, including, without limitation, such documents or information as the Directors deem necessary or desirable:

- (a) to enable the Directors to determine that the proposed transferee is an Eligible Investor; and
- (b) to enable the Company to comply with all applicable laws, including anti-money laundering laws.

10.4 The instrument of Transfer of any Share shall be in writing and shall be executed by or on behalf of the transferor (and, if the Directors so require, signed by or on behalf of the transferee). The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

## 11 Transmission of Shares

11.1 If a Member dies, the survivor or survivors (where the Member was a joint holder) or his or her legal personal representatives (where the Member was a sole holder) shall be the only persons recognised by the Company as having any title to the Member's interest in the Company. The death of any Member shall not operate to relieve, waive or reduce any liabilities attaching to the Member's Shares at the time of death and such liabilities shall continue to bind any survivor or survivors, or any personal representative, as the case may be.

11.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is an Eligible Investor may, upon delivery to the Directors of such evidence as may from time to time be required by them of:

- (a) such person's entitlement to such Shares; and/or
- (b) such person's status as an Eligible Investor,



elect, either to become the holder of such Share or to have such Share Transferred to another Eligible Investor nominated by such person. If such person elects to become the holder of such Share, such person shall give notice in writing to the Directors to that effect, but the Directors shall, in either case, have the same right to decline registration of such person as a holder of such Share as they would have had in the case of a Transfer of the Share by that Member before his or her death or bankruptcy, or liquidation or dissolution, as the case may be.

- 11.3 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is not an Eligible Investor shall not be registered as the holder of such Share and shall promptly Transfer such Share to an Eligible Investor in accordance with these Articles.
- 11.4 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by Transfer), and who is an Eligible Investor, shall be entitled to the same dividends and other advantages to which such person would be entitled if such person were the registered holder of such Share. However, the person shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him become the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days the Directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

## 12 Redemption of Shares

- 12.1 Subject to any provisions relating to a specific Class and/or Series as set out in the Offering Memorandum or these Articles or in any resolution constituting a Class and/or Series or otherwise forming part of the special rights of such Participating Shares, a Member may require the redemption of all or any of such Member's Participating Shares by serving a Redemption Notice on the Company. Unless timely receipt is waived by the Directors in a particular case, a Redemption Notice shall be required to be received on or before a Redemption Date with respect to such Participating Shares (or such number of days prior to such Redemption Date as may be determined by the Directors). Any Member redeeming Participating Shares shall submit to the Directors the share certificate (if any) issued in respect of those Participating Shares. The Company shall redeem such Participating Shares at the Redemption Price, being an amount equal to the Net Asset Value per Participating Share of the relevant Class and/or Series prevailing on the relevant Redemption Date (or if the Redemption Date is not a Valuation Date then on the immediately preceding Valuation Date) subject to any deductions, holdbacks or adjustments provided for in these Articles and/or the Offering Memorandum.



- 12.2 The Directors may deduct any Redemption Fee from the Redemption Price. The Directors may also deduct such amount which they consider to be an appropriate allowance to reflect fiscal and sale charges which would be incurred for the account of the Company in realising assets or closing out positions to provide funds to meet any redemption request.
- 12.3 A Member may not withdraw a Redemption Notice once submitted to the Company unless (a) the Directors shall have declared a Calculation Suspension or Redemption Suspension or (b) the Directors determine (in their sole discretion) to permit the withdrawal of such redemption request (which they may do in whole or in part). If a relevant Suspension has been declared by the Directors, the right of a Member to have its Participating Shares redeemed shall be suspended and during the period of Suspension the Member may withdraw its Redemption Notice. Any withdrawal of the Redemption Notice shall be made in writing and shall only be effective if actually received by the Company before the termination of the period of the Redemption Suspension or Calculation Suspension, as applicable. If the Redemption Notice is not withdrawn, any Participating Shares the redemption of which has been suspended shall be redeemed once the relevant Suspension has ended at the Redemption Price for Participating Shares of the relevant Class and/or Series calculated on the next Redemption Date following the end of the relevant Suspension.
- 12.4 The Directors may impose a gate the effect of which is to limit the redemptions of Participating Shares of any Class and/or Series or to limit the redemptions of Participating Shares held by any Member or Members as of any Redemption Date to such extent and in such manner as is disclosed in the Offering Memorandum. If the Directors determine to limit redemptions, the Directors may determine the manner in which such gated redemption requests will be dealt with on any subsequent Redemption Date.
- 12.5 If the Company is required by the laws of any relevant jurisdiction to make a withholding from any redemption monies payable to the holder of Participating Shares the amount of such withholding shall be deducted from the redemption monies otherwise payable to such person.
- 12.6 No redemption of part of a Member's holding of Participating Shares of any one Class and/or Series may be made if, as a result thereof, such Member would hold fewer Participating Shares of such Class and/or Series than such minimum number or value of Participating Shares of such Class and/or Series as may from time to time be specified (either generally or in any particular case or cases) by the Directors. If such partial redemption would reduce such Member's holding of Participating Shares to less than such minimum holding, the Directors may, in their discretion, elect to compulsorily redeem all of such Member's Participating Shares.
- 12.7 The Company may, in the absolute discretion of the Directors, refuse to make a redemption payment to a Member if the Directors suspect or are advised that the payment of any redemption proceeds to such Member may result in a breach or violation of any anti-money laundering law by any person in any relevant jurisdiction, or if such refusal is necessary to ensure the compliance by the Company, its Directors, the Administrator or any other service provider of the Company with any anti-money laundering law in any relevant jurisdiction.



- 12.8 Any amount payable to a Member for the redemption of Participating Shares shall be paid in such currency or currencies as the Directors may determine. Subject to any Payment Suspension, the Company shall remit redemption proceeds (net of the costs of remittance) by cheque or wire transfer within such period or periods as the Directors shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period or periods as the Directors shall determine. In the absence of directions as to payment the Company may remit redemption proceeds by cheque to the address of the Member appearing on the Register of Members or by wire transfer to such account as the Directors deem appropriate in the circumstances. The Company shall not be liable for any loss resulting from this procedure.
- 12.9 On any redemption of Participating Shares the Directors shall have the power to satisfy (in whole or in part) the Redemption Price (and any other sums payable on redemption as provided in these Articles) owing on the redemption of such Participating Shares by dividing *in specie* the whole or any part of the assets of the Company (including, without limitation, shares, debentures, or securities of any other company whether or not held by the Company on the Redemption Date in question) and either (i) distributing such assets directly to the redeeming shareholder, and/or (ii) distributing or allocating such assets to a liquidating account or other similar mechanism to be managed and/or liquidated at the discretion of the Directors.
- 12.10 Participating Shares shall be treated as having been redeemed with effect from the relevant Redemption Date irrespective of whether or not a Member has been removed from the Register of Members or the Redemption Price has been determined or remitted. Accordingly, on and from the relevant Redemption Date, Members in their capacity as such will not be entitled to or be capable of exercising any rights arising under these Articles with respect to Participating Shares being redeemed (including any right to receive notice of, attend or vote at any meeting of the Company) save the right to receive the Redemption Price and any dividend which has been declared prior to the relevant Redemption Date but not yet paid (in each case with respect to the Participating Shares being redeemed). Such Members will be treated as creditors of the Company with respect to the Redemption Price and will rank accordingly in the priority of the Company's creditors.
- 12.11 Once a Participating Share is redeemed it shall be available for re issue and, until re issue, shall form part of the authorised and unissued share capital of the Company.
- 12.12 Upon the written request of a Member or prospective Member in a form acceptable to the Directors, the Company may, in the discretion of the Directors, accept a standing redemption request from such Member or prospective Member pursuant to which the Company shall agree (without assuming any liability for failing to do so) to use its commercially reasonable efforts to redeem such Member's Participating Shares to the extent necessary to ensure that such Member does not own over a specified percentage of the outstanding Participating Shares of the Company or any Class and/or Series thereof; such percentage to be the percentage identified by such Member or prospective Member in such written request as being the percentage which such Member's or prospective Member's ownership cannot exceed without material risk of such





Member or prospective Member being in violation of applicable law or regulation. Any such written request may be revoked by notice in writing to the Company from the affected Member.

- 12.13 No amendment to these Articles made after a Redemption Date shall affect a Member with respect to Participating Shares of that Member which have been redeemed, or are being treated as redeemed, on or prior to that Redemption Date.
- 12.14 Unless otherwise provided in the Offering Memorandum, unremitted redemption proceeds shall not bear interest against the Company and redeemed Participating Shares shall not participate in the profits and losses of the Company with effect from the relevant Redemption Date.

### 13 Compulsory Redemption

- 13.1 The Directors may cause the Company to redeem any or all of the Participating Shares held by any person at the appropriate Redemption Price in the circumstances disclosed in the Offering Memorandum. If the Directors determine compulsorily to redeem any Participating Shares under this Article they shall give the holder of the Participating Shares such notice of the redemption as they shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period as the Directors shall determine.
- 13.2 The Directors may cause a compulsory redemption during any period for which a Redemption Suspension has been declared.
- 13.3 Without prejudice to the generality of the foregoing, the Company may (without notice) compulsorily redeem the Participating Shares of any Member and, on behalf of such Member, apply the proceeds of redemption in paying for new Participating Shares to give effect to any exchange, conversion or roll-up policy disclosed to Members pursuant to which Participating Shares of one Class or Series (the "**Old Shares**") may, at the option of the Company, be exchanged for Participating Shares of another Class or Series (the "**New Shares**") by means of the redemption of the Old Shares and the immediate re-subscription of the redemption proceeds in paying up the New Shares.

### 14 FATCA

- 14.1 Notwithstanding any other Article, in order to comply with FATCA, any Director shall be entitled to release and/or disclose on behalf of the Company to the Cayman Islands Tax Information Authority or equivalent authority (the "**TIA**") and any other foreign government body as required by FATCA, any information in its or its agents' or delegates' possession regarding a Member including, without limitation, financial information concerning the Member's investment in the Company, and any information relating to any shareholders, principals, partners, beneficial owners (direct or indirect) or controlling persons (direct or indirect) of such Member. Any such Director may also authorise any third party agent, including but not limited to, the Investment Manager or Administrator, to release and/or disclose such information on behalf of the Company.





- 14.2 In order to comply with FATCA and, if necessary, to reduce or eliminate any risk that the Company or its Members are subject to withholding taxes pursuant to FATCA or incur any costs or liabilities associated with FATCA, the Directors may cause the Company to undertake any of the following actions:
- (a) compulsorily redeem any or all of the Shares held by a Member either (i) where the Member fails to provide (in a timely manner) to the Company, or any agent or delegate of the Company, including but not limited to, the Investment Manager or the Administrator, any information requested by the Company or such agent or delegate pursuant to FATCA; or (ii) where there has otherwise been non-compliance by the Company with FATCA whether caused, directly or indirectly, by the action or inaction of such Member, or any related person, or otherwise;
  - (b) deduct from, or hold back, redemption or repurchase proceeds, dividend payments or any other distributions, in order to:
    - (i) comply with any requirement to apply and collect withholding tax pursuant to FATCA;
    - (ii) allocate to a Member an amount equal to any withholding tax imposed on the Company as a result of the Member's, or any related person's, action or inaction (direct or indirect), or where there has otherwise been non-compliance by the Company with FATCA;
    - (iii) ensure that any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) are recovered from the Member(s) whose action or inaction (directly or indirectly, including the action or inaction of any person related to such Member) gave rise or contributed to such costs or liabilities;
  - (c) in order to give effect to the requirements imposed upon the Company by FATCA, including the actions contemplated by articles 14.2(a) and 14.2(b), the Directors may:
    - (i) create separate classes and/or series of Shares ("**FATCA Shares**"), with such rights and terms as the Directors may in their sole discretion determine, and following the compulsory redemption of some or all of a Member's Shares may immediately apply such redemption proceeds in subscribing for such number of FATCA Shares as the Directors determine; and/or
    - (ii) may re-name any number of Shares (whether issued or unissued) as FATCA Shares, create a Separate Account with respect to such FATCA Shares and apply any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) to such Separate Account; and/or



- (iii) allocate any FATCA costs, debts, expenses, obligations, liabilities or withholding tax among Separate Accounts on a basis determined solely by the Directors; and/or
- (iv) adjust the Net Asset Value per Share of any relevant Shares (including any FATCA Share).

## 15 Designated Investments

- 15.1 The Directors may, in their discretion, classify certain of the Company's investments which are deemed by the Directors or the Investment Manager to be illiquid or the value of which is not readily or reliably ascertainable or which may have a relatively long-term investment horizon as "**Designated Investments**". Once so classified, Designated Investments may, in the discretion of the Directors, be represented by a separate Class and/or Series of Participating Shares which, unless otherwise determined by the Directors, shall be allotted only to those Members who are holders of Participating Shares at the time of such designation. The gains and losses attributable to Designated Investments may, in the discretion of the Directors, be segregated and separately calculated and attributed amongst Members holding Shares of the relevant Class or Series in such manner as is consistent with the relevant provisions of the Offering Memorandum. Participating Shares of any such separate Class and/or Series may be issued by way of bonus or by way of conversion or exchange of all or part of a Member's holding of Participating Shares of another Class and/or Series. Similarly, Shares of a Designated Investment Class and/or Series may be converted or exchanged back into Participating Shares of the original Class and/or Series upon the Directors making a determination that the relevant investment no longer qualifies as a Designated Investment. The power to convert or exchange Participating Shares of one Class and/or Series into Participating Shares of another Class and/or Series may be effected by the Directors in any manner permitted by the Statute and the Articles, including the compulsory redemption of Participating Shares of one Class and/or Series and the application of the proceeds of redemption in subscribing for Participating Shares of the other Class and/or Series or by redesignating a portion of the Participating Shares of any existing Class and/or Series as thereafter belonging to a new Class and/or Series. Shares of a Class or Series of Shares which represent Designated Investments shall not, unless the Directors otherwise determine, be redeemable at the option of the Members holding such Participating Shares. Where investments are classified as Designated Investments and Participating Shares of a separate Class and/or Series are issued by way of bonus, the requirement of these Articles to ensure proper value is transferred to the Separate Account of the Participating Shares of the original Class and/or Series to which such investments were originally allocated shall not apply.

## 16 Purchase and Surrender of Shares

- 16.1 Subject to the provisions of the Statute and without prejudice to these Articles, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.



16.2 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

16.3 The Directors may accept the surrender for no consideration of any fully paid Share.

## 17 Treasury Shares

17.1 The Directors may, prior to the purchase, redemption or surrender of any Share, determine that such Share shall be held as a Treasury Share.

17.2 The Directors may determine to cancel a Treasury Share or transfer a Treasury Share on such terms as they think proper (including, without limitation, for nil consideration).

## 18 Variation of Share Rights

18.1 Subject to the Statute, these Articles and any applicable subscription agreement, all or any of the Share Rights applicable to any Class or Series of Participating Shares in issue (unless otherwise provided by the terms of issue of those Participating Shares) may (whether or not the Company is being wound up) be varied without the consent of the holders of the issued Participating Shares of that Class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation may be made with the prior consent in writing of the holders of not less than two-thirds by Net Asset Value of such Participating Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Participating Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of such Participating Shares. To any such meeting all the provisions of these Articles as to general meetings shall *mutatis mutandis* apply, but so that any holder of a Participating Share present in person or by proxy may demand a poll, and the quorum for any such meeting shall be Members holding not less than twenty per cent. by Net Asset Value of the issued Participating Shares of the relevant Class or Series. At any Class meeting, the voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote.

18.2 For the purposes of a Class consent, the Directors may treat two or more or all the Classes or Series of Participating Shares as forming one Class or Series if the Directors consider that such Classes or Series would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes or Series.

18.3 Where the Shares of any Class or Series (the "**First Class**") rank, or will on issue rank, *pari passu* with the Shares of another Class or Series (the "**Second Class**") with respect to participation in the same pool of profits or assets of the Company on a winding up, the rights of the First Class shall be deemed to be varied by any variation of or creation of rights in the Second



Class (including on initial issue) which gives the Second Class priority over the First Class on a winding up of the Company.

18.4 Subject to the foregoing Articles, the Share Rights applicable to any Class or Series of Shares in issue shall (unless otherwise expressly provided by the conditions of issue of such Shares) be deemed not to be varied by:

- (a) the creation, allotment or issue of further Shares ranking *pari passu* therewith and which may be issued with the benefit of the terms referred to below;
- (b) the purchase or redemption of any Shares;
- (c) the exercise of the powers to allocate assets and charge liabilities to the various Separate Accounts or any of them and to transfer the same to and from the various Separate Accounts or any of them, as provided for in these Articles;
- (d) any reduction or waiver of any fees (including early redemption, management or performance fees) chargeable or allocable to any Class or Series of Shares;
- (e) any reduction or waiver of any redemption notice, gate or lock-up period applicable to any Class or Series of Shares; or
- (f) any variation or waiver contemplated by or provided for in the Offering Memorandum applicable to the relevant Class and/or Series.

18.5 In relation to any Class or Series consent required pursuant to Article 18.1, the Directors in their discretion may invoke the following procedure (the "**Negative Consent Procedure**"). The Directors shall provide written notice of the proposed variation (the "**Proposal**") to the Members of the affected Class or Series and shall specify a deadline (the "**Redemption Request Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written request for redemption of some or all of their Participating Shares of the affected Class and/or Series on the Redemption Date (the "**Specified Redemption Date**") specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the "**Effective Date**") shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Participating Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the "**Affected Shares**") shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the "**Negative Consent Shares**"). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under Article 18.1 with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favour of the Proposal on the Effective Date.



## 19 Variation of Terms

The Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a Member to waive or modify the terms applicable to such Member's subscription for Participating Shares (including those relating to management and performance fees and redemption terms) without obtaining the consent of any other Member; provided that such waiver or modification does not amount to a variation of the rights attaching to the Participating Shares of such other Members.

## 20 Certificates for Shares

- 20.1 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or another person authorised by the Directors. The Directors may authorise certificates to be issued with the authorised signature(s) affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and, subject to these Articles, no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.
- 20.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- 20.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) on delivery up of the old certificate.

## 21 Register of Members

- 21.1 The Company shall maintain or cause to be maintained the Register of Members.
- 21.2 The Directors may determine that the Company shall maintain one or more branch registers of Members in accordance with the Statute. The Directors may also determine which register of Members shall constitute the principal register and which shall constitute the branch register or registers, and to vary such determination from time to time.

## 22 Closing Register of Members and Fixing Record Date

- 22.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Directors may provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed thirty days.



- 22.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of, or to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any dividend or in order to make a determination of Members for any other proper purpose.
- 22.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to receive payment of a dividend, the date on which notice of the meeting is sent or the date on which the resolution of the Directors declaring such dividend is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

### **23 Non Recognition of Trusts**

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the registered holder.

- 23.1 if it is not paid all the provisions of these Articles shall apply as if that amount had become due and payable by virtue of a call.
- 23.2 The Directors may issue Shares with different terms as to the amount and times of payment of calls, or the interest to be paid.
- 23.3 The Directors may, if they think fit, receive an amount from any Member willing to advance all or any part of the monies uncalled and unpaid upon any Shares held by it, and may (until the amount would otherwise become payable) pay interest at such rate as may be agreed upon between the Directors and the Member paying such amount in advance.
- 23.4 No such amount paid in advance of calls shall entitle the Member paying such amount to any portion of a dividend declared in respect of any period prior to the date upon which such amount would, but for such payment, become payable.

### **24 Lien on Shares**

- 24.1 The Company shall have a first and paramount lien on all Shares (whether fully paid-up or not) registered in the name of a Member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such Member or such Member's estate, either alone or jointly with any other person, whether a Member or not, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The registration of a Transfer of any such Share shall operate as a waiver of the Company's lien thereon. The Company's lien on a Share shall also extend to any amount payable in respect of that Share.





- 24.2 The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, if a sum in respect of which the lien exists is presently payable, and is not paid within fourteen clear days after notice has been given to the holder of the Shares, or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold.
- 24.3 To give effect to any such sale the Directors may authorise any person to execute an instrument of Transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The purchaser or such purchaser's nominee shall be registered as the holder of the Shares comprised in any such Transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Shares be affected by any irregularity or invalidity in the sale or the exercise of the Company's power of sale under these Articles.
- 24.4 The net proceeds of such sale after payment of costs, shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and any balance shall (subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

## **25 Amendments of Memorandum and Articles and Alteration of Capital**

- 25.1 The Company may, by Ordinary Resolution:
- (a) increase its share capital by such sum and with such rights, priorities and privileges annexed thereto, as the resolution shall prescribe;
  - (b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;
  - (c) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum; and
  - (d) cancel any Shares that at the date of the passing of the resolution have not been taken or agreed to be taken by any person.
- 25.2 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of these Articles with reference to liens, Transfer, transmission and otherwise as the Shares in the original share capital.
- 25.3 Subject to the provisions of the Statute and the provisions of these Articles as regards the matters to be dealt with by Ordinary Resolution the Company may, by Special Resolution:
- (a) change its name;
  - (b) alter or add to these Articles;





- (c) alter or add to the Memorandum with respect to any objects, powers or other matters specified therein; and
- (d) reduce its share capital or any capital redemption reserve fund.

## **26 Registered Office**

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

## **27 General Meetings**

- 27.1 All general meetings other than annual general meetings shall be called extraordinary general meetings. The Directors may call general meetings.
- 27.2 The Company may but shall not be obliged to hold a general meeting in each year as its annual general meeting, and shall specify the meeting as such in the notice calling it. Any annual general meeting shall be held at such time and place as the Directors shall determine.

## **28 Notice of General Meetings**

- 28.1 At least five Business Days' notice shall be given of any general meeting. Every notice shall be exclusive of the day on which it is given or deemed to be given and of the day on which the meeting is to be held and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of these Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:
  - (a) in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and
  - (b) in the case of an extraordinary general meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety five per cent. in par value of the Shares giving that right.
- 28.2 The accidental omission to give notice of a general meeting to, or the non receipt of notice of a meeting by, any person entitled to receive notice thereof shall not invalidate the proceedings of that meeting.

## **29 Proceedings at General Meetings**

- 29.1 No business shall be transacted at any general meeting unless a quorum is present. A quorum shall be one or more Members (present in person, by proxy or authorised corporate



representative, as the case may be) entitled to attend and vote and representing not less than twenty per cent. in par value of all of the Shares in issue and carrying the right to vote at the meeting.

- 29.2 A person may, with the consent of the Directors, participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.
- 29.3 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.
- 29.4 If a quorum is not present within half an hour from the time appointed for the meeting or if during such a meeting a quorum ceases to be present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time or such other place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
- 29.5 The chairman, if any, of the board of Directors shall preside as chairman at every general meeting of the Company, or if there is no such chairman, or if the chairman shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.
- 29.6 If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairman of the meeting.
- 29.7 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice.
- 29.8 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, the chairman or any Member present in person or by proxy (or in the case of a non-natural person, by its duly authorised representative or by proxy) demands a poll.
- 29.9 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority,



an entry to that effect in the minutes of the proceedings of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 29.10 The demand for a poll may be withdrawn.
- 29.11 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.
- 29.12 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.
- 29.13 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a second or casting vote.

### **30 Votes of Members**

- 30.1 Subject to any rights or restrictions attached to any Shares, on a show of hands every Member holding Shares carrying the right to vote on the matter in question who (being an individual) is present in person or by proxy or (if a corporation or other non-natural person) is present by its duly authorised representative or by proxy, shall have one vote and on a poll every such Member shall have one vote for every Share of which he is the holder.
- 30.2 In the case of joint holders of record, the vote of the senior holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. Seniority among joint holders shall be determined by the order in which the names of the holders stand in the Register of Members.
- 30.3 A Member of unsound mind, or in respect of whom an order has been made by any court or authority having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the Member's committee, receiver, curator bonis, or other similar person appointed on such Member's behalf by that court or authority and any such committee, receiver, curator bonis or other similar person may vote by proxy.
- 30.4 No person shall be entitled to vote at any general meeting unless such person is registered as a Member on the record date for such meeting, nor unless all calls or other monies then payable by such person in respect of such Shares have been paid.
- 30.5 No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is purported to be given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.



- 30.6 On a poll or on a show of hands votes may be cast either personally or by proxy. A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall state which proxy is entitled to vote on a show of hands.
- 30.7 A Member holding more than one Share need not cast the votes in respect of its Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain (any such abstentions to count neither for nor against the resolution) from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing it, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which such proxy is appointed either for or against a resolution and/or abstain from voting.

### **31 Proxies**

- 31.1 The instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of such appointor's attorney duly authorised in writing or, if the appointor is a corporation or other non-natural person, under the hand of an officer or other person duly authorised for that purpose. A proxy need not be a Member of the Company.
- 31.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the place and the time (being not later than the time for holding the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting, the instrument appointing a proxy shall be deposited at the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.
- 31.3 The chairman may in any event, at the chairman's discretion, declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted and which has not been declared to have been duly deposited by the chairman, shall be invalid.
- 31.4 The instrument appointing a proxy may be in any usual or common form and may be incorporated within any subscription agreement or other document signed by or on behalf of the Member. An instrument appointing a proxy may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.
- 31.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the Transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or Transfer was received by the



Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

### **32 Corporate Members**

Any corporation or other non-natural person which is a Member of the Company may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as the corporation could exercise if it were an individual Member.

### **33 Shares Beneficially Owned by the Company**

Shares of the Company that are beneficially owned by the Company shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.

### **34 Directors**

There shall be a board of Directors consisting of not less than one person (exclusive of alternate Directors) provided however that the Company may from time to time by Ordinary Resolution increase or reduce the limits in the number of Directors. The first Directors of the Company shall be determined in writing by, or appointed by a resolution of, the Subscriber.

### **35 Powers of Directors**

- 35.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- 35.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.
- 35.3 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. Notwithstanding the foregoing, the Directors shall not exercise the powers specified in this Article in breach of any limits or restrictions specified in the Offering Memorandum.



### **36 Appointment and Removal of Directors**

- 36.1 The Company may, by Ordinary Resolution, appoint any person to be a Director and may, by Ordinary Resolution, remove any Director.
- 36.2 The Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with these Articles as the maximum number of Directors.

### **37 Vacation of Office of Director**

The office of a Director shall be vacated if:

- (a) the Director gives notice in writing to the Company that such Director resigns the office of Director;
- (b) the Director is absent (without being represented by proxy or an alternate Director appointed by such Director) from three consecutive meetings of the board of Directors without special leave of absence from the Directors, and they pass a resolution that such Director has by reason of such absence vacated office;
- (c) the Director dies, becomes bankrupt or makes any arrangement or composition with such Director's creditors generally;
- (d) the Director is or becomes of unsound mind;
- (e) the Director ceases to be a Director by virtue of, or is prohibited from being a Director by, an order made pursuant to any law or regulation binding on the Company; or
- (f) all the other Directors of the Company (being not less than two in number) resolve that such Director should be removed as a Director.

### **38 Proceedings of Directors**

- 38.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be two if there are two or more Directors, and shall be one if there is only one Director. A person who holds office as an alternate Director shall, if such person's appointor is not present, be counted in the quorum. A Director who also acts as an alternate Director shall, if such Director's appointor is not present, count twice towards the quorum.
- 38.2 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall not have a second or casting vote. A Director who is also an alternate Director shall be entitled in the absence of such Director's appointor to a separate vote on behalf of such Director's appointor in addition to such Director's own vote.





- 38.3 A person may participate in a meeting of the Directors or any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors, the meeting shall be deemed to be held at the place where the chairman is located at the start of the meeting.
- 38.4 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of Directors (an alternate Director being entitled to sign such a resolution on behalf of such alternate Director's appointor) shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.
- 38.5 A Director or alternate Director may, or other officer of the Company at the direction of a Director or alternate Director may call a meeting of the Directors by at least two days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held.
- 38.6 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
- 38.7 The Directors may elect a chairman of their board and determine the period for which the chairman is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
- 38.8 All acts done by any meeting of the Directors or of a committee of Directors (including any person acting as an alternate Director) shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or alternate Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director or alternate Director as the case may be.
- 38.9 A Director but not an alternate Director may be represented at any meetings of the board of Directors by a proxy appointed in writing by such Director. The proxy shall count towards the quorum and the vote of the proxy shall for all purposes be deemed to be that of the appointing Director.

### **39 Presumption of Assent**

A Director who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless the Director's dissent shall be entered in the minutes of the meeting or unless the Director shall file such





Director's written dissent from such action with the person acting as the chairman or secretary of the meeting before the close or adjournment thereof or shall forward such dissent by personal delivery, courier or registered post to such person immediately after the close or adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

#### **40 Directors' Interests**

- 40.1 A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with such Director's office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
- 40.2 A Director may act alone or by such Director's firm in a professional capacity for the Company and the Director or such Director's firm shall be entitled to remuneration for professional services as if such Director were not a Director or alternate Director.
- 40.3 A Director or alternate Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by such Director or alternate Director as a director or officer of, or from such Director or alternate Director's interest in, such other company.
- 40.4 No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or transaction by reason of such Director holding office or of the fiduciary relationship thereby established. A Director (or such Director's alternate Director in such Director's absence) shall be at liberty to vote in respect of any contract or transaction in which such Director is interested provided that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by such Director at or prior to such Director's consideration and any vote thereon.
- 40.5 A general notice that a Director or alternate Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or transaction in which such Director has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

#### **41 Minutes**

The Directors shall cause minutes to be made in books kept for the purpose of recording all appointments of officers made by the Directors, all proceedings at meetings of the Company or



the holders of any Class of Shares and of the Directors, and of committees of Directors including the names of the Directors or alternate Directors present at each meeting.

## **42 Delegation of Directors' Powers**

- 42.1 The Directors may delegate any of their powers to any committee consisting of one or more Directors or such other persons as the Directors may designate. They may also delegate to any managing director or any Director holding any other executive office such of their powers as they consider desirable to be exercised by such managing director or any Director provided that an alternate Director may not act as managing director and the appointment of a managing director shall be revoked forthwith if such managing director ceases to be a Director. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers, and may be revoked or altered. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.2 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees or local boards. Any such appointment may be made either collaterally with or to the exclusion of the Directors' powers, shall be subject to any conditions the Directors may impose, and may be revoked or altered. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.3 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised person to delegate all or any of the powers, authorities and discretions vested in such attorney or authorised person.
- 42.4 The Directors may appoint such officers as they consider necessary on such terms, at such remuneration (if any) and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of such officer's appointment an officer may be removed by resolution of the Directors or Members.

## **43 Alternate Directors**

- 43.1 Any Director (other than an alternate Director) may by written notice to the Company appoint any other Director, or any other person willing to act, to be an alternate Director and by written notice to the Company may remove from office an alternate Director so appointed by the Director.



- 43.2 An alternate Director shall be entitled to receive notice of all meetings of Directors and of meetings of committees of Directors of which such alternate Director's appointor is a member, to attend and vote at every such meeting at which the Director appointing such alternate Director is not personally present, and generally to perform all the functions of such alternate Director's appointor as a Director in such Director's absence.
- 43.3 An alternate Director shall cease to be an alternate Director if such alternate Director's appointor ceases to be a Director.
- 43.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.
- 43.5 Subject to the provisions of the Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for such alternate Director's own acts and defaults and shall not be deemed to be the agent of the Director appointing such alternate Director.

#### **44 No Minimum Shareholding for Directors**

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director shall not be required to hold Shares.

#### **45 Remuneration of Directors**

- 45.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any Class of Shares or debentures of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.
- 45.2 The Directors may by resolution approve additional remuneration to any Director for any services other than such Director's ordinary routine work as a Director. Any fees paid to a Director who is also counsel to the Company, or otherwise serves it in a professional capacity, shall be in addition to such Director's remuneration as a Director.

#### **46 Seal**

The Company may, if the Directors so determine, have a Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some officer or other person authorised by the Directors for the purpose.



#### **47 Dividends, Distributions and Reserves**

- 47.1 Subject to the Statute, these Articles, and the special rights attaching to Participating Shares of any Class and/or Series, the Directors may, in their absolute discretion, declare dividends and distributions on Participating Shares of any Class and/or Series in issue and authorise payment of the dividends or distributions out of the relevant Separate Account in respect of such Participating Shares. No dividend or distribution shall be paid except out of the realised or unrealised profits of the Company, or out of the share premium account attributable to Participating Shares of the Class and/or Series in respect of which the dividend or distribution is proposed to be paid, or as otherwise permitted by law.
- 47.2 Except as otherwise provided by the rights attached to Participating Shares, or as otherwise determined by the Directors, all dividends and distributions in respect of Participating Shares of a particular Class and/or Series shall be declared and paid according to Net Asset Value of the Participating Shares of the Class and/or Series that a Member holds. If any Participating Share is issued on terms providing that it shall rank for dividend or distribution as from a particular date, that Participating Share shall rank for dividend or distribution accordingly.
- 47.3 The Directors may deduct and withhold from any dividend or distribution otherwise payable to any Member all sums of money (if any) then payable by it to the Company on account of calls or otherwise or any monies which the Company is obliged by law to pay to any taxing or other authority.
- 47.4 Under no circumstances may the assets (or the income derived from such assets) attributed to a Separate Account in respect of any Class and/or Series be used to pay a dividend in respect of a Separate Account that is attributed to any other Class and/or Series.
- 47.5 The Directors may declare that any dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of shares, debentures or securities of any other company or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.
- 47.6 Any dividend, distribution, interest or other monies payable in cash in respect of Participating Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall (unless the Directors in their sole discretion otherwise determine) be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the Participating Share held by them as joint holders.



- 47.7 Any dividend or distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date of declaration of such dividend or distribution may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the dividend or distribution shall remain as a debt due to the Member. Any dividend or distribution which remains unclaimed after a period of six years from the date of declaration of such dividend or distribution shall be forfeited and shall revert to the Company.
- 47.8 No dividend or distribution shall bear interest against the Company.

#### **48 Capitalisation**

The Directors may capitalise any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members of any Class and/or Series in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and to apply such sum on their behalf in paying up in full unissued Participating Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power to the Directors to make such provisions as they think fit for the case of Participating Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter into an agreement with the Company, on behalf of all of the Members interested, providing for such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

#### **49 Books of Account**

- 49.1 The Directors shall cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account must be retained for a minimum period of five years from the date on which they are prepared. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.
- 49.2 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute, or authorised by the Directors or by the Company in general meeting.



49.3 The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

## **50 Audit**

50.1 The Directors may appoint an Auditor of the Company who shall hold office on such terms as the Directors determine.

50.2 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.

50.3 Any Auditors of the Company shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an ordinary company, and at the next extraordinary general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an exempted company, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

## **51 Notices**

51.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to the Member or to the address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent airmail.

51.2 Where a notice is sent by courier, service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in the Cayman Islands) following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient.





- 51.3 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under these Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 51.4 Notice of every general meeting shall be given in the manner authorised by these Articles to every person shown as holding Shares carrying an entitlement to receive such notice in the Register of Members on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of such person being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for such Member's death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.

## 52 Winding Up

- 52.1 If the Company shall be wound up the liquidator shall apply the assets of the Company in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. The liquidator shall in relation to the assets available for distribution among the Members make in the books of the Company such transfers thereof to and from Separate Accounts as may be necessary in order that the effective burden of such creditors' claims may be shared among the holders of Participating Shares of different Classes and/or Series in such proportions as the liquidator in such liquidator's absolute discretion may think equitable.
- 52.2 Subject to the special rights attaching to Participating Shares of any Class or Series, the balance shall then be applied in the following priority:
- (a) first, to the holders of Management Shares, an amount equal to the par value of such Management Shares; and
  - (b) second, the balance shall be paid to the holders of Participating Shares in proportion to the Net Asset Value of Participating Shares held, subject to a deduction from those Participating Shares in respect of which there are monies due, of all monies due to the Company for unpaid calls, or otherwise.
- 52.3 If the Company shall be wound up (whether the liquidation is voluntary or by or under the supervision of the Court) the liquidator may, with the authority of a resolution or resolutions passed by the holders of Participating Shares (whether as a whole or at separate Class meetings), divide among the Members in specie the whole or any part of the assets of the Company, and whether or not the assets shall consist of property of one kind or shall consist of property of different kinds, and may for such purposes set such value as the liquidator deems fair upon any one or more class or classes of property, and may determine how such division shall be





carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator, with the like authority, shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no Member shall be compelled to accept any shares or other property in respect of which there is a liability.

### **53 Indemnity and Insurance**

- 53.1 Every Director and officer of the Company (which for the avoidance of doubt, shall not include any Auditor), together with every former Director and former officer of the Company (each an "**Indemnified Person**") shall be indemnified out of the assets of the Company against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud, wilful default or Gross Negligence. No Indemnified Person shall be liable to the Company for any loss or damage incurred by the Company as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud, wilful default or Gross Negligence of such Indemnified Person. No person shall be found to have committed actual fraud, wilful default or Gross Negligence under this Article unless or until a court of competent jurisdiction shall have made a finding to that effect.
- 53.2 The Company shall advance to each Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defence of any action, suit, proceeding or investigation involving such Indemnified Person for which indemnity will or could be sought. In connection with any advance of any expenses hereunder, the Indemnified Person shall execute an undertaking to repay the advanced amount to the Company if it shall be determined by final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification pursuant to this Article. If it shall be determined by a final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification with respect to such judgment, costs or expenses, then such party shall not be indemnified with respect to such judgment, costs or expenses and any advancement shall be returned to the Company (without interest) by the Indemnified Person.
- 53.3 The Directors, on behalf of the Company, may purchase and maintain insurance for the benefit of any Director or other officer of the Company against any liability which, by virtue of any rule of law, would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which such person may be guilty in relation to the Company.
- 53.4 Pursuant to the foregoing provisions, the Company may enter into a service or other agreement with any Director (or any entity providing one or more persons to the Company to act as Directors) upon such terms and conditions (including as to indemnification and exculpation) as the Directors shall, in their absolute discretion, determine. Any such indemnification and exculpation provisions may be specified to a standard equal to or more favourable (but not less favourable) to the Company than any standard specified in these Articles.



**54 Disclosure**

If required to do so under the laws of any jurisdiction to which the Company, the Investment Manager, the Administrator or any other service provider is subject, or in compliance with the rules of any stock exchange upon which the Company's Shares are listed, or to ensure the compliance by any person with any anti-money laundering law in any relevant jurisdiction, any Director, Officer, the Investment Manager, the Administrator or Auditor of the Company shall be entitled to release or disclose any information in its possession regarding the affairs of the Company or a Member including, without limitation, any information contained in the Register of Members or subscription documentation of the Company relating to any Member.

**55 Financial Year**

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

**56 Transfer by way of Continuation**

The Company shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

**57 Mergers and Consolidations**

The Company shall, with the approval of a Special Resolution, have the power to merge or consolidate with one or more constituent companies (as defined in the Statute), upon such terms as the Directors may determine.



## **EXHIBIT 16**

**THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT**

**by and among**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**

**and**

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

**November 1, 2013**

**APPX 00579  
002633**

**THIS THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT** (this “*Agreement*”), is dated effective as of November 1, 2014, by and among:

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**, a Cayman Islands exempted company (the “*Offshore Fund*”);

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**, a Delaware limited partnership (the “*Domestic Fund*,” and together with the Offshore Fund, the “*Clients*”) acting through its general partner, Highland Multi Strategy Credit Fund GP, L.P. a Delaware limited partnership (the “*General Partner*”); and

**HIGHLAND CAPITAL MANAGEMENT, L.P.**, a Delaware limited partnership (the “*Investment Manager*”).

### PRELIMINARY STATEMENTS

A. The Domestic Fund previously retained the Investment Manager as its investment manager pursuant to an investment management agreement dated as of December 1, 2005, as amended and restated as of December 29, 2005 and as further amended and restated as of September 1, 2006 (the “*Original Agreement*”).

B. The Offshore Fund will invest all of its investable assets in the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and will serve merely as a steward thereof. The Investment Manager will conduct its investment activities at the Domestic Fund level as the investment manager to the Domestic Fund.

C. The Domestic Fund desires to continue to retain the Investment Manager and the Offshore Fund desires to retain the Investment Manager to provide certain discretionary advisory services relating to the assets and liabilities of the Domestic Fund and the Investment Manager desires to accept such appointment, all subject to the terms and conditions hereinafter set forth.

### AGREEMENT

This Agreement amends and restates in its entirety the Original Agreement as set forth below. For good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

#### 1. Appointment.

The Clients hereby appoint the Investment Manager as investment manager with respect to the assets and liabilities of the Domestic Fund and the Investment Manager hereby accepts such appointment and agrees to perform its obligations in accordance with the terms hereof and of the Fourth Amended and Restated Limited Partnership Agreement of the Domestic Fund, dated effective as of November 1, 2014, as amended from time to time (the “*Domestic Fund Partnership Agreement*”), and the investment objectives, policies,

guidelines and restrictions that from time to time are set forth in the Governing Documents of the Clients as applicable. “**Governing Documents**” mean, with respect to:

- (a) the Offshore Fund: the Memorandum and Articles of Association of the Offshore Fund, as amended from time to time, and the Confidential Private Offering Memorandum dated November 2014, as may be supplemented from time to time (the “**POM**”);
- (b) the Domestic Fund: the Domestic Fund Partnership Agreement and the Private Placement Memorandum dated November 2014, as may be supplemented from time to time (the “**PPM**”).

## **2. Authority and Duties of the Investment Manager.**

- (a) All of the investable assets of the Offshore Fund must be invested in, and the investment program of the Offshore Fund is to be conducted by the Investment Manager through, the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and the investment activities of the Investment Manager will be conducted at the Domestic Fund level as the investment manager to the Domestic Fund.
- (b) The Domestic Fund’s investment program will be conducted by the Investment Manager in accordance with the PPM.
- (c) The Investment Manager serves as the investment manager to the Domestic Fund and in that capacity has full discretion and authority, without obtaining the prior approval of any officer or other agent of the Domestic Fund:
  - (i) to continuously supervise the investment program of the Domestic Fund and the composition of its investment portfolio including, without limitation, determining from time to time what investments will be purchased, retained or sold, what contracts will be entered into by the Domestic Fund and what portion of its assets will be retained as cash, and to engage consultants and analysts in connection therewith; to cause the Domestic Fund to purchase or sell any asset, enter into any other investment-related transaction, including (directly or through subsidiaries or affiliates of the Domestic Fund) borrowing money, entering into swap transactions, lending securities, exercising control over a company, exercising voting or approval rights and selecting brokers and dealers for execution of portfolio transactions; and to undertake to do anything incidental to the foregoing to facilitate the performance of its obligations hereunder;
  - (ii) to invest within or outside the United States of America in “Investments” (as defined in, and subject to the provisions of, the Domestic Fund Limited Partnership Agreement);
  - (iii) to effect any and all transactions in Investments, including collateralized loan obligations, asset-backed securities, commodities, total return swaps,

credit default swaps, synthetic securities and other financial instruments and assets (and options and other contracts thereon), and everything connected therewith in the broadest sense, including, without limitation, the full discretion and authority to make short sales, to purchase or write options (including uncovered options) and to trade on margin;

- (iv) to, on behalf of the Clients, exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the Investments and other property and funds held or owned by the Domestic Fund, including without limitation the right to possess, lend, transfer, mortgage, pledge or otherwise deal in, and to secure the payment of obligations of the Domestic Fund by mortgage upon, or hypothecation or pledge of, all or part of the property of the Domestic Fund, whether at the time owned or thereafter acquired, and to vote Investments, participate in arrangements with creditors, institute and settle or compromise suits and administrative proceedings and other similar matters;
- (v) to select brokers, dealers, banks and other intermediaries by or through whom such transactions will be executed or carried out and to open, maintain and close accounts with brokers, which power shall include the authority to issue all instructions and authorizations to brokers regarding securities and money therein and to cause the Domestic Fund to pay, or authorize the payment and reimbursement of, brokerage commissions;
- (vi) to open, maintain and close bank accounts and authorize the drawing of checks or other orders for the payment of monies;
- (vii) to borrow or raise monies or utilize any other forms of leverage and to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non- negotiable instruments and evidences of indebtedness and otherwise to utilize any lines of credit, credit balances or overdraft privileges available to the Domestic Fund;
- (viii) to value the Client's assets as of the close of each fiscal period and any other date selected by the respective Client;
- (ix) to direct any administrator of the Clients, banks, brokers or other custodians to effect deliveries of funds or assets, but only in the course of effecting portfolio transactions for the account of the Clients;
- (x) to remove or replace any administrator of the Clients and/or any accountant of the Clients at any time; and
- (xi) to make and execute all such documents and to take all such other actions as the Investment Manager considers necessary or appropriate to carry out its investment management duties hereunder.



- (d) In furtherance of the foregoing, the Board of Directors, on behalf of the Offshore Fund, and the General Partner, on behalf of the Domestic Fund, has delegated certain rights and responsibilities with respect to the operation of their respective partnerships and funds to the Investment Manager, as more fully set forth in the Governing Documents.
- (e) Each Client hereby designates the Investment Manager as the commodity pool operator (the “*CPO*”) for such Client with complete authority and responsibility for compliance with the U.S. Commodity Exchange Act and the regulations promulgated thereunder, including to perform any and all duties required of a CPO (i) that is exempt from registration under the regulations of the U.S. Commodity Futures Trading Commission (the “*CFTC*”) and (ii) that is in compliance with CFTC Rule 4.13(a)(3), including the filing of a notice of exemption under said Rule 4.13(a)(3) with the CFTC.
- (f) Additionally, each of the Clients hereby designates and appoints the Investment Manager as its agent and attorney-in-fact, with full power and authority and without the need for further approval of the Clients (except as may be required by law) to complete and execute all such documents and to take any and all actions that the Investment Manager, in its discretion, may deem advisable to carry out the foregoing with respect to the assets of the Clients; provided, however, that the Investment Manager is not intended to have actual or constructive custody of any assets of the Clients. In connection with any of the foregoing, the Investment Manager is further authorized to transfer or tender for cash or exchange such assets. In all such purchases, sales or trades the Clients authorize the Investment Manager to act for the Clients, and at their risk, and in their name and on their behalf, in the same manner and with the same force and effect as the Clients might or could do with respect to such purchases, sales or trades without prior consultation with the Clients. The Clients also appoint the Investment Manager as their agent and attorney-in-fact to vote, and to execute proxies, waivers, consents and other instruments with respect to, the assets of the Clients.
- (g) At the request of a Client, in any wind down of such Client, the Investment Manager will manage the realization of the Client’s assets and the distribution thereof to investors.
- (h) In connection with the execution of transactions on behalf of the Domestic Fund, the Domestic Fund hereby acknowledges and agrees that in the course of selecting brokers, dealers, futures commission merchants, banks and financial intermediaries to effect transactions for the Domestic Fund’s account, the Investment Manager may agree to such commissions, fees and other charges on behalf of the Domestic Fund’s account as it may deem reasonable in the circumstances, taking into consideration all such factors as the Investment Manager deems relevant, including the following: the ability to effect prompt and reliable executions at favorable prices; the operational efficiency with which transactions are effected; the financial strength, integrity and stability of the broker; the quality, comprehensiveness and frequency of available research and other services considered to be of value; and

the competitiveness of commission rates in comparison with other brokers satisfying the Investment Manager's other selection criteria. It is understood that the costs of such services will not necessarily represent the lowest costs available and that the Investment Manager is under no obligation to combine or arrange orders so as to obtain reduced charges.

### 3. Fees and Expenses.

- (a) For its services to the Domestic Fund, the Domestic Fund will pay the Investment Manager the Management Fee (as defined in the Domestic Fund Partnership Agreement), calculated and payable monthly in advance. The Investment Manager may waive or reduce the management fees with respect to capital account and capital sub-accounts of the Domestic Fund in its discretion.
- (b) The Clients will pay, or will reimburse the Investment Manager, for all costs and expenses arising in connection with their operations, including without limitation, with respect to the Domestic Fund, all costs and expenses directly related to portfolio investments or prospective investments (whether or not consummated) of the Domestic Fund.
- (c) The Clients will not have their own separate employees or office, and they will not reimburse the Investment Manager for salaries, office rent and other general overhead costs of the Investment Manager. The Investment Manager will pay all of its own operating and overhead costs (except liability insurance) without reimbursement by the Clients. The Investment Manager is entitled to reimbursement from the Clients for any expenses paid by it on behalf of the Clients; provided that, the Investment Manager in its sole discretion may absorb any or all of such expenses incurred on behalf of the Clients. If the Investment Manager incurs any such expenses for the account of the Clients and any Customers (as defined below), the Investment Manager will allocate such expenses among the Clients and each such Customer in proportion to the size of the investment made by each in the activity or entity to which the expense relates, or in such other manner as the Investment Manager in its sole discretion considers fair and reasonable.

### 4. Other Activities and Investments.

- (a) The Investment Manager is not required to devote its full time to the affairs of the Clients, but must devote such of its time to the business and affairs of the Clients as it may determine, in its discretion exercised in good faith, to be necessary to conduct the affairs of the Clients for the benefit of the Clients, the shareholders of the Offshore Fund and the partners of the Domestic Fund. Subject to this limitation, the Investment Manager, its partners and principals and their affiliates are not precluded from engaging in or owning an interest in other business ventures or investment activities of any kind. It is expressly understood that the Investment Manager and its affiliates may effect investment transactions for their own accounts and for the accounts of other customers (generally, "*Customers*"), and the Clients further understand and agree that nothing herein restricts the ability of the

Investment Manager and its affiliates to engage in any such transactions notwithstanding the fact that the Clients may enter into or engage in such transactions so long as such transactions are in the best interests of the Clients.

- (b) The Investment Manager will act in a manner that it considers fair, reasonable and equitable in allocating investment opportunities to the Clients. It is understood that when the Investment Manager determines that it would be appropriate for the Clients and one or more of the Customers to participate in an investment opportunity, the Investment Manager will seek to execute orders for, or otherwise allocate such opportunities to, the Clients and such Customers on an equitable basis. In such situations, the Investment Manager may place orders for the Clients and each Customer simultaneously, and if all such orders are not filled at the same price, the Investment Manager may cause the Clients and each Customer to pay or receive the average of the prices at which such orders were filled for the Clients and all other Customers. If all such orders cannot be fully executed under prevailing market conditions, the Investment Manager may allocate among the Clients and the Customers the investments traded in a manner which the Investment Manager considers equitable, taking into account the size of the order placed for the Clients and each such Customer as well as any other factors which the Investment Manager deems relevant.

## 5. Account and Other Information.

- (a) The Investment Manager must furnish such information concerning activities undertaken for the account of the Clients as the Clients may reasonably request.
- (b) The Clients agree to keep confidential and not to disclose to any person any information or matter relating to the Clients' investments (other than disclosure to the Clients' shareholders, partners, directors and employees, legal counsel, administrator, registrar and accountant in connection with the preparation and review of financial statements and with the filing of any tax returns or to any other person approved in writing by the Investment Manager (each such person being hereinafter referred to as an "**Authorized Representative**")); provided that the Clients and their Authorized Representatives may make such disclosure to the extent that (x) the information to be disclosed is publicly known at the time of proposed disclosure by the Clients or Authorized Representative, (y) the information otherwise is or becomes legally known to the Clients other than through disclosure by the Investment Manager or (z) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities, provided that such agency, regulatory authorities or association is aware of the confidential nature of the information disclosed. Prior to making any disclosure required by law, the Clients will use their best efforts to notify the Investment Manager of such disclosure. Prior to any disclosure to any Authorized Representative, the Clients must advise such Authorized Representative of the obligations set forth in this Section 5(b) and are responsible for any breach of these obligations made by an Authorized Representative.

- (c) The Investment Manager retains, or arranges for the retention of, for a period of at least 5 years, copies of any documents generated or received by the Investment Manager in the ordinary course of business pertaining to the financial condition of the account of the Clients or to the compensation payable to the Investment Manager. At the request of the Clients, the Investment Manager will afford to the Clients' independent auditors reasonable access to such documents during customary business hours and will permit the Clients' auditors to make copies thereof or extracts therefrom at the expense of the Clients.

**6. Custody.**

The assets of the Clients must be held in the custody of one or more custodians (or other independent institutions performing the functions of custodian, with respect to the assets which are held by such institutions) selected by the Investment Manager. The Investment Manager will notify the Clients promptly of the proposed selection of any custodians.

**7. Scope of Liability.**

The Clients agree that the Investment Manager is not liable to the Clients or any of their partners or shareholders for any losses, damages, expenses or claims occasioned by any act or omission of the Investment Manager in connection with the performance of its services hereunder, other than as a result of the Investment Manager's willful misconduct, fraud or gross negligence, or as otherwise prescribed by applicable law. The Clients explicitly recognize that the investment advisory opinions, recommendations and actions of the Investment Manager will be based on advice and information deemed to be reliable but not guaranteed by or to the Investment Manager.

**8. Indemnification.**

- (a) The Clients must indemnify and hold harmless the Investment Manager, each member, shareholder, partner, manager or director of, or any person who controls, the Investment Manager, each of the respective affiliates of the foregoing and each of the respective executors, heirs, assigns, successors or other legal representatives of the foregoing (each, an "*indemnitee*") from and against any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted against such indemnitee in connection with the Investment Manager's serving or having served as such pursuant to this Agreement; provided, however, that the indemnitee is not entitled to any such indemnification with respect to any expense, loss, liability or damage that was caused by the indemnitee's willful misconduct, fraud or gross negligence.
- (b) In the event that the Investment Manager or any other indemnitee entitled to indemnification pursuant to paragraph (a) above is or becomes a party to any action or proceeding in respect of which, or there otherwise exists a claim pursuant to which, it may be entitled to seek indemnification hereunder, the indemnitee must promptly notify the respective Client thereof. The respective Client is entitled to participate in any such suit or proceeding and, to the extent that it may wish, to

assume the defense thereof with counsel reasonably satisfactory to the indemnitee. After notice of an election by the Client so to assume the defense thereof, the Client will not be liable to the indemnitee hereunder for any legal or other expenses subsequently incurred by the indemnitee in connection with the defense thereof other than reasonable costs of investigation or reasonable legal expenses incurred as a result of (i) potential conflicts of interest between the indemnitee and the Client or (ii) the protection of proprietary or privacy interests of other clients of or parties in interest with the indemnitee. The Client must advance to the indemnitee the reasonable costs and expenses of investigating and/or defending such claim, subject to receiving a written undertaking from the indemnitee to repay such amounts if and to the extent of any subsequent determination by a court or other tribunal of competent jurisdiction that the indemnitee was not entitled to indemnification hereunder.

- (c) A Client is not liable hereunder for any settlement of any action or claim effected without its written consent thereto.

**9. Independent Contractor.**

For all purposes of this Agreement, the Investment Manager is an independent contractor and not an employee or dependent agent of any Client. Nothing herein is to be construed as making any Client a partner or co-venturer with the Investment Manager or any of its affiliates or Customers. Except as provided in this Agreement, the Investment Manager has no authority to bind, obligate or represent the Clients.

**10. Term; Termination; Renewal.**

- (a) This Agreement will remain in full force and effect for a period commencing on the date first above written and ending on December 31, 2014, and thereafter will renew automatically for successive one-year periods. This Agreement may be terminated by any party hereto, without penalty, upon 75 days' prior written notice to the other parties.
- (b) The termination of this Agreement does not extinguish the obligations of the Clients for the payment of fees and expenses in respect of services rendered by the Investment Manager prior to the effective date of such termination.

**11. Acknowledgement.**

Each of the Clients certifies and acknowledges to the Investment Manager that it:

- (i) has fully disclosed to potential investors the fee provisions and other arrangements relating to the Client's account with the Investment Manager and is satisfied that the potential investors have received sufficient information from the Investment Manager to enable them to evaluate the terms of this Agreement; and
- (ii) fully understands the method of compensation provided herein and its associated risks, including the risk that the performance compensation arrangements with

affiliates of the Investment Manager may create an incentive for the Investment Manager to engage in transactions that are riskier or more speculative than would be the case in the absence of performance compensation and that such risk has been disclosed to potential investors.

**12. Amendment; Modification; Waiver.**

Except as otherwise expressly provided herein, this Agreement may not be amended, nor may any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by the party to be charged with such amendment, waiver or modification.

**13. Binding Effect; Assignment.**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations hereunder are not, except as otherwise expressly provided herein, assignable, transferable or delegable without the written consent of the other parties hereto and any attempted assignment, transfer or delegation thereof without such consent is null and void, except that the Investment Manager may assign its rights and obligations hereunder to an entity that controls, is controlled by or is under common control with the Investment Manager; provided, however, that such entity assumes the obligations of the Investment Manager hereunder.

**14. Governing Law.**

This Agreement is governed by and construed in accordance with the substantive laws of the State of Delaware which are applicable to contracts made and entirely to be performed therein, without regard to the place of performance hereunder.

[SIGNATURE PAGE FOLLOWS]



The parties have executed this Agreement as of the day and year first above written.

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, LTD.**

By: 

Name: James Dondero  
Title: Director


**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT  
GP, LLC  
its general partner


By: HIGHLAND CAPITAL MANAGEMENT,  
L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:   
Name: James Dondero  
Title: President

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

By: STRAND ADVISORS, INC.

By: 

Name: James Dondero  
Title: President



## **EXHIBIT 17**

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

HAYWARD PLLC  
Melissa S. Hayward (Texas Bar No. 24044908)  
Zachery Z. Annable (Texas Bar No. 24053075)  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

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

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

In re:

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

THE CHARITABLE DAF FUND, L.P.,  
Plaintiffs,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
Defendant.

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§  
§ Adversary Proceeding No.  
§ 22-03052-sgj  
§  
§  
§  
§  
§  
§

**DECLARATION OF JAMES P. SEERY, JR., IN SUPPORT OF HIGHLAND CAPITAL  
MANAGEMENT, L.P.'S AMENDED MOTION TO DISMISS**

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

I, James P. Seery, Jr., pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declare as follows:

1. During the bankruptcy case, I was first appointed as a member of the Board of Directors (the “Board”) of Strand Advisors, Inc. (“Strand”), the general partner of Highland Capital Management, L.P. (the “Highland” or the “Debtor,” as applicable), and later as the Debtor’s Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”).

2. In August 2021, upon the occurrence of the effective date of Highland’s Plan, I became Highland’s CEO.

3. I submit this Declaration in support of *Highland Capital Management, L.P.’s Amended Motion to Dismiss* (the “Motion”),<sup>2</sup> being filed concurrently with this Declaration. Unless stated otherwise, this Declaration is based on my personal knowledge, my review of the documents described below, and my communications with certain of Highland’s employees and counsel.

4. Highland is the investment manager for Multi-Strat (defined below) pursuant to the terms of the *Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P.*, dated November 1, 2013.

5. Multi-Strat is a pooled investment fund structured as a “mini master” and consists of Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “Master Fund”), and Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “Feeder Fund”). We refer to the Master Fund and the Feeder Fund collectively as “Multi-Strat.”

---

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed in the Motion.

6. Multi-Strat is managed by Highland, as its investment manager, and its general partner, Highland Multi Strategy Credit Fund GP, L.P. (“MSCF GP”). MSCF GP is wholly-owned by Highland Multi Strategy Credit GP, LLC, which is in turn wholly-owned by Highland. I am the sole officer of MSCF GP. I am also a director of the Feeder Fund.

7. Multi-Strat’s investors include both the limited partners in the Master Fund and the shareholders of the Feeder Fund (which itself is a limited partner of the Master Fund). The ultimate investors, whether direct or through the Feeder Fund, are commonly referred to as Multi-Strat’s limited partners. Multi-Strat’s current limited partners on a consolidated basis are:

<b>Limited Partner</b>	<b>Ownership %</b>
Highland	58.70%
CLO Holdco, Ltd.	4.06%
The Dugaboy Investment Trust	1.71%
Highland Capital Management Services, Inc.	35.10%
Mark Okada	0.43%

8. In addition to the limited partners, there are a number of former “redeemed” limited partners of Multi-Strat.

9. The Charitable DAF Fund, L.P., is not a Multi-Strat limited partner, investor, or “redeemed” limited partner in Multi-Strat.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

I declare under penalty of perjury OF the laws of the United States that the foregoing is true and correct.

Dated: May 27, 2022

/s/ James P. Seery, Jr.  
James P. Seery, Jr.

## **EXHIBIT 18**

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

[1992–93 CILR 372]

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED

GRAND COURT (Smellie, Ag. J.): July 6th, 1993

Civil Procedure—joinder of parties—party who “ought to have been joined”—Grand Court (Civil Procedure) Rules, r.26 permits joinder of defendant who ought to have been joined at commencement of proceedings only if established link between original cause of action and that against party to be joined—joinder not permitted for purpose of expanding original cause, e.g. to join party not privy to contract forming subject of original cause Civil Procedure—pleading—amendment—application to amend under Rules of Supreme Court, O.20, r.5 to be decided on merits and effect on action against original defendant—normally allowed unless applicant causing injury for which no compensation or acting mala fide—inconsistent, useless or futile claims or those constituting new cause of action not permitted

Landlord and Tenant—characteristics of relationship—exclusivity—if landlord/tenant relationship and remedy for breach comprehensively covered by lease agreement, court will not impose equitable or agency relationship—court will also not impose duties not strictly and necessarily incidental to relationship expressly created by parties

Landlord and Tenant—breach of covenant—forfeiture—notice—Registered Land Law (Revised), s.56 requirements for notice before forfeiture applicable only if breach capable of remedy

The plaintiff sought leave to amend its writ and statement of claim in an action against the defendant for breach of a lease.

The plaintiff leased premises to the defendant for the operation of its jewellery retail business. The form of lease was based on a Canadian model and provided for the payment of an annual basic rent and an annual percentage rent based on sales. The lease contained extensive provisions dealing with the defendant’s obligations to report and account to the plaintiff and specified the relief available in the event of breach of those provisions.

The defendant failed to keep full and faithful records and refused to comply with the directions of an independent auditor engaged by the plaintiff to obtain a reconstruction or compilation of those records. The plaintiff also obtained evidence of at least one sale of a valuable item which had not been recorded. The plaintiff claimed forfeiture of the lease and gave notice

---

1992–93 CILR 373

to that effect. It brought proceedings for recovery of possession and for rent claiming that the defendant had repudiated the lease.

The plaintiff subsequently sought leave to amend its writ and statement of claim (a) to add four more defendants who it alleged conspired with and facilitated or assisted the defendant in its falsification of accounts and disclosures; (b) to plead claims against those defendants; and (c) to effect substantial amendments of the pleadings against the primary defendant to include *inter alia* a claim for an account from the defendant to ascertain the amount owed to it, a claim for a declaration that the lease was duly forfeited and a claim in the alternative for damages for breach of the covenant to pay rent.

The plaintiff submitted that (a) the joinder of the additional defendants was permitted under r.26 of the Grand Court (Civil Procedure) Rules because the proper test was whether they could have been joined in some way at the time the original action was brought irrespective of whether they could have been joined in the action as it was actually brought. Accordingly, though the original action sought recovery of possession and mesne profits from the defendant, it could have instituted proceedings in damages at the same time against the other parties for having procured and conspired with the defendant to breach the lease; (b) the justification for giving leave to amend to include a claim for an account from the defendant consisted in the fiduciary relationship of principal and agent which should be implied as existing between it and the defendant having regard to the lease agreement which demanded a duty of trust from the defendant as tenant; further, an action for an account was an established remedy available to a principal against his agent in lieu of damages; (d) it was entitled to forfeit the lease on the basis that the breach was incapable of being remedied; and (e) it was entitled to make an alternative claim for damages for breach of the covenant to pay rent.

The defendant submitted in reply that (a) the joinder of the proposed defendants under r.26 was not permissible as they were not party to any contract with the plaintiff; (b) the court had no jurisdiction to permit the plaintiff to amend its writ and statement of claim to include new causes of action or inconsistent or useless amendments; (c) no fiduciary relationship existed between itself and the plaintiff; theirs was strictly a relationship of landlord and tenant to be governed by the clearly express terms of the lease; and (d) the plaintiff’s application should be



5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

dismissed in its entirety for the most important reason that the cause of action was bound to fail, for though it might have breached the lease, that breach was not irremediable. Accordingly, by virtue of s.56 of the Registered Land Law (Revised) it was entitled to notice requiring it to remedy the breach. As there had been no such proper notice nor any proper demand to remedy, the forfeiture was wrong in law and the cause of action based on it, for recovery of possession, rent and, latterly, damages, could not succeed. Further, the lease was still intact despite the plaintiff's claim to forfeiture.

**Held**, granting the application in part:

(1) The Grand Court (Civil Procedure) Rules, r.26 provided for the

---

1992-93 CILR 374

joinder of defendants who ought to have been joined at the commencement of the proceedings where there was an established link between the original cause and the cause against those to be joined. It did not permit joinder for the purpose of expanding the original cause of action. Since the original action between the plaintiff and the defendant was based on the lease agreement between them as landlord and tenant and the plaintiff's claim to recovery of possession and mesne profits arising from the defendant's breach, there could have been no other parties to the action as instituted because privity of contract existed only between those two (page 381, lines 13-15; lines 21-28; page 383, line 37 - page 384, line 9).

(2) In general, a plaintiff's application to amend pleadings to vary or add claims was to be decided on the merits to the extent that they might affect the action brought against the original defendant. The applicable principles were embodied in the Rules of the Supreme Court, O.20, r.5, by which amendments should normally be allowed unless it was apparent that the plaintiff applicant was acting *mala fide* or that by his omission or by the amendment he had done or would cause injury to his opponent which could not be compensated for by costs or otherwise; a plaintiff would not be permitted to raise entirely new claims amounting to a new cause of action or those that were inconsistent or useless or which sought to support a case that was bound to fail (page 385, line 27 - page 386, line 26).

(3) The court should not search for liability in tort or in equity where the parties were in a contractual relationship and this was particularly so in commercial relationships. More specifically it should not impose duties which were not strictly and necessarily incidental to that relationship. Since the lease agreement between the parties was a commercial transaction and it specified expressly and comprehensively their intentions with regard to the defendant's duties as well as an appropriate remedy for breach of the agreement, the court would not invoke the rules of equity so as to impose a relationship where there was no true need for the special protection that equity afforded. Similarly, no relationship of principal and agent could be found in what was strictly a landlord and tenant relationship. Furthermore, the proposition that the court should impose a fiduciary duty on the defendant because of the self-dealing manner in which he had breached the agreement was not acceptable since the equitable rules about self-dealing were based on a pre-existing fiduciary duty. Accordingly, no separate fiduciary duty on the defendant to account was to be implied from their relationship and the plaintiff's application to amend the pleadings on this basis would therefore be refused (page 387, lines 12-30; page 388, line 28 - page 389, line 36).

(4) The plaintiff had satisfied the court that it had a good, arguable case for forfeiture on the merits since even though it had omitted to address the question of whether the defendant's breach could be

---

1992-93 CILR 375

remedied, it was at least objectively arguable that it should be entitled to treat the circumstances existing at the time it purported to forfeit the case as irremediable because (a) the defendant's falsifications were deliberate; (b) its failure to assist the independent auditor betrayed an intention to continue its dissemblance; and (c) the continued performance of the lease depended on the good faith and willingness of the defendant, not only to remedy the breach but also to keep faithful accounts and make full and frank disclosure of sales and income. Although s.56 of the Registered Land Law (Revised) and its requirements for proper notice superseded any provisions in the lease to the contrary, the section would apply only if it were to be determined on the facts that the breaches were capable of remedy. Since the plaintiff's contention was that the breach was irremediable and repudiatory and entitled him to repudiate the lease without notice, it should be allowed to present that claim for determination on its merits. Given the interlocutory nature of these proceedings, the plaintiff needed to show no more than that it had a good, arguable case in this respect. Accordingly, the leave to amend would be granted to

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

include the claim for a declaration that the lease had been duly forfeited (page 390, lines 3–10; page 390, line 21 – page 392, line 20; page 392, lines 33–41).

(5) Leave would also be granted to include a claim in the alternative for damages for breach of the covenant to pay rent. This was sustainable in light of the evidence of at least one instance in which the defendant had failed to declare the sale of a valuable item which would have generated income to be assessed for percentage rent (page 393, lines 14–19).

Cases cited:

- (1) *Baker (G.L.) Ltd. v. Medway Building & Supplies Ltd.*, [1958] 1 W.L.R. 1216; [1958] 3 All E.R. 540, observations of Jenkins, L.J. applied.
- (2) *Bank of Nova Scotia v. Becker*, 1988–89 CILR 12, applied.
- (3) *Cayman Arms (1982) Ltd. v. English Shoppe Ltd.*, 1988–89 CILR 383; on appeal, Cause No. 16 of 1989, September 20th, 1989, unreported.
- (4) *Clarapede v. Commercial Union Assn.* (1883), 32 W.R. 262, observations of Brett, M.R. applied.
- (5) *Executive Air Servs. Ltd. v. MacDonald*, 1990–91 CILR N-4.
- (6) *Empire Clothing Serv. & Sales Ltd. v. Hillgate House Ltd.*, [1986] Ch. 340; [1985] 2 All E.R. 998, *dicta* of Slade, L.J. applied.
- (7) *Iorgulescu v. Swiss Bank & Trust Corp. Ltd.*, 1990–91 CILR 163.
- (8) *Jones v. Hughes*, [1905] 1 Ch. 180, observations of Vaughan Williams, L.J. applied.
- (9) *Ketteman v. Hansel Properties Ltd.*, [1987] A.C. 189; [1988] 1 All E.R. 38, observations of Lord Griffiths applied.
- (10) *Kurtz v. Spence* (1887), 36 Ch. D. 770.
- (11) *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 R.C.S. 574, applied.
- (12) *Molnlycke AB v. Procter & Gamble Ltd.*, [1992] 1 W.L.R. 1112; [1992] 4 All E.R. 47, distinguished.

---

1992–93 CILR 376

- (13) *Norwich Pharmacal Co. v. Customs & Excise Commrs.*, [1974] A.C. 133; [1973] 2 All E.R. 943.
- (14) *Paradise Manor Ltd. v. Bank of Nova Scotia*, 1984–85 CILR 437, considered.
- (15) *Raleigh v. Goschen*, [1898] 1 Ch. 73.
- (16) *Salomon v. A. Salomon & Co. Ltd.*, [1897] A.C. 22; [1895–99] All E.R. Rep. 33, considered.
- (17) *Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd.*, [1986] A.C. 519; [1985] 2 All E.R. 947; [1985] 2 Lloyd's Rep. 313, followed.
- (18) *Tildesley v. Harper* (1878), 10 Ch. D. 393, observations of Bramwell, L.J. applied.
- (19) *Tito v. Waddell (No.2)*, [1977] Ch. 106; [1977] 3 All E.R. 129, *dicta* of Megarry, V.-C. applied.

**Legislation construed:**

Grand Court (Civil Procedure) Rules, r.25: The relevant terms of this rule are set out at page 380, lines 29–34.  
r.26: The relevant terms of this rule are set out at page 380, line 35 – page 381, line 9.

Registered Land Law (Revised) (Law 21 of 1971, revised 1976), s.37(1): The relevant terms of this section are set out at page 392, lines 25–27.

s.55(1):

“Subject to the provisions of section 57 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee—

(a) commits any breach of, or omits to perform any agreement or condition on his part expressed or implied in the lease. . . .”

s.56:

“Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease whether expressed or implied, until the lessor has served on the lessee a notice—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.”

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

Rules of the Supreme Court, O.20, r.5:

“Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to

---

1992–93 CILR 377

amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.”

*M. Parkinson* for the plaintiff;

*P. Lamontagne, Q.C.* and *P. Boni* for the defendant.

**SMELLIE, Ag. J.:** By summons dated March 1st, 1993 the landlord/plaintiff sought leave to re-amend its writ and statement of claim in this matter to achieve three main objectives. The first was to add parties—the proposed second to fifth defendants. The second was to plead claims against those additional defendants and the third, to effect consequential amendments of the pleadings against the original defendant. Submissions were taken on March 31st, April 1st and April 5th and an order made on April 16th, 1993 with written reasons to be delivered at a later date. These are the reasons.

The original parties stand in the position of landlord and tenant by virtue of a lease dated August 16th, 1990. In the action the plaintiff’s case is that the tenant/defendant has falsified records of accounts and disclosures required to be respectively kept and made by the defendant pursuant to the lease and that the defendant has falsified those records in order to deprive the plaintiff of rents lawfully due under the lease. The proposed additional defendants are parties who, the plaintiff alleges, conspired with and actually facilitated or assisted the defendant in its falsification of the accounts and disclosures.

The lease is not typical of the forms in use in this jurisdiction and I am informed by counsel that it follows a Canadian model. It is unusual in that, among other things, it includes a provision for “annual percentage rent” as well as a provision for “basic rent.” Central to the dispute is the issue whether the defendant has made full and frank disclosure as to its income from sales as the basis for arriving at the annual percentage rent.

Article III of the lease contains the following provisions:

“3.01 *Basic rent*

The tenant shall pay to the landlord in each lease year \$45,000 *per annum* (in this lease referred to as ‘basic rent’) by equal monthly instalments in advance, commencing upon the commencement date and on the first day of each calendar month thereafter during the term (provided that if the term commences on a day which is not the first day of a calendar

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

month, then the instalment of basic rent payable on the

---

1992-93 CILR 378

commencement date for the broken portion of the calendar month at the beginning of the term shall be calculated at a rate per day of 1/365 of the annual basic rent).

3.02 *Percentage rent*

5 The tenant shall pay to the landlord in each lease year during the term the annual percentage rent for such lease year. Such annual percentage rent shall be payable in monthly instalments of estimated monthly percentage rent which shall be payable 20 days after the close of each

10 calendar month in each and every lease year (including any portion of a calendar month at the commencement of the term if the term commences on a day other than the first day of a calendar month) *the amount of such estimated monthly*

15 *percentage rent to be calculated by the tenant and accompanied by a statement certified as correct by the tenant showing in such detail as the landlord shall reasonably require, the amount of gross revenue for such calendar month and the amount of estimated monthly percentage rent payable.*

3.03 *Adjustment of annual percentage rent*

20 Within 120 days after the end of each lease year *the tenant shall deliver to the landlord a statement in writing and certified by the tenant, and which shall also be certified as being audited by an independent chartered accountant acceptable to the landlord, setting forth accurately and with reasonable*

25 *detail and particulars and in such form as the landlord may require the gross revenue both monthly and in the aggregate, for such lease year and its annual percentage rent payable for such lease year.* If the aggregate annual percentage rent set forth in such statement differs from the annual percentage

30 rent set forth in such statement, the tenant shall pay or the landlord shall refund the difference within 30 days after such statement is provided.” [Emphasis supplied.]

In the definitions in Article I, the following appears:

35 “ ‘Annual percentage rent’ means 6% of gross revenue plus 1.5% of extraordinary off premises revenue (derived from sales by the tenant of stock kept on the leased premises or sold off-premises having been placed for display on the leased premises) minus the basic rent. Annual percentage rent shall only be payable in the event such calculation from

40 time to time produces a net positive figure.”

By virtue of those provisions the plaintiff claims that special

1992-93 CILR 379

duties and responsibilities are created and are owed to him by the defendant and that they give rise to an implied relationship of trust which is not to be found in an ordinary lease where liabilities for rent are essentially stipulated as a pre-determined sum. Here  
5 the plaintiff argues that the lease contains covenants that the tenant must keep proper accounts of its income in order to ensure that the proper amounts of annual percentage rent are known and payable to the plaintiff.

A most important issue centered on this argument. It is  
10 whether this implied relationship of trust is so germane to the landlord/tenant relationship in this lease that the manner in which it was dishonoured by the tenant gave rise to an irremediable breach of the lease. If so the consequence would be that the plaintiff should be entitled to claim that the lease has been duly  
15 forfeited and in the manner which the plaintiff has purported to do so in a letter and notice which it sent to the defendant dated November 17th, 1992.

The plaintiff having raised these allegations of breach of contract and breach of faith, the court was invited by counsel for  
20 the defendant to reject any suggestion of fraudulent conduct on the part of the defendant as fraud had not been specifically pleaded at the outset. Instead, and without any admission on the part of his client, counsel for the defendant invited the court to make the following assumptions for the purposes of the hearing  
25 of this summons that (a) there is no dispute as to the tenant's contractual obligations to pay basic rent and annual percentage rent, although the amount owed may be disputed; (b) there is no dispute that the tenant is in breach of the lease in not having kept full and faithful records as required by Articles 3:03, 3:04 and  
30 3:05 of the lease; (c) despite efforts on the part of the landlord to obtain a reconstruction or compilation of the records of the revenue of the defendant, through an independent auditor engaged for the purpose by the landlord, the tenant had failed to comply with the directions of the auditor to provide names and  
35 addresses of customers from whom verification of sales transactions might be obtained, and that such verification was essential to that exercise of reconstruction or compilation of the records; and (d) in at least one instance a certain named customer had purchased an expensive item of jewellery from the tenants' on-  
40 premises shop and that the tenant had failed to declare that item of revenue for the purposes of the accounting records.

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

1992-93 CILR 380

5 Despite those assumptions which I was invited to make,  
counsel for the defendant submitted ultimately that the plaintiff's  
application on his summons should be dismissed in its entirety for  
the most important reason that the cause of action was bound to  
fail. This submission was based on the position taken by the  
defendant that though it may have breached the lease, those  
breaches were not irremediable; it was entitled to notice  
requiring it to remedy them; and as there was no such proper  
notice nor any proper demand to remedy, the forfeiture was  
10 wrong in law and the cause of action based on it, for recovery of  
possession, rent and, latterly, damages, could not succeed.  
Further, that the lease was still intact despite the landlord's claim  
to forfeiture. The landlord's claim was therefore bound to fail.

15 For the reasons which will follow, I was unable to accept the  
defendant's submissions that the plaintiff will inevitably fail to  
establish that it was entitled to forfeit the lease. Although that is  
the central issue underlying the action as it stands between the  
plaintiff and the defendant, the plaintiff sought leave by its  
summons to do a number of things, some of which were allowed  
20 by my order of April 16th and others disallowed. I will proceed to  
set out my reasons for the order in respect of each issue  
separately.

(A) *Application for leave to re-amend to join the proposed  
second,  
25 third, fourth and fifth defendants. Leave refused.*

For the purposes of joinder of defendants to an existing cause  
of action, rr. 25 and 26 of the Grand Court (Civil Procedure)  
Rules are applicable. The text of the rules is as follows:

30 "25. All persons may be joined as defendants against  
whom the right of any relief is alleged to exist, whether  
jointly, severally or in the alternative, and any judgment may  
be given against such one or more of the defendants as may  
be found to be liable, according to their respective liabilities,  
without any amendment.

35 26. No cause or matter shall be defeated by reason of the  
misjoinder or nonjoinder of parties and the Court may in  
every cause or matter deal with the matter in controversy so  
far as regards the rights and interests of the parties actually  
before it. The Court may, at any stage of the proceedings,  
40 either upon or without the application of any party and upon  
such terms as may seem just, order the names of any parties

---

1992-93 CILR 381



5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

improperly joined, whether as plaintiffs or defendants, to be struck out and the names of any parties added who *ought to have been joined*, whether as plaintiffs or defendants, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter:

Provided that no person shall be added as a plaintiff, or as the next friend of a plaintiff under a disability, without his own consent in writing thereto.” [Emphasis supplied.]

Rule 25 deals with the joinder of defendants in a single action. Rule 26 addresses the principles and circumstances which determine the joinder of a party to proceedings already instituted. As to joinder of plaintiffs or defendants, r.26 provides for the addition of two categories of persons: (a) those who ought to have been joined at the commencement of the proceedings, and (b) those whose presence may be necessary to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter. Mr. Parkinson sought the joinder of the additional defendants on the basis that they came within the first category of persons.

The original action is between the landlord and tenant based on the lease agreement between them. The claim at the time that action was brought was against the tenant for recovery of possession, for rent and for mesne profits and arose from the tenant’s alleged repudiation of the lease. Privity of contract existed only between those parties and in the cause of action as it was thus framed, there could have been no other parties to the action as originally instituted. Notwithstanding those circumstances Mr. Parkinson submitted that amendments ought to be allowed to add the proposed second to fifth defendants because the proper test is whether they could have been joined as defendants in some way, *at the time* the original action was brought, irrespective of whether they could have been joined as defendants in the action *as it was actually brought*.

The plaintiff’s claim against the proposed second to fifth defendants was, *inter alia*, for damages for having procured and conspired with the defendant to breach the lease. As such a claim could have been brought originally and *at the same time* as the original action, Mr. Parkinson submitted the requirements of rr. 25 and 26 were met, notwithstanding that the rules of privity of contract would have precluded joinder of the proposed



5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

defendants in the action as originally framed. He relied primarily on the judgment of the Court of Appeal in *Executive Air Servs. Ltd. v. MacDonald* (5).

5 In that case the Court of Appeal upheld the decision of this court in allowing amendments to join a party as a joint tortfeasor in a statement of claim which originally raised allegations of tortious conduct as well as of breach of contract. In so doing it is significant that the court disallowed amendments seeking to join the same party as defendant to the claim based on allegations of breach of contract. In that case it was urged that the additional defendant was someone who fell within the first of the two categories of persons covered by r.26 of those who ought to have been joined at the commencement of the proceedings. From my reading of that case it appears clear that the court regarded the additional defendant as a party who “ought to have been joined” in the original action as framed in tort and within the meaning of that expression as it appears within r.26. It follows that the Court of Appeal disallowed the further pleadings as the additional defendant was not a party who ought to have been joined in the contractual claim as originally pleaded; as such an amendment would have been contrary to the principles of privity of contract, the additional defendant not having been a party to the contract and therefore against the principles established by *Salomon v. A. Salomon & Co. Ltd.* (16). I therefore did not think the case supported Mr. Parkinson’s position.

25 Although rr. 25 and 26 may be outmoded, they still apply and I consider that the applicable principles were settled by the Court of Appeal in the earlier case of *Bank of Nova Scotia v. Becker* (2), which was cited in argument by Mr. Lamontagne on behalf of the proposed defendants.

30 In that case, the applicant and third defendant, a company in liquidation which had been joined as a party in the suit between the plaintiff bank and the other defendants, applied for an order to join its own receivers as parties. The company had been granted a loan by the plaintiff bank for which collateral had been provided by the other defendants. It had defaulted in payment and the bank had appointed receivers who took possession of the company’s property. In an action by the bank against the other defendants as guarantors, the company was itself made a co-defendant upon the successful application of one of the other defendants. It was joined for the purpose of setting off any

---

1992–93 CILR 383

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

damages it might recover for the wrongful acts of the receivers (whom it alleged to be agents or servants of the bank) against any relief granted to the bank in relation to it as principal debtor and the other defendants as guarantors.

5 The company then sought to counterclaim against the bank alleging that the receivers, as the bank's agents or servants, had trespassed upon the company's land, wrongfully taken possession of it and wrongfully converted the company's chattels. The company also applied for leave to join the receivers as added  
10 parties in the counterclaim contending that (a) as it was entitled to damages from the bank or the receivers or both, the receivers were, under the Grand Court (Civil Procedure) Rules, r.26 "necessary parties to the proceedings"; and (b) in any event, since by virtue of r.25 it could have initiated proceedings against  
15 the bank and joined the receivers as co-defendants, it was "only just and convenient" that it should be able to counterclaim against them both at the same time.

The Court of Appeal, in refusing to order the joinder of the receiver, held (a) the court was obliged to have regard to the  
20 terms of the Grand Court (Civil Procedure) Rules and was only entitled to consider whether joinder was "just and convenient" as an aspect of the application of those rules. It was not entitled to use the "just and convenient" principles to give itself an unfettered discretion to order joinder; (b) as the bank had  
25 originally made no claim against the receivers they could not be added as defendants in the bank's writ against the guarantors. Consequently, so far as that action was concerned, the receivers could not qualify as persons who "ought to have been joined" at the beginning of the proceedings. Nor did they so qualify when  
30 the company was introduced into the proceedings as an added party and counterclaimed against the bank. The application had therefore failed the first criterion for joinder in r.26; and (c) nor did the receivers qualify under the second criterion as parties "whose presence before the court may be necessary to enable the  
35 court effectually and completely to adjudicate upon the issue involved within the meaning of r.26. . . ."

From the second head of the *ratio decidendi* of the case as extracted above from the report and from the judgment itself, it seems to me that parties can only be joined pursuant to r.26 as  
40 persons "who ought to have been joined" if that nexus is established with the action as originally commenced. It is

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

1992–93 CILR 384

impermissible to join parties for the purpose of expanding the original cause of action.

5 In the case before me, there was no privity of contract between the proposed additional defendants and the plaintiff. The action based on the lease for recovery of possession and mesne profits as commenced could have joined no other parties. It rested entirely between the plaintiff as landlord and the defendant as tenant. For those reasons I was unable to allow the joinder of the proposed second to fifth defendants.

10 I should also mention in passing that Mr. Parkinson also placed great reliance on the case of *Molnlycke AB v. Procter & Gamble Ltd.* (12) as authority for two propositions. The first was that other members of a corporate group besides the defendant (as were the proposed second and third defendants in relation to the defendant herein) may be brought in as defendants in the same  
15 action if they are in some way shown to have facilitated the conspiracy whereby the original defendant was able to commit the wrongdoing complained of and that is so whether or not the others are willing parties to the conspiracy. The second proposition was that the *Molnlycke* case confirms it is not an abuse of  
20 process to join other parties for the purpose only of obtaining discovery where that discovery will assist in proving the claims against the original defendant and assist in the later claim against the added defendants and further that that approach would not  
25 be in breach of the principles laid down in *Norwich Pharmacal Co. v. Customs & Excise Commrs.* (13).

My reading of the *Molnlycke* case leads me to a different view of it. To my mind it deals with a situation where a plaintiff sought to join as an alleged tortfeasor a German company which was an  
30 affiliate of the defendant company. By virtue of certain provisions of the Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments 1968, joinder in the circumstances of that case was as of right provided the plaintiff met the preliminary criterion of showing it had a good arguable case against the  
35 alleged defendant by satisfying the court that there was a serious question which called for a trial for its proper determination in respect of an alleged defendant company domiciled in a country which was party (as was Germany) to the convention. That criterion is premised on a basis entirely distinct from those  
40 criteria laid down by rr. 25 and 26 of the Grand Court (Civil Procedure) Rules and which are clearly set out in the judgment of

---

1992–93 CILR 385

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

the Court of Appeal in *Bank of Nova Scotia v. Becker* (2), which I regard as applicable here. It follows I did not regard the *Molnlycke* case as persuasive authority for either proposition in the circumstances of this case.

5 I should also make it clear that leave to amend to join the additional defendants was not refused on the basis that the plaintiff's case was doomed to failure in its entirety. Had that been my view of the case I would have been obliged to invoke also the principles stated in *Raleigh v. Goschen* (15) that leave should not be given to add parties to an action which is bound to fail and where such leave would allow the plaintiff to mount a substantially different cause of action against added parties.  
10 (B) *Leave for consequential re-amendments in respect of the proposed additional defendants, including an amendment seeking orders for discovery against them. Leave refused.*  
15

It followed from the refusal of leave to join the proposed additional defendants that leave for consequential re-amendments to plead claims against them had also to be refused. I note  
20 further that in any event Mr. Parkinson for the plaintiff indicated he would have been prepared to seek discovery from them separately had they been joined as defendants and to have done so by separate process. As joinder was refused, on the merits, that recourse would also fail to materialize. I have set out above  
25 the reasons for the decision not to allow further amendments which sought to add new parties.

The remaining issues related to the application to re-amend the pleadings to vary or add claims. Such applications still fell to be decided on the merits to the extent that they might affect the  
30 action brought against the original defendant. There was no dispute as to the general principles which the court should apply in deciding on an application to amend pleadings for the purposes of adding or varying claims. They are set out at O.20, r.5 of the Rules of the Supreme Court and, as they apply to this case, I  
35 summarize them as follows:

(a) Generally speaking, all amendments ought to be allowed which are for the purpose of determining the real question in controversy between the parties to any proceedings or for correcting any defect or error in any proceedings (*per* Jenkins, L.J. in *G.L. Baker Ltd. v. Medway Building & Supplies Ltd.* (1)  
40 ([1958] 1 W.L.R. at 1231).

---

1992-93 CILR 386

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

(b) Leave should be given to amend unless the court is satisfied that the party applying was acting *mala fide*, or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise. However negligent or careless may have been the omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs (*per* Bramwell, L.J. in *Tildesley v. Harper* (18) (10 Ch. D. at 397) and *per* Brett, M.R. in *Clarapede v. Commercial Union Assn.* (4) (32 W.R. at 263).

(c) An amendment ought to be allowed if thereby “the real substantial question” can be raised between the parties and multiplicity of legal proceedings avoided: see *Kurtz v. Spence* (10).

(d) On the other hand, it should be remembered that there is a clear difference between allowing amendments to clarify the issues in dispute and those that provide distinct defences or claims to be raised for the first time (*per* Lord Griffiths in *Ketteman v. Hansel Properties Ltd.* (9) ([1987] A.C. at 220)).

(e) Furthermore, the court will always look at the materiality of the proposed amendment; inconsistent or useless amendments will not be allowed nor will amendments be allowed to raise a case which must fail: see 1 *The Supreme Court Practice 1991*, para. 20/5 – 8/23; *Jones v. Hughes* (8) ([1905] 1 Ch. at 187 *per* Vaughan Williams, L.J.) and the judgment of the Court of Appeal of the Cayman Islands in *Iorgulescu v. Swiss Bank & Trust Corp. Ltd.* (7).

I now turn to deal with the application for re-amendments to the claims.

(C) *Leave to re-amend the writ and the statement of claim to include a claim for an account from the defendant to be taken in order to ascertain the ultimate amount which the defendant owes the plaintiff by way of annual percentage rent. Leave refused.*

This aspect of the application had proceeded on the basis that a fiduciary relationship of principal and agent should be implied as existing between the plaintiff and defendant having regard to the lease arrangement which demanded a duty of trust from the defendant as tenant. Mr. Parkinson had submitted further that an action for an account is an established remedy available to a principal against his agent (in lieu of damages) and that such an action arose here. I need not provide reasons at length for this

---

1992–93 CILR 387

aspect of the ruling as it appears Mr. Parkinson accepted as

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

correct the principles cited by Mr. Lamontagne in his response but as considerable time was taken on it and as a distinction needs to be struck between the duty to account prescribed by the lease and the remedy in equity which was sought here, I will provide a  
5 brief minute of reasons.

Two considerations were paramount bearing in mind that the lease agreement embodies a commercial arm's length transaction between the parties. It contains extensive provisions as set out in  
10 Articles 3:01 – 3:05 as to the tenant's obligations to report and account to the landlord. It also specifies the relief available in the event of breach of those provisions. The two questions which arose were (a) whether there was the necessity and therefore a basis for implying as between the parties, a term or condition of  
15 the lease that there existed a further fiduciary relationship and arising from it that there should be accounting, as a separate remedy, beyond that expressly provided in the lease in the event the tenant acted in breach of the lease; and (b) could there be a need or basis for finding a relationship of principal and agent and a resulting duty to account, where the written agreement between  
20 the parties is a complete code of the intentions of the parties.

The decision of the Privy Council in *Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd.* (17) was cited in opposition to Mr. Parkinson's submissions and is clear authority for the proposition  
25 that the court should not search for a liability in tort or in equity where the parties are in a contractual relationship and that this is particularly so in commercial relationships. It is not permissible, on the contractual analysis of the relationship between the parties, to imply duties which are not strictly and necessarily  
30 incidental to that relationship.

Mr. Parkinson had conceded there was no English authority directly on point to support his submissions but had cited extracts from Underhill & Hayton, *Law relating to Trusts & Trustees*, 14th ed., at 14 (1987), 1(2) *Halsbury's Laws of England*, 4th ed., para.  
35 86, at 62, and from 1 *Atkin's Court Forms*, 2nd ed., at 601 *et seq.* (1992 Issue) in support of his general submissions that the categories of circumstances which may give rise to a fiduciary relationship are not closed and that a principal/agent relationship might be inferred from the nature of the relationship between the parties as was evident in this case from the lease. Further, that an  
40 action for an account is a remedy arising from that relationship.

---

1992–93 CILR 388

Mr. Lamontagne in opposition relied also on the decision of the Supreme Court of Canada in *Lac Minerals Ltd. v. Interna*



5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

5 *tional Corona Resources Ltd.* (11) for the following statement of principles which are extracted from the headnote to the case in the *Canada Supreme Court Reports* ([1989] 2 R.C.S. at 577–578):

“The following common features provide a rough and ready guide to whether or not a fiduciary obligation should be imposed on a new relationship: (1) the fiduciary has scope for the exercise of some discretion or power; (2) the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary’s legal or practical interests; and (3) the beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.”

10  
15 This description of the fiduciary relationship accords with the treatment of the subject in the textbooks which were cited in argument and especially as regards the relationship of principal and agent the following definition of agency is to be found in Fridman’s *Law of Agency*, 6th ed., at 9 (1990):

20 “Agency is the relationship that exists between two persons when one, called the *agent*, is considered in law to represent the other, called the *principal*, in such a way as to be able to affect the principal’s legal position in respect of strangers to the relationship by the making of contracts or the disposition of property.”

25 That definition does not accord with the relationship created between the landlord and tenant in the context of the lease which is the subject of this action.

30 The very helpful and exhaustive treatment of the subject in the *Lac Minerals* case also demonstrates that no relationship of principal and agent could properly be implied into the commercial arm’s length transaction which was the lease agreement between the parties herein. It would not be appropriate to invoke the rules of equity so as to impose a relationship in a situation such as this where there is no true need for the special protection that equity affords.

35  
40 I also observe that the plaintiff’s submissions were based not on any suggestion of a pre-existing fiduciary duty but on the proposition that the court might find one having regard to the self-dealing manner in which the contractual duties of the defendant had been breached. In that regard I was specifically guided by the opinion of Megarry, V.-C. in *Tito v. Waddell (No. 2)* (19) in

---

1992–93 CILR 389

commenting on this approach to identifying a fiduciary obligation



5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

([1977] 3 All E.R. at 232):

“I cannot see why the imposition of a statutory duty to perform certain functions, or the assumption of such a duty, should as a general rule impose fiduciary obligations, or even be presumed to impose any. Of course, the duty may be of such a nature as to carry with it fiduciary obligations. . . .

Impose a fiduciary duty and you impose fiduciary obligations. But apart from such cases, it would be remarkable indeed if in each of the manifold cases in which statute imposes a duty, or imposes a duty relating to property, the person on whom the duty is imposed were thereby to be put in a fiduciary relationship with those interested in the property, or towards whom the duty could be said to be owed. . . .

Furthermore, I cannot see that coupling the job to be performed with self-dealing in the performance of it makes any difference. If there is a fiduciary duty, the equitable rules about self-dealing apply: but self-dealing does not impose the duty. Equity bases its rules about self-dealing on some pre-existing fiduciary duty: it is a disregard of this pre-existing duty that subjects the self-dealer to the consequences of the self-dealing rules. I do not think that one can take a person who is subject to no pre-existing fiduciary duty and then say that because he self-deals he is thereupon subjected to a fiduciary duty.”

Notwithstanding the assumptions I was invited by Mr. Lamontagne to make and which lead irresistibly to the conclusion that the defendant was in breach of the lease and thereby guilty of “self-dealing,” I was unable to conclude, having regard to the foregoing statements of principles, that there could be found to be a principal/agent relationship between the landlord and tenant as parties to the lease. Accordingly, no separate fiduciary duty to account was to be implied. The plaintiff had no arguable case for a claim in that regard and the re-amendments could not have been allowed.

(D) *Application for leave to re-amend to include a claim for a declaration that the lease was properly rescinded. Leave refused.*

This aspect of the application was abandoned by Mr. Parkinson and I see no need to comment further on it.

---

1992–93 CILR 390

(E) *Leave to re-amend to include a claim for a declaration against the defendant that the lease was duly forfeited. Leave granted.*

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

5 Having regard to the assumptions which I should make for present purposes that the defendant was in breach of the lease, the real point in dispute, as I earlier mentioned, was whether the breaches committed by the defendant were repudiatory, that is irremediable breaches giving rise to a right in the plaintiff to repudiate the lease without first giving notice as required by the lease and more importantly as required by ss. 55 and 56 of the Registered Land Law (Revised).

10 Mr. Lamontagne submitted that leave should not be granted because the plaintiff's claim for a declaration that the lease was duly forfeited was bound to fail. This was so, he urged, because in purporting to forfeit the lease the plaintiff treated as irremediable breaches which were patently capable of being remedied and because it failed to give notice to remedy as mandatorily prescribed by s.56 of the Law. Furthermore, he submitted, it was not for the plaintiff unilaterally and subjectively to decide whether the breach was remediable; it was obliged to give notice and see whether the defendant complied within the reasonable time to be set in the notice. Acceptance of Mr. Lamontagne's submissions in this regard would result in the disallowance of the plaintiff's application to re-amend to include a claim for a declaration that the lease was duly forfeited as, having regard to the principles earlier cited, amendments should not be allowed in aid of futile claims. This would be the result as no right of action in forfeiture could have accrued to the plaintiff, if the breach had been capable of remedy.

20 I was satisfied the plaintiff had at least an arguable case that the breaches complained of were not capable of remedy. On the basis of the authorities the plaintiff need not show more than that, at this stage, in order to render his claim strike-out proof. In arriving at that conclusion I was guided by the following passage from the judgment of the English Court of Appeal given by Slade, L.J. in *Empire Clothing Serv. & Sales Ltd. v. Hillgate House Ltd.* (6) ([1985] 2 All E.R. at 1010):

30 "In my judgment, on the remediability issue, the ultimate question for the court was this: if the s.146 notice had required the lessee to remedy the breach and the lessors had then allowed a reasonable time to elapse to enable the lessee fully to comply with the relevant covenant, would such

---

1992-93 CILR 391

compliance, coupled with the payment of any appropriate monetary compensation, have effectively remedied the harm which the lessors had suffered or were likely to suffer from

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

5 the breach? If, but only if, the answer to this question was  
No would the failure of the s.146 notice to require remedy of  
the breach have been justifiable. In the *Rugby School*,  
*Esplanade* and *Hoffman* cases the answer to this question  
plainly would have been No. In the present case, however,  
for the reasons already stated, I think the answer to it must  
10 have been Yes.”

Essentially, given the interlocutory nature of the proceedings  
before me, the issue is whether the plaintiff has an arguable case.  
The answer to that question is No. There is no dispute that the  
plaintiff’s notice did not afford an opportunity to the defendant to  
15 remedy the breach.

I took the view, in the light of the assumptions I was invited to  
draw by the defendant and having regard to the affidavit of Mr.  
Mark Chapman, the independent auditor engaged by the plaintiff  
to examine the records of the defendant, in which Mr. Chapman  
20 expressed the view that there had been no proper records of  
accounts at all maintained by the defendant, that the plaintiff had  
at least an arguable case that the harm had been irretrievably  
done and that the breaches of the positive covenants to keep and  
maintain proper accounts and to enable full disclosure of income  
are breaches which in the context of this case may be shown to  
25 be  
incapable of remedy. This is, in my view, arguable notwithstand-  
ing that Mr. Chapman’s affidavit dealt with the situation as he  
found it and did not specifically address the question whether it  
would be possible for the defendant to rectify the breach by  
30 reconstruction of the records.

To my mind it must be at least objectively arguable that the  
plaintiff should be entitled to treat the circumstances existing at  
the time it purported to forfeit the lease as irremediable because  
the defalcations were deliberate, because the defendant’s failure  
35 to assist Mr. Chapman’s audit betrayed its intention to continue  
its dissemblance and because the continued performance of the  
lease depended on the good faith, willingness and ability of the  
defendant not only to remedy the breach but also to keep faithful  
accounts and make full and final disclosure of sales and income.

40 Put another way, it will be an arguable matter whether a notice  
in keeping with s.56 of the Law, specifying the breach and

---

1992–93 CILR 392

requiring remedy, should have been issued in circumstances  
where it would have been clear no proper records existed and that  
their creation would depend upon the recall and co-operation of

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

5 the officers or employees of the defendant which, from all indications, would likely be convenient to the defendant's own interests and which records may have therefore been predisposed to falsification. Whether the plaintiff as landlord could reasonably and objectively apprehend such an outcome as the inevitable result of a notice to remedy is an issue to be tried.

10 On account of the unusual nature of this lease, none of the cases cited in argument provided a full answer by way of precedent to these factual issues which remain to be resolved on the question whether the plaintiff was entitled to forfeit this lease. It should also be clear that in arriving at this view of the matter I proceeded on the basis that the requirements of ss. 55 and 56 of the Registered Land Law (Revised), in respect of the exercise of the right of forfeiture of leases, are paramount, and specifically as regards the requirements set out in s.56 for proper notice, this is so regardless whether there are provisions to the contrary  
20 contained in the lease itself.

The primacy of the s.56 requirements is confirmed by the pronouncements of this court in *Cayman Arms (1982) Ltd. v. English Shoppe Ltd.* (3) and by their confirmation by the Court of Appeal. Moreover, s.37(1) of the Registered Land Law (Revised) also expressly states that "no land, lease or charge registered under this Law shall be capable of being disposed of except in accordance with this Law. . . ." Henry, J.A. stated in the Court of Appeal case of *Paradise Manor Ltd. v. Bank of Nova Scotia* (14) (1984-85 CILR at 480) that under s.37 of the Registered  
30 Land Law (Revised), "no right of a proprietor in or over his land, lease or charge registered under the Law shall be capable of being affected except in accordance with the Law. . . ."

Nonetheless, as the plaintiff's primary contention is that it was entitled to forfeit the lease on the basis that the breaches were incapable of being remedied and as I decided it should be  
35 allowed to present that claim for determination on its merits, there was no need for me to consider whether the requirements of s.56 as to notice had been met, as those requirements would apply in the factual circumstances of this case only if it is determined that the breach is capable of remedy or that the defendant should have  
40 been afforded an opportunity to remedy.

---

1992-93 CILR 393

(F) *Leave to re-amend to include a claim in respect of auditor's*

5/27/22, 1:46 PM

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED 06-July-1993

*fees. Leave granted.*

5 The lease in Article 3:04 provides that the cost of “any special audit or an examination by an accountant designated by the landord pursuant to this section shall be chargeable to and paid by the tenant” in circumstances like those which led to Mr. Chapman’s audit. Accordingly Mr. Lamontagne for the defendant conceded that the plaintiff’s claim in that regard was not prone to being struck out and did not oppose the amendment. (G) *Leave to re-amend to include a claim, in the alternative to the claim for a declaration of forfeiture, for damages for breach of the covenant to pay rent. Leave granted.*

15 In light of the proof of at least one instance where the defendant failed to declare the sale of a valuable item which would have generated income which would be subject to being assessed for percentage rent, a claim in the alternative for damages for breach of the covenant to pay rent is sustainable.

This re-amendment was therefore allowed without opposition.

*Order accordingly.*

Attorneys: *Ritch & Connolly* for the plaintiff; *Ian Boxall & Co.* for the defendant.

## **EXHIBIT 19**

CAYMAN ISLANDS



Supplement No. 5 published with Extraordinary  
Gazette No. 35 dated 21<sup>st</sup> May, 2014.

**THE CONTRACTS (RIGHTS OF THIRD PARTIES) LAW, 2014**

**(LAW 4 OF 2014)**

APP 00917  
002871



*The Contracts (Rights of Third Parties) Law, 2014*

**THE CONTRACTS (RIGHTS OF THIRD PARTIES) LAW, 2014**

**ARRANGEMENT OF SECTIONS**

1. Short title
2. Interpretation
3. Application
4. Rights of third party to enforce contractual term
5. Variation and rescission of contract
6. Defences
7. Enforcement of contract by promisee
8. Protection of promisor from double liability
9. Exceptions
10. Supplementary provisions relating to third party
11. Arbitration provisions

*The Contracts (Rights of Third Parties) Law, 2014*

CAYMAN ISLANDS

Law 4 of 2014.

I Assent

Franz Manderson

Acting Governor.

14<sup>th</sup> May, 2014

**A LAW TO MAKE PROVISION FOR THE ENFORCEMENT OF  
CONTRACTUAL TERMS BY THIRD PARTIES; AND FOR INCIDENTAL  
AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Contracts (Rights of Third Parties) Law, 2014. Short title
2. (1) In this Law - Interpretation  
  
“contract of employment” has the meaning assigned to that expression under section 2 of the Labour Law (2011 Revision); (2011 Revision)  
  
“employee” has the meaning assigned to that expression under section 2 of the Labour Law (2011 Revision);  
  
“set off” includes netting of claims; and  
  
“third party” means a person who is not a party to a contract.  
  
(2) In relation to a term of a contract which is enforceable by a third party -
  - (a) “promisor” means a party to the contract against whom the term is enforceable by the third party; and

*The Contracts (Rights of Third Parties) Law, 2014*

(b) “promisee” means a party to the contract by whom the term is enforceable against the promisor.

Application

3. (1) This Law shall apply to any contract which, on or after the date on which this Law comes into force, includes terms which comply with section 4.

(2) A contract made on, before or after the date on which this Law comes into force may be amended to include terms which comply with section 4.

(3) If, after this Law comes into force, a contract is amended to include terms which comply with section 4, a third party may only enforce a right which accrues on or after the date on which the contract is amended.

(4) If, prior to the date on which this Law comes into force, a contract included terms which comply with section 4, a third party may only enforce a right which accrues on or after the date on which this Law comes into force.

Rights of third party to enforce contractual term

4. (1) Subject to section 9, a third party may in his own right enforce a term of the contract if -

- (a) he is expressly identified in the contract by name, as a member of a class or as answering a particular description, which includes a person nominated or otherwise identified pursuant to the terms of the contract but the third party need not be in existence when the contract is entered into; and
- (b) the contract expressly provides in writing that he may.

(2) This section does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.

(3) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly.

(4) Where a term of a contract excludes or limits liability in relation to any matter, references in this Law to the third party enforcing the term shall be construed as references to his availing himself of the exclusion or limitation.

Variation and rescission of contract

5. (1) Where a third party has a right under section 4 to enforce a term of the contract, the parties to the contract may not, by agreement, rescind the contract, or

*The Contracts (Rights of Third Parties) Law, 2014*

vary it so as to extinguish or alter his entitlement under that right, without his consent if -

- (a) the third party has communicated his assent to the term to the promisor;
- (b) the promisor is aware that the third party has relied on the term; or
- (c) the promisor can reasonably be expected to have foreseen that the third party would rely on the term and the third party has in fact relied on it.

(2) The assent referred to in subsection (1)(a) -

- (a) may be by words or conduct; and
- (b) if sent to the promisor by post or other means, shall not be regarded as communicated to the promisor until received by him.

(3) Subsection (1) is subject to any express term of the contract under which -

- (a) the contract may be rescinded or varied without the consent of the third party; or
- (b) the consent of the third party is required in circumstances specified in the contract instead of those set out in subsection (1)(a) to (c).

(4) Where the consent of a third party is required under subsection (1) or (3), the court may, on the application of one or more of the parties to the contract, dispense with his consent if satisfied that it is just and equitable to do so having regard to all the circumstances.

(5) The court may, on the application of one or more of the parties to a contract, dispense with any consent that may be required under subsection (1)(c) if satisfied that it cannot reasonably be ascertained whether or not the third party has in fact relied on the term.

(6) If the court dispenses with a third party's consent, it may impose the conditions it thinks fit, including a condition requiring the payment of compensation to the third party.

6. (1) Subsections (2) to (5) apply where, in reliance on section 4, proceedings for the enforcement of a term of a contract are brought by a third party. Defences

(2) The promisor shall have available to him by way of defence or set-off any matter that -

*The Contracts (Rights of Third Parties) Law, 2014*

- (a) arises from or in connection with the contract and is relevant to the term; and
  - (b) would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.
- (3) The promisor shall also have available to him by way of defence or set-off any matter if -
- (a) an express term of the contract provides for it to be available to him in proceedings brought by the third party; and
  - (b) it would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.
- (4) The promisor shall also have available to him -
- (a) by way of defence or set-off any matter; and
  - (b) by way of counterclaim any matter not arising from the contract,
- that would have been available to him by way of defence or set-off or, as the case may be, by way of counterclaim against the third party if the third party had been a party to the contract.
- (5) Subsections (2) and (4) are subject to any express term of the contract as to the matters that are not to be available to the promisor by way of defence, set-off or counterclaim.
- (6) Where in any proceedings brought against him a third party seeks in reliance on section 4 to enforce a term of a contract including, in particular, a term purporting to exclude or limit liability, he may not do so if he could not have done so, whether by reason of any particular circumstances relating to him or otherwise, had he been a party to the contract.

Enforcement of contract  
by promisee

7. Section 4 does not affect any right of the promisee to enforce any term of the contract.

Protection of promisor  
from double liability

8. Where under section 4 a term of a contract is enforceable by a third party and a promisee has recovered from the promisor a sum in respect of -

- (a) the third party's loss in respect of the term; or
- (b) the expense to the promisee of making good to the third party the default of the promisor,

then, in any proceedings brought in reliance on that section by the third party, the court shall reduce any award to the third party to the extent it thinks appropriate to take account of the sum recovered by the promisee.

*The Contracts (Rights of Third Parties) Law, 2014*

9. (1) Section 4 confers no rights on a third party in the case of a contract on a bill of exchange, promissory note or other negotiable instrument. Exceptions

(2) Section 4 confers no rights on a third party in the case of any contract binding on a company and its members under sections 12 and 25 of the Companies Law (2013 Revision). (2013 Revision)

(3) Section 4 confers no rights on a third party to enforce any term of a contract of employment against an employee.

(4) Section 4 confers no rights on a third party in the case of -

- (a) a contract for the carriage of goods by sea;
- (b) a contract for the carriage of goods by road, or for the carriage of cargo by air; or
- (c) letters of credit.

(5) In subsection (4) -

“contract for the carriage of goods by sea” means a contract of carriage -

- (a) contained in or evidenced by a bill of lading, sea waybill or a corresponding electronic transaction; or
- (b) under or for the purposes of which there is given an undertaking which is contained in a ship’s delivery order or a corresponding electronic transaction.

10. (1) Section 4 does not affect any right or remedy of a third party that exists or is available apart from this Law. Supplementary provisions relating to third party

(2) In sections 7 and 10 of the Limitation Law (1996 Revision) the references to an action founded on a simple contract and an action upon a specialty shall respectively include references to an action brought in reliance on section 4 relating to a simple contract and an action brought in reliance on that section relating to a specialty. (1996 Revision)

(3) Except to the extent provided in section 11(1) or (2), a third party shall not, by virtue of section 4(4), 6(4), 6(6), 11(1) or 11(2) be treated as a party to the contract for the purposes of any other Law or any instrument made under any other Law.

11. (1) Where a right under section 4 to enforce a term is subject to an arbitration agreement, the third party shall be treated for the purposes of the Arbitration Law, 2012 as a party to the arbitration agreement as regards disputes Arbitration provisions  
(Law 3 of 2012)

*The Contracts (Rights of Third Parties) Law, 2014*

between himself and the promisor relating to the enforcement of the term by the third party.

(2) Where -

- (a) a third party has a right under section 4 to enforce an arbitration agreement; and
- (b) the third party does not fall to be treated under subsection (1) as a party to the arbitration agreement,

the third party shall, if he exercises the right, be treated for the purposes of the Arbitration Law, 2012 as a party to the arbitration agreement in relation to the matter with respect to which the right is exercised, and be treated as having been so immediately before the exercise of the right.

(3) In this section -

“arbitration agreement” has the meaning assigned to that expression under section 2 of the Arbitration Law, 2012.

Passed by the Legislative Assembly the 11<sup>th</sup> day of April, 2014.

Juliana Y. O’Connor-Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.



## **EXHIBIT 20**

## \*366 Ebbw Vale Urban District Council v South Wales Traffic Area Licensing Authority.



No Substantial Judicial Treatment

### Court

Court of Appeal

### Judgment Date

16 March 1951

### Report Citation

[1951] 2 K.B. 366



Court of Appeal

Cohen , Asquith and Birkett , L.JJ.

1951 March 16.

*Road Traffic—Omnibus company—100 per cent. subsidiary of British Transport Commission—Company's application to vary fares made to licensing authority—Jurisdiction of authority—Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 72 — Transport Act, 1947 (10 & 11 Geo. 6, c. 49), ss. 2, sub—ss. 1, 2 (f) (g) (i), 3, 63—5, 76 .*

By s. 65, sub-s. 1, of the Transport Act, 1947 , ss. 72 to 76 of the Road Traffic Act, 1930 , do not apply to any passenger road transport service provided by the British Transport Commission or by any person acting as agent for the commission.

The commission, acting under the Transport Act, 1947 , acquired all the shares of a passenger road transport company with power to appoint and dismiss all their directors, the company thus becoming a 100 per cent. subsidiary of the commission. There was no evidence that the commission had in fact appointed the company to act as their agent. The company applied to a licensing authority for public service vehicles under s. 72, sub-ss. 1 and 4, of the Road Traffic Act, 1930 , to vary the conditions of road service licences then held by them, i.e., to increase the existing scale of fares.

\*367

Held, that the licensing authority had jurisdiction to hear the application of the company, since the service in question was not a passenger road transport service provided by the commission or by any person acting as agent for the commission. The commission, in acquiring the shares of the company in the exercise of their general duty as stated in s. 3 of the British Transport Act, 1947 , were not "providing", but "securing or promoting" the provision of, an efficient, adequate, economical and properly integrated system of public inland transport.

*Salomon v. Salomon & Co. LD.[1897] A. C. 22* followed.

Observations of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.[1924] 2 Ch. 33* , 38, 40, referred to.

Decision of the Divisional Court reversed.

Appeal from the Divisional Court.

The applicants, Ebbw Vale Urban District Council, sought an order to prohibit the licensing authority for public service vehicles for the South Wales Traffic Area from hearing and determining an application by Red and White Services Ld. under s. 72 of the Road Traffic Act, 1930 <sup>1</sup>, to vary the conditions of road service licences then held by them, that was, to increase their existing scale of fares. The ground for the application was that the licensing authority had no jurisdiction to hear the application by the omnibus company by reason of s. 65 of the Transport Act, 1947 <sup>2</sup>.

\*368

The Divisional Court (Lord Goddard, C.J., Hilbery and Hallett, JJ.) held that s. 72 of the Act of 1930 on the facts of the case had ceased to apply, because the services afforded by the omnibus company were provided "by the commission" or by a "person acting as agent for the commission" within the meaning of sub-s. 1 of s. 65 of the Transport Act, 1947.

The omnibus company had been a private enterprise concern when, under the Transport Act, 1947, the British Transport Commission had acquired all their shares and the power to appoint and dismiss all their directors. The omnibus company, therefore, became a 100 per cent. subsidiary of the British Transport Commission. Lord Goddard, C.J., said that the commission were providing the road passenger service of the omnibus company, though he was rather inclined to think that the omnibus company in the circumstances were acting as agents for the commission. The British Transport Commission and the omnibus company appealed.

Before the Court of Appeal, counsel for the urban district council did not see fit to support the order of prohibition made by the Divisional Court on the ground that the omnibus company provided the services as agents of the British Transport Commission: he contended that the services were provided by the commission.

*Heald, K.C.*, and *R. J. Parker* for the commission.

*Fox-Andrews, K.C.*, and *King-Hamilton* for the omnibus company.

*Cyril Morgan* for the urban district council.

The argument, based on the relevant sections of the Transport Act, 1947, appears fully from the judgment of Cohen, L.J. Counsel for the appellants cited *Salomon v. Salomon & Co. LD.* <sup>3</sup>; the speech of Lord Buckmaster in *Rainham Chemical Works LD. (In Liquidation) v. Belvedere Fish Guano Co. LD.* <sup>4</sup>; the judgment of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.* <sup>5</sup>; *Railway Executive v. Henson* <sup>6</sup>; and *Smith v. London Transport Executive* <sup>7</sup>.

COHEN, L.J.

This appeal raises a question as to the jurisdiction of the licensing authority under s. 72 of the Road Traffic Act, 1930, to hear an application by Red and White Services Ld. for the modification of the conditions of their licence in such a way as to enable them to increase the fares which they are entitled to charge for the services that they supply in a district in South Wales.

Section 72, sub-s. 1, provides: "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. It is under that last provision that Red and White Services Ld. made the application which gives rise to the present proceedings.

When the application came before the authority, the suggestion was made, and it has since been decided by the Divisional Court, that the jurisdiction of the authority had been taken away, so far as the point then under discussion was concerned, by s. 65 of the Transport Act, 1947. [His Lordship read sub-s. 1 of s. 65]. The Divisional Court decided that s. 72 of the Road Traffic Act, 1930, had ceased to apply on the facts of this case, because the services in question were services provided "by the commission", or by a "person acting as agent for the commission", within the meaning of s. 65.

I will refer to two passages in the judgment of Lord Goddard, C.J., in order to explain the ratio decidendi of the court. He said: "It seems to me, when one gives s. 65 the ordinary meaning of the English language, that the transport commission, having acquired the whole of the undertaking and share-holding of this company, and running the omnibuses of that company for the purpose of providing a passenger service through the Ebbw Vale, are providing a road transport service. The vehicles are not their own: they still belong to the legal entity which is the company; but it seems to me that the commission are in effect providing the road passenger transport, though I am rather inclined to think that the omnibus company in the circumstances are acting as agents for the commission". Then, in the last paragraph he said: "Mr. \*370 Heald has relied on the well-known case of *Salomon v. Salomon & Co. LD.*<sup>8</sup>, which decided that in what is commonly called a one-man company, the company is a different entity from the man who holds the whole of the shares. and I have no doubt here that the omnibus company are a different entity from the commission; but it seems to me that the commission are providing this road passenger transport service, because the company are put there by the Transport Commission to do what otherwise it is the privilege of the commission to do. For these reasons I think that the order of prohibition must go".

Colloquially speaking, it may be true to say that the British Transport Commission are running the omnibuses of the company; but I am unable to agree, with all respect to the Divisional Court, that so broad a construction can properly be placed on the material phrase in s. 65: "any passenger road transport service provided ... by the commission or by any person acting as agent for the commission".

Under the ordinary rules of law, a parent company and a subsidiary company, even a 100 per cent. subsidiary company, are distinct legal entities, and in the absence of an agency contract between the two companies one cannot be said to be the agent of the other. That seems to me to be clearly established by *Salomon v. Salomon & Co. LD.*<sup>9</sup>, and by the observations of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.*<sup>10</sup>.

Tomlin, J., said<sup>11</sup>: "I do not think that any such inference" - that is, an inference of agency between the directors and the company - "can be or ought to be drawn. It has been made plain by the House of Lords that for the purpose of establishing contractual liability it is not possible, even in the case of the so-called one-man companies, to go behind the legal corporate entity of the company and treat the creator and controller of the company as the real contractor merely because he is the creator and controller. If he is to be fixed with liability as principal, the agency of the company must be established substantively and cannot be inferred from the holding of director's office and the control of the shares alone: see *Salomon v. Salomon & Co. LD.*<sup>12</sup>. Any other conclusion would have nullified the purpose for which the creation of limited companies was authorized by the legislature".

\*371

Tomlin, J., continued: "Nor does the matter stand otherwise in regard to liability for tortious acts". and later<sup>13</sup>: "There is no evidence from which it ought or can be inferred that the defendant directors have authorized the wrongful acts. To draw that inference from the fact that they are sole directors and shareholders of the defendant company would be manifestly wrong and contrary to the principles enunciated by the House of Lords in the cases already referred to, and there is no evidence of any other facts at all in relation to the matter".

So I think that it can clearly be said here that there is no evidence to justify the inference which apparently Lord Goddard, C.J., was inclined to draw, that the omnibus company in the circumstances of the case are acting as agents for the British Transport Commission. In fairness to Mr. Morgan I add that he did not seek to support the order on the ground of agency. He did, however, strongly urge that, on a business view of the matter, the services which were provided in South Wales by the company were services provided by the commission.

I can find nothing in the Act to negative or exclude the ordinary rules of law so far as this question is concerned. I think that the proper approach to the question is to construe s. 65, sub-s. 1, in the light of the other relevant provisions of the Act; and, as Mr. Fox-Andrews said, the proper starting point is s. 3, which lays down the general duty of the commission and states the objects, as distinct from the powers, which the commission was incorporated to perform. By sub-s. 1: "It shall be the general duty of the commission so to exercise their powers under this Act as to provide, or secure or promote the provision of, an efficient, adequate, economical and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods with due regard to safety of operation".

I would emphasize the distinction that is plainly drawn there between "providing", on the one hand, and "securing or promoting" on the other, the provision of an efficient system of transport. It seems to me that those words clearly visualize that the commission may either provide the system themselves or may secure or promote its provision by others. With that in mind I turn back to s. 2, which concerns the powers which the commission are to \*372 have to enable them to fulfil their object. Section 2, sub-s. 1, provides: "Subject to the provisions of this Act, the commission shall have power - (a) to carry goods and passengers by rail, road and inland waterway, within Great Britain". By sub-s. 2: "Subject to the provisions of this Act, the powers conferred by sub-s. 1 of this section include power", and then follow a series of powers lettered in paragraphs from (a) to (i). I need only refer to paragraphs (f), (g) and (i). Paragraph (f): "to acquire by agreement (whether absolutely or for any period) the whole or any part of any undertaking of any other person, being an undertaking, or a part of an undertaking, the activities whereof are wholly or mainly such activities as are specified in the said sub-s. 1". Paragraph (g): "to enter into and carry out agreements with any person for the carrying on by that person, whether as agent for the commission or otherwise, of any of the activities specified in the said sub-s. 1, or for the provision by that person, whether as agent for the commission or otherwise, of clearing house facilities in connexion with the transport of goods". Paragraph (i): "to lend money to, or give guarantees for the benefit of, any person carrying on or about to carry on any of the activities specified in the said sub-s. 1", and then, omitting immaterial words, "and to acquire by agreement any securities of any body corporate which is carrying on or about to carry on or which directly or indirectly controls another body corporate which is carrying on or about to carry on any such activities".

I pause here to observe that it is plain as regards the omnibus company that it is under this latter power to acquire the securities of a body corporate which is carrying on transport activities that the acquisition was made. I pause also to observe that both sub-s. 1 and sub-s. 2 are subject to provisos prohibiting the commission from doing certain things which might otherwise be within the wide words of the enabling power.

Sub-s. 3 provides: "Where, whether by agreement or otherwise, the commission acquire the whole or any part of any undertaking of any other person, they may, subject to the provisions of this Act, carry on any activities, whether mentioned in sub-s. 1 of this section or not, which were theretofore carried on for the purposes of that undertaking or part of an undertaking or were authorized by any statutory provision to be carried on for the purposes thereof". There again that is followed by a proviso restricting the generality of the foregoing Sub-s. 4 also contains certain restrictive powers.

\*373

It is clear from that section, and I think that it also appears clear from ss. 63 and 64, which concern the preparation and approval of area road transport schemes and the contents of area road transport schemes, that the Act contemplates that the commission may either provide services itself or may secure the provision of those services by or through other bodies, and not only by or through agents of the commission. That being so, prima facie, it would seem necessary to see whether what is being done in any particular case is an act done to provide transport facilities, or is an act done to secure the provision of transport facilities. Where a service is provided through a subsidiary company of the commission, it seems to me that prima facie, having regard to the general rule of law, what the commission are doing is to secure the provision of road transport facilities, and not to provide them.

That the commission can act by providing them themselves is made clear by the decision of this court to which our attention was called by Mr. Heald and Mr. Morgan, namely, *Smith v. London Transport Executive* <sup>14</sup>.

That the commission can act through an agent is also clear under the express provisions of sub-s. (2) (g); but, as I have said, there is no question of agency here. It seems to me quite plain that it can also arrange with independent concerns to provide a service, in which case it will be performing its function of securing or promoting the provision of an efficient, adequate, economical and properly integrated system of public inland transport. In the present case, I think, the commission were securing the provision of an efficient, adequate, economical and properly integrated system of public inland transport within the meaning of s. 3, sub-s. 1, of the Act, through the omnibus company - not an independent concern, but a separate legal entity.

That conclusion, it seems to me, is rendered more certain by sub-s. 6 of s. 2 of the Act. That provides: "For the purposes of sub-s. 4 and of the provisos to sub-ss. 2 and 3 of this section, where a body corporate is directly or indirectly controlled by the commission, anything done by that body shall be deemed to be done by the commission, and the undertaking of the body shall be deemed to form part of the undertaking of the commission". The importance of that provision seems to me to be that it is quite plain that Parliament when it passed this Act had in mind the general rule of law to which I have \*374 referred as laid down in *Salomon v. Salomon & Co. LD.* <sup>15</sup>, and many other cases, that a subsidiary company is not the agent of the parent company, but is an entirely separate entity. Its acts are not the acts of the parent company, and the parent company is not responsible for its acts or defaults, in the absence of special provisions in some contract between the parties. Parliament, with that in mind, has gone out of its way to prescribe that for certain limited purposes the acts of the subsidiary company shall be

deemed to be the acts of the commission. It seems to me an inevitable inference from that provision that, except to that extent, the intention was that the ordinary rule of law should prevail and that the acts of the subsidiary company should be its own acts and not the acts of the commission.

Mr. Morgan was compelled to admit that if there were a road accident the victim would have a remedy, if he had a remedy at all, not against the commission, but only against the omnibus company. That seems to me to lead to, or support, the conclusion that the services here were provided, not by the commission, but by the company.

There is another argument of Mr. Morgan's to which I ought to refer. He laid some stress on the words in sub-s. 1 of s. 65, "any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise". He relied upon those words as in some way enlarging the meaning to be given to the word "provided". I am unable to follow him in this part of his argument. It seems to me that, in the context in which they appear, the words "or otherwise" are merely in contrast to the words "under a scheme", and mean no more than "provided, whether or not under a scheme under the preceding provisions of this Part of this Act". It does not assist us in determining whether or not as a matter of fact any particular service is provided by the commission.

There is still one other argument to which I must refer. It was said that it would lead to a ridiculous, or at any rate to an artificial, situation if there were to be two bodies dealing with the same subject-matter. Section 76 of the Transport Act, 1947, contains the provisions under which the commission "shall from time to time prepare, and submit to the transport tribunal for confirmation, drafts of schemes (hereafter in this Act referred to as 'charges schemes') for determining, as respects the \*375 services and facilities provided by the commission to which the schemes respectively relate - (a) the charges which are to be made by the commission". So, said Mr. Morgan, it is plain that in one case not the licensing authority under the Road Traffic Act, 1930, but the transport tribunal under the Transport Act, 1947, will have to determine the fares and charges which are to be made by the commission. Is it not, he said, most unlikely that the legislature intended that, as regards other cases, where in substance the service was provided by the commission, the reference should be to the licensing authority? It does not seem to me that that objection really has any substance, and in a sense it begs the question, because it is only where the services are provided by the commission that the obligation to set up a charging scheme arises; and it seems to me that Parliament, having, as it clearly had, in mind the prospect that the commission might discharge their obligations either by providing or by securing provision of the requisite services, should have visualized a different method of settling the charges according to whether the commission provided the services themselves or secured their provision. It seems to me quite natural that the charging scheme should only apply where the commission were providing the services themselves, leaving the matter to be dealt with under the Road Traffic Act, 1930, in cases where the part played by the commission was merely to secure the provision of the services.

For these reasons, I think that the proper inference from the facts proved before the Divisional Court was that this was a case where the services were not provided by the commission but the commission merely secured their provision. I therefore think that it is not a case for prohibition, and I would allow the appeal.

ASQUITH, L.J.

I agree, and I would add only a word or two out of deference to the judgment from which we are differing. The case originally raised two distinct issues: did the commission within the meaning of sub-s. 1 of s. 65 "provide" these services? Or, short of that, did the omnibus company provide them as agents for the commission?

Mr. Morgan has not pressed the second point on the appeal, but, as the Divisional Court based its judgment partly on an affirmative answer to it, it is desirable to glance at it briefly. The only relevant fact before the court is that the commission own substantially all the shares in the company. The two bodies are admittedly separate legal personæ. Admittedly a subsidiary is not necessarily, as such, an agent for the controlling corporation. \*376 There is, of course, nothing to prevent a controlling body from constituting a controlled body its agent if it chooses to do so, but there is no evidence of any such thing having happened here.

I turn, therefore, to the other question: did the commission provide these services themselves? The Divisional Court took a broad, common-sense view of the meaning of the word "provide", but in my view it has to be construed in the light of its context and the general structure of the Act. The other sections of the Act do draw a firm and sharp distinction between services "provided by" the commission themselves, and services of which they "secure the provision", presumably by other people. My Lord has read the first two or three lines of s. 3, sub-s. 1, of the Transport Act, 1947, in support of that proposition, and I will not repeat them, but the same distinction reappears in a salient form in ss. 63 and 64, concerning schemes. Sub-s. 1 of s. 63



provides: "(1) The commission may, at any time, prepare and submit to the Minister a scheme". Sub-s. 1 of s. 64 provides: "A scheme under the last preceding section may provide for all or any of the following matters, that is to say - (a) for constituting or specifying the body or bodies who are to provide passenger road transport services operating within or partly within the area ...". Then by sub-s. 2: "The commission may be the body specified, or one of the bodies specified, in a provision included in a scheme by virtue of paragraph (a) of sub-s. 1 of this section"; so that it is not to be assumed that the distinction between services provided by the commission themselves and services which they cause other bodies to provide - a distinction which is so clearly present in the draftsman's mind when drafting ss. 63 and 64 - has entirely escaped his mind when he passes on to draft s. 65. It would appear to me that the commission have not in fact themselves provided passenger road services up to this time; but it is quite clear that they could, if they wished to do so, purchase a fleet of omnibuses tomorrow and run them themselves under powers given by s. 2, sub-s. 1 (a) and sub-s. 2 : see *Smith. v. London Transport Executive* <sup>16</sup> . If the commission in this case had bought, not shares in the omnibus company, but the physical assets of that company, and had engaged the company's staff to run the undertaking, in that case the commission would have been "providing" the services themselves. But it is, in my view, only if and to the extent that the commission do provide such services by themselves (or by an \*377 "agent" within the meaning of sub-s. 1 of s. 65 ) that the jurisdiction as to fares of the licensing authority is displaced; and as neither of these conditions is fulfilled in the present case I agree with my Lord that the appeal ought to be allowed.

BIRKETT, L.J.

I agree with both the judgments which have just been delivered. The point in this case was described by the Lord Chief Justice in the Divisional Court as being a short point, and a short point it assuredly is.

The Lord Chief Justice said: "I think, therefore, for the reasons which I have endeavoured to express - it is a very short point - that this is a road transport service provided by the commission, or by persons acting as agents for the commission, and that accordingly the Road Traffic Act no longer applies". Also, in the Divisional Court the grounds upon which this order for prohibition was asked were these: "The relief sought is an order of prohibition that the licensing authority for public service vehicles for the South Wales Traffic Area be prohibited from hearing and determining an application by Red and White Services Ld. to vary the conditions attached to road service licences now held by the Red and White Services Ld., that is to say, to increase their present scale of fares. The grounds upon which relief is sought are that the said licensing authority has no jurisdiction to hear and determine the said application".

The short question, therefore, is: is it shown, on the true construction of the statutes, and on the facts which have been proved, that the British Transport Commission are providing these road services in South Wales so that ss. 72 to 76 of the Road Traffic Act, 1930 , no longer apply?

Mr. Morgan invited the court to take a broad view, as he termed it, of the word "provide" in sub-s. 1 of s. 65, and, of course, that, I think, is the gist of the whole matter. Section 65, sub-s. 1, of the Transport Act, 1947 , provides: " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the commission or by any person acting as agent for the commission". Quite naturally, Mr. Morgan said that you must take a broad view of that word "provide". If I may say so, with all respect, it was the acceptance of that invitation in the Divisional Court which led to error. The meaning of the word "provide" cannot be interpreted quite on those lines, but must be ascertained with \*378 some precision, having regard to the wording of the various sections of the Transport Act, 1947 .

I think that Mr. Fox-Andrews was quite right in saying that the section which sheds most light on this matter is s. 3. There the general duty of the commission is set out. Sub-section 1 provides: "It shall be the general duty of the commission so to exercise their powers under this Act as to provide, or secure or promote the provision of, an efficient, adequate, economical and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods with due regard to safety of operation; and for that purpose it shall be the duty of the commission to take such steps as they consider necessary for extending and improving the transport and port facilities within Great Britain in such manner as to provide most efficiently and conveniently for the needs of the public, agriculture, commerce and industry". That is the general duty of the commission, and it is to be observed that one can conceive all sorts of matters as within the power of the Transport Commission under that section: they can provide services themselves; they can, in lieu of providing services themselves, secure the provision of services; or they can, instead of doing that, promote services, all to the end that their general duty under the section shall be fulfilled.



In this case it was shown that the commission in fact controlled the omnibus company, in this sense, that they owned all the shares, with the possible exception of two, and that they had the controlling power over the appointment and the dismissal of directors. In relation to that, sub-s. 6 of s. 2 is very important, because it is contemplated that the commission shall control, directly or indirectly, corporate bodies. The sub-section provides: "For the purposes of sub-s. 4 and of the provisoes to sub-ss. 2 and 3 of this section, where a body corporate is directly or indirectly controlled by the commission, anything done by that body shall be deemed to be done by the commission", thus limiting this provision most carefully to the matters which are set out in the section, i.e., for the purposes of sub-s. 4 and the provisoes of sub-ss. 2 and 3 of s. 2. Therefore, in this case, although the commission do control the omnibus company, though they do own the shares, though they have the power to control the appointment and dismissal of directors, they do not own the property of the company and the vehicles which actually run upon the roads. As my Lord pointed out, there is no power to sue the commission either in contract or in tort. Therefore, popularly, \*379 or, if I may use Mr. Morgan's phrase, "in a broad sense", one may say, of course, that the commission provide the services, as one man might say to another, because they control the company, they own the shares; yet in fact what they are really doing here is, not to provide the services, but, as my Lord has already stated, to secure that those services are provided.

Asquith, L.J., discussed the matter of agency, which clearly influenced the Divisional Court, but which is no longer relied upon here; and Cohen, L.J., disposed of the argument raised on the use of the words "or otherwise" in the words of sub-s. 1 of s. 65: "any passenger road transport service provided whether under a scheme under the preceding provisions of this Part of this Act or otherwise".

In all these circumstances, I am clearly of opinion that this was not a case where the commission in fact provided the services, and, that being so, sub-s. 1 of s. 65, which eliminated ss. 72 to 76 of the Road Traffic Act, 1930, in the case of any passenger road transport service *provided* by the commission, has no application, and I agree that this appeal should be allowed.

## Representation

Solicitors: M. H. B. Gilmour ; M. H. B. Gilmour ; Lewin, Gregory, Torr, Durnford & Co. , for J. L. J. Price, Merthyr Tydfil .

*Appeal allowed. (C. G. M.)*

## Footnotes

- 1 Road Traffic Act, 1930, s. 72, sub-s. 1 : "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. Transport Act, 1947, s. 65, sub-s. 1 : " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the Commission or by any person acting as agent for the Commission, but neither the Commission nor any such person as aforesaid shall use any public service vehicle for the conveyance of passengers for hire or reward at separate fares except - (a) on a route approved, as respects so much thereof as falls within any traffic area, by the licensing authority for public service vehicles for that area; and (b) in accordance with such restrictions as may be imposed by that authority as to the class or description of vehicles which may be used on the route and as to the portions of the route on which, and the points at which, passengers may be taken up or set down ...".
- 2 Road Traffic Act, 1930, s. 72, sub-s. 1 : "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the

provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. Transport Act, 1947, s. 65, sub-s. 1 : " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the Commission or by any person acting as agent for the Commission, but neither the Commission nor any such person as aforesaid shall use any public service vehicle for the conveyance of passengers for hire or reward at separate fares except - (a) on a route approved, as respects so much thereof as falls within any traffic area, by the licensing authority for public service vehicles for that area; and (b) in accordance with such restrictions as may be imposed by that authority as to the class or description of vehicles which may be used on the route and as to the portions of the route on which, and the points at which, passengers may be taken up or set down ...".

- 3 *[1897] A. C. 22 .*
- 4 *[1921] 2 A. C. 465 , 475.*
- 5 *[1924] 2 Ch. 33 , 38 and 40.*
- 6 *(1949) 65 T. L. R. 336; 113 J. P. 333 .*
- 7 *[1949] Ch. 685; [1951] W. N. 157 .*
- 8 *[1897] A. C. 22 .*
- 9 *[1897] A. C. 22 .*
- 10 *[1924] 2 Ch. 33 .*
- 11 **Ibid. 38.**
- 12 *[1897] A. C. 22 .*
- 13 *[1924] 2 Ch. 33 , 40.*
- 14 *[1949] Ch. 685; [1951] W. N. 157 .*
- 15 *[1897] A. C. 22 .*
- 16 *[1949] Ch. 685; [1951] W. N. 157*

(c) Incorporated Council of Law Reporting for England & Wales

## **EXHIBIT 21**

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

1  
2  
3 In Re: ) **Case No. 19-34054-sgj-11**  
4 ) Chapter 11  
5 )  
6 HIGHLAND CAPITAL ) Dallas, Texas  
7 MANAGEMENT, L.P., ) Friday, June 25, 2021  
8 ) 9:30 a.m. Docket  
9 Debtor. )  
10 ) EXCERPT: MOTION FOR  
11 ) MODIFICATION OF ORDER  
12 ) AUTHORIZING RETENTION OF JAMES  
13 ) P. SEERY, JR. DUE TO LACK OF  
14 ) SUBJECT MATTER JURISDICTION  
15 ) (2248)  
16 )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

17 For the Debtor: Jeffrey Nathan Pomerantz  
18 PACHULSKI STANG ZIEHL & JONES, LLP  
19 10100 Santa Monica Blvd.,  
20 13th Floor  
21 Los Angeles, CA 90067-4003  
22 (310) 277-6910

23 For the Debtor: John A. Morris  
24 PACHULSKI STANG ZIEHL & JONES, LLP  
25 780 Third Avenue, 34th Floor  
New York, NY 10017-2024  
(212) 561-7700

For CLO Holdco, Ltd. and Jonathan E. Bridges  
The Charitable DAF Fund, Mazin Ahmad Sbaiti  
LP: SBAITI & COMPANY, PLLC  
JP Morgan Chase Tower  
2200 Ross Avenue, Suite 4900 W  
Dallas, TX 75201  
(214) 432-2899

For Get Good Trust and Douglas S. Draper  
Dugaboy Investment Trust: HELLER, DRAPER & HORN, LLC  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
(504) 299-3300

1 APPEARANCES, cont'd.:

2 For the Official Committee Matthew A. Clemente  
3 of Unsecured Creditors: SIDLEY AUSTIN, LLP  
4 One South Dearborn Street  
Chicago, IL 60603  
(312) 853-7539

5 Recorded by: Michael F. Edmond, Sr.  
6 UNITED STATES BANKRUPTCY COURT  
1100 Commerce Street, 12th Floor  
7 Dallas, TX 75242  
(214) 753-2062

8 Transcribed by: Kathy Rehling  
9 311 Paradise Cove  
Shady Shores, TX 76208  
10 (972) 786-3063

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.



1 provision that's at issue here. We submit that change is an  
2 admission or at least a strong indication that the unmodified  
3 order, at least as applied in some instances, contains  
4 legally-impermissible provisions. The entire argument today  
5 from our side is about what's not legally permissible in that  
6 order.

7 And that starts with our concerns regarding the  
8 application of 28 U.S.C. § 959(a). As Your Honor knows well,  
9 959(a) is a provision of law that the Fifth Circuit and  
10 *Collier on Bankruptcy* call an exception to the *Barton*  
11 doctrine. I know from the last time we were here that the  
12 Court is already aware of what 959(a) says. It's the second  
13 sentence, I understand, which the Court pointed to in our  
14 previous hearing that creates general equity powers or  
15 authorizes the Court to use its general equity powers to  
16 exercise some jurisdiction, some control over actions that  
17 fall within the first sentence of 959(a). But that second  
18 sentence also prohibits explicitly the Court's using general  
19 equity powers to deprive a litigant of his right to trial by  
20 jury.

21 Here, we're not under *Barton*, the statutory exception to  
22 *Barton* applies, because Mr. Seery is a manager of hundreds of  
23 millions of third-party investor property. Instead, we're  
24 here under the Court's general equity powers, as authorized by  
25 959(a). And those equity powers cannot deprive the right to



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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 14**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>	<p>3</p> <p>4</p>	<p>5/25/22 (10/5/21)</p> <p>5/25/22 (10/5/21)</p>	<p>9</p> <p>10</p>	<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>(15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>(1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>	<p>5</p> <p>6</p> <p>7</p>	<p>5/25/22 (10/5/21)</p> <p>5/25/22 (10/5/21)</p> <p>5/25/22 (10/5/21)</p>	<p>11</p> <p>12</p> <p>13</p>	<p>(8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>(10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Vol. 8

001349

001352

001359

001361

001369

001381

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018				
	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024				
	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036				
	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051				
Thru Vol 14				
Vol. 15	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
002916				
Thru Vol. 18				
Vol. 19	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
003783				
Thru Vol. 22				



001. 22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

1 trial by jury.

2 But the order does deprive trials by jury, first by  
3 asserting sole jurisdiction here, where jury trials are  
4 unavailable, and secondly, by abolishing any trial rights for  
5 claims that do not involve gross negligence or intentional  
6 misconduct.

7 Movants' third cause of action in the District Court case  
8 is for ordinary negligence. It comes with a Seventh Amendment  
9 jury right. But it's barred by the order because the order  
10 only allows colorable claims involving gross negligence or  
11 intentional conduct, not ordinary negligence.

12 Movants' second cause of action in the District Court case  
13 is for breach of contract. That comes with a Seventh  
14 Amendment jury right, but it's barred by the order because the  
15 order only allows colorable claims of gross negligence or  
16 intentional misconduct, not negligent or faultless breaches of  
17 contractual obligations.

18 Movants' first cause of action in the District Court case,  
19 breach of Advisers Act fiduciary duties, comes with a jury  
20 right. It's also barred by the order because the order only  
21 allows colorable claims involving gross negligence or  
22 intentional misconduct.

23 You see there what I mean. Congress couldn't have been  
24 clearer. Courts cannot deprive litigants of their day in  
25 court before a jury of their peers by invoking general equity

1 powers. Those powers don't trump the constitutional right to  
2 a jury trial.

3 Yet this Court's order purports to do precisely that, not  
4 only for the Movants, but also for future potential litigants  
5 who may have claims that have not even accrued yet. If those  
6 claims are for ordinary negligence or breach of contract or  
7 breach of fiduciary duties and don't rise to the level of  
8 gross negligence or intentional misconduct, this order says  
9 that those claims are barred, and it would deprive them of  
10 their day in court.

11 The Court's general equity powers are simply not broad  
12 enough to uphold such an order.

13 This issue is even more problematic when the causes of  
14 action at issue fall within the mandatory withdrawal of the  
15 reference provisions of 28 U.S.C. § 157(d). As this Court  
16 knows, it lacks jurisdiction over proceedings that require  
17 consideration of non-bankruptcy federal law regulating  
18 interstate commerce. Some such claims -- Movants' Advisers  
19 Act claim, for instance -- do not involve culpability rising  
20 to the level of gross negligence or intentional misconduct,  
21 but the order purports to bar them nonetheless, despite this  
22 Court's lacking jurisdiction over the subject matter of those  
23 claims.

24 Even if there is gross negligence or intentional  
25 misconduct, the order states that this Court will have sole

1 jurisdiction over such claims. And that can't be right if  
2 withdrawal of the reference is mandatory.

3 Opposing counsel will tell you that 157(d) is inapplicable  
4 here because they think our claims in the District Court won't  
5 require substantial consideration of the Advisers Act or any  
6 other federal laws regulating interstate commerce. But their  
7 cases don't come anywhere close to making that showing, as the  
8 briefing demonstrates.

9 And in any case, that argument is beside the point. This  
10 order is contrary to 157(d) because it asserts jurisdiction  
11 over claims that 157(d) does not apply -- I'm sorry, does  
12 apply to. And that's true regardless of whether Movants'  
13 claims are among those.

14 The idea that there's no substantial consideration of  
15 federal law, however, in the District Court case is undermined  
16 by Mr. Seery's testimony in support of his appointment in  
17 which he confirmed that the Advisers Act applies to him and  
18 that he has fiduciary duties under that Act to the investors  
19 of the funds he manages.

20 Your Honor, importantly, the Advisers Act isn't the  
21 typical federal statute with loads of case law under it. It's  
22 actually an underdeveloped, less-relied-upon statute, and most  
23 -- most of the law under that Act is promulgated by regulation  
24 and supervised by the SEC. As a registered investment  
25 advisor, Mr. Seery is bound by that Act, which he admits, he

1 agrees to. But to flesh out what his duties are requires a  
2 close exam of more than three dozen regulations under 17  
3 C.F.R. Part 275.

4 The obligations include robust duties of transparency and  
5 disclosure, as well as duties against self-dealing and the  
6 necessity of obtaining informed consent, none of which are  
7 waivable, these duties.

8 The proceedings here in this Court reflect an effort to  
9 have those unwaivable duties waived. The allegations in the  
10 District Court are essentially insider trading allegations  
11 that the Debtor and Mr. Seery knew or should have known  
12 information that they had a duty under the Advisers Act to  
13 disclose to their advisees. Both under the Act and  
14 contractually, they had those duties. And, instead, they did  
15 not disclose and consummated a transaction that benefited  
16 themselves nonetheless.

17 In considering those claims, the presiding court will have  
18 to consider and apply the Advisers Act and the many  
19 regulations promulgated under it, in addition to other federal  
20 laws regulating interstate commerce. For that reason,  
21 withdrawal of the reference on the District Court action is  
22 mandatory. That's the two major -- that's two major problems  
23 out of four with the order that we're here on today.

24 First, it deprives litigants of their right to trial, to a  
25 jury trial, when Section 959(a) says that can't be done. And,

1 two, the order asserts jurisdiction -- sole jurisdiction, even  
2 -- over proceedings in which withdrawal of the reference is  
3 mandatory under 157(d).

4 The fourth major problem is what the Court called  
5 specificity at the previous hearing. The Fifth Circuit's  
6 *Applewood Chair* case holds that the rule from *Shoaf* does not  
7 apply without a "specific discharge or release," and that that  
8 release has to be enumerated and approved by the Bankruptcy  
9 Court. Thus, the order here can't exculpate Mr. Seery of  
10 liability for ordinary negligence and the like in a blanket  
11 fashion. The claims being released must be identified.

12 That's what happened in *Shoaf*. *Shoaf*'s guaranty  
13 obligation was explicitly released. That's also what happened  
14 in *Espinosa*. *Espinosa*'s plan listed his student loan as his  
15 only specific indebtedness. But it's not what happened here.  
16 And it couldn't happen here, because the ordinary negligence  
17 and similar claims being discharged by the order had not yet  
18 accrued and thus were not even in existence at the time the  
19 order issued.

20 Instead, what we have here is a nonconsensual, nondebtor  
21 injunction or release that's precisely what the Fifth Circuit  
22 refused to enforce in the *Pacific Lumber* case.

23 So, lack of specificity is the third major problem with  
24 the order. And that brings us to the fourth problem, which is  
25 the *Barton* doctrine. *Barton* is the only possible basis for

1 this Court to assert exclusive or sole jurisdiction over  
2 anything. Outside of *Barton*, it's plain black letter law that  
3 the District Court's jurisdiction is equal to and includes  
4 anything that this Court's derivative jurisdiction would also  
5 reach.

6 But the exception to the *Barton* doctrine in 959(a) plainly  
7 applies here, leaving no basis for exclusivity with regards to  
8 jurisdiction and the District Court. That's because Mr. Seery  
9 is carrying on the business of a debtor and managing the  
10 property of others, rather than merely administering the  
11 bankruptcy estate. The exclusive jurisdiction function of the  
12 *Barton* doctrine has no applicability because 959(a) creates  
13 that exception here.

14 Under its general equity powers, yes, 959(a) still  
15 authorizes this Court to exercise some control over actions  
16 against Mr. Seery, but short of depriving litigants of their  
17 day in court. And nothing in 959(a), that exception to  
18 *Barton*, says that the Court can nonetheless exercise  
19 exclusivity in that jurisdiction. Those general equity powers  
20 do not create exclusive or sole jurisdiction. They do not  
21 deprive the District Court of its Congressionally-granted  
22 original jurisdiction.

23 Moreover, Mr. Seery is not an appointed trustee entitled  
24 to the protections of the *Barton* doctrine in any case. His  
25 appointment was a corporate decision that the Court was asked



1 not to interfere with. The Court was asked to defer under the  
2 business judgment rule to the Debtor's appointment of Mr.  
3 Seery. And the Court did so.

4 As we asserted last time, no authority that we can find  
5 combines these two unrelated doctrines, the *Barton* doctrine  
6 and the business judgment rule. And they don't go together.  
7 None of the testimony or the briefing or argument, in the July  
8 order, in the January order that preceded it, none of that  
9 indicated that Mr. Seery would be a trustee or the functional  
10 equivalent of a trustee. The word "trustee" does not appear  
11 in any of those briefs or transcripts.

12 Opposing -- and because of that, the District Court suit  
13 is not about -- well, not because of that. The District Court  
14 suit simply is not about any trustee-like role that Mr. Seery  
15 may have played anyway. Opposing counsel will try to convince  
16 you otherwise, will tell you that the District Court case is a  
17 collateral attack on the settlement, but it's not. Wearing  
18 his estate administrator hat, Mr. Seery can settle claims in  
19 this court. Wearing his advisor hat, he has to fulfill his  
20 Advisers Act duties and properly advise his clients.

21 He doesn't have to wear both hats, and it seems highly  
22 unusual that he would choose to fill both of those roles  
23 simultaneously. But he has chosen both roles. And the  
24 District Court case is a hundred percent about his role as an  
25 advisor. Did he comply with the Act? Did he do the things

1 that his advisor role obligated him to do as a manager of that  
2 property?

3 The District Court suit really is only being used to  
4 illustrate the issues that we're raising here. It's  
5 important, it's timely to address those issues now because of  
6 the District Court action, but that's an illustration of the  
7 problems with the order. It is not exclusively that that  
8 action is what we're attempting to address. Rather, the order  
9 exculpating Mr. Seery from ordinary negligence liability and  
10 similar liability is problematic, is contrary to the law. On  
11 top of that, the Court is asserting jurisdiction over gross  
12 negligence and intentional misconduct claims. To the extent  
13 that 157(d) applies, it is problematic and contrary to law as  
14 well.

15 THE COURT: Okay. We're occasionally getting some  
16 breakup of your sound. So please -- I don't know what you can  
17 do to adjust, but it was just now, and intermittently we get a  
18 little bit of garbly. So if you could just say your last  
19 sentence one more time, and we'll see if it improves.

20 MR. BRIDGES: Your Honor, I'm not sure I can say this  
21 last sentence again.

22 THE COURT: Okay.

23 MR. BRIDGES: I was -- I was mentioning that the  
24 District Court case is an illustration of our argument. Our  
25 argument is not merely that the District Court case should be

1 exempted or excepted from the order. Our argument is that the  
2 order is legally infirm and that the District Court case and  
3 the claims there illustrate some of those infirmities, but  
4 that the infirmities go beyond just what's at issue in the  
5 District Court case.

6 In sum, there are four problems with the order that render  
7 parts of it legally infirm. It deprives the right of a jury  
8 trial -- in fact, of any trial -- in contravention of 959(a)  
9 for some causes of action.

10 It asserts jurisdiction -- two, it asserts jurisdiction  
11 over claims that are subject to the mandatory withdrawal of  
12 the reference provision (garbled) 157(d).

13 And three, it lacks the specificity required to discharge  
14 future claims under *Applewood*.

15 Finally, Your Honor, number four, the order relies on the  
16 *Barton* doctrine, which doesn't apply and which 959(a) creates  
17 an exception to.

18 Movants respectfully submit the order should be modified  
19 for those reasons.

20 MR. SBAITI: Tell him Mark Patrick is here, for the  
21 record.

22 THE COURT: All right. I have a couple of follow-up  
23 questions for you. I want to drill down on the issue of your  
24 client not having appealed the July 2020 order. Or the  
25 HarbourVest settlement order, for that matter. Tell me as

1 directly as possible why you don't view that as a big problem.  
2 Because it's high on my list of possible problems here.

3 MR. BRIDGES: I understand, Your Honor. The  
4 *Applewood Chair* case is our -- our defense to that argument,  
5 that without providing specifics as to the claims being  
6 discharged in the July order, that *Shoaf* cannot apply to  
7 create a res judicata effect from the failure to appeal that  
8 order.

9 THE COURT: But is that really what we're talking  
10 about, a discharge of certain claims? We're talking about a  
11 protocol that the Court established which wasn't appealed.

12 MR. BRIDGES: Your Honor, your order does many  
13 things. We're talking about a few of them in one paragraph of  
14 the order. And in that order -- in that paragraph, yes, it  
15 creates a protocol for determining the colorability of some  
16 claims, claims that rise to the level of gross negligence or  
17 intentional misconduct. It does not create a protocol for  
18 claims that fall below that threshold, claims for ordinary  
19 negligence, as an example.

20 THE COURT: Okay.

21 MR. BRIDGES: For breach of contract that's not  
22 intentional, is not grossly negligent, it's just a breach of  
23 contract. It can even be faultless. There's still liability.  
24 There's still a jury right under the Seventh Amendment for  
25 faultless breach of contract.

1 The protocols in the order do not address such claims  
2 other than to bar them. To discharge them. And thus, yes,  
3 it's a release, it's a discharge of those claims. It can be  
4 viewed as a permanent injunction against bringing such claims.  
5 It's what's -- it's what's not allowed by the *Applewood Chair*  
6 case and by *Pacific Lumber*.

7 THE COURT: All right. So you're arguing that was --  
8 the wording of the order was not specific enough to apprise  
9 affected parties of what they were releasing, they're  
10 releasing claims based on ordinary negligence against Mr.  
11 Seery? That's not specific enough?

12 MR. BRIDGES: Correct. Future unproved claims, the  
13 factual basis for which has not happened yet. Those cannot be  
14 and were not disclosed with any specificity in this order.

15 If we compare it to *Shoaf* and to *Espinosa*, in *Shoaf* what  
16 we had was a guaranty, Shoaf's guaranty on a transaction that  
17 was listed in the actual release, describing what the  
18 transaction was that was being -- that the guaranty was being  
19 released for.

20 In *Espinosa*, what we had was a student loan --

21 THE COURT: Right.

22 MR. BRIDGES: -- that was listed in the plan  
23 specifically, as the only specific indebtedness.

24 Here, we don't have any of that specificity. What we have  
25 is a notice to the entire world, Your Honor, that for an

1 unlimited period of time any claim for ordinary negligence,  
2 for ordinary breach of contract or fiduciary duty against Mr.  
3 Seery is barred if it relates to his CEO role. And his CEO  
4 role means as a manager of property, exactly precisely what  
5 959(a) is talking about.

6 Those jury rights (garbled) claims cannot be released,  
7 discharged, expunged, done away with, in an order that isn't  
8 explicit.

9 On top of that, even in an explicit order, 959(a) tells  
10 the Court it cannot deprive a litigant of its jury trial  
11 right.

12 THE COURT: Well, as anyone knows who's been around a  
13 while in this case, my brain sometimes goes down an unexpected  
14 trail, and maybe this one is one of those situations. Are  
15 there contracts that your clients would rely on in potential  
16 litigation?

17 MR. BRIDGES: Yes, Your Honor.

18 THE COURT: What are those contracts?

19 MR. BRIDGES: It is a management contract. I don't  
20 think I can give you the specifics at this moment, but I  
21 probably can before we're done here today. A management  
22 contract in which the Debtor provides advisory and management  
23 services to the DAF --

24 THE COURT: Well, you know, the shared services  
25 agreements that we heard so much about in this case? A shared

1 service agreement? I can't remember, you know, which entities  
2 have them and which do not at times. So, --

3 MR. BRIDGES: The shared services agreement is one of  
4 those contracts, Your Honor.

5 THE COURT: Okay.

6 MR. BRIDGES: It's not the only one.

7 THE COURT: And what are the others?

8 MR. BRIDGES: There's -- the other is the investment  
9 advisory agreement.

10 THE COURT: Those two?

11 MR. BRIDGES: (no response)

12 THE COURT: Those are the only two?

13 MR. BRIDGES: There may be one other, Your Honor.

14 I'm not sure.

15 THE COURT: Are they in evidence?

16 MR. BRIDGES: I can find out shortly.

17 THE COURT: Are they in evidence? We haven't talked  
18 about evidence yet, but are they going to be in evidence,  
19 potentially?

20 MR. BRIDGES: They are referenced in the District  
21 Court case, the complaint, which is in evidence.

22 THE COURT: I'm asking, are --

23 MR. BRIDGES: But those contracts I don't believe are  
24 listed as exhibits here in this motion, no.

25 THE COURT: They are not? Okay.



1 Well, what my brain is thinking about here is, of the  
2 umpteen agreements I've seen -- more than umpteen -- of the  
3 many, many agreements I've seen over time in this case, so  
4 often there's a waiver of jury trial rights, as I recall, as  
5 well as an arbitration clause. I just was curious, hmm, you  
6 know, you talked a lot about your clients' jury trial rights:  
7 do we know that these agreements have not waived those?

8 MR. BRIDGES: Your Honor, I think I can answer that  
9 by the end of our hearing. I don't have an answer off the top  
10 of my head. What I can tell you is a jury right has been  
11 demanded in the federal court complaint, which is in evidence,  
12 and that opposing counsel has brought no evidence indicating  
13 that they have the defense of our having waived the right to a  
14 jury trial here.

15 THE COURT: Okay. Well, I just --

16 MR. BRIDGES: Or arbitra...

17 THE COURT: -- would think that you would know that.  
18 Does anyone know that on the Debtor's side off the top of your  
19 head?

20 MR. POMERANTZ: I do not, Your Honor.

21 THE COURT: Uh-huh.

22 MR. POMERANTZ: And to Mr. Bridges' last point, we  
23 have filed a motion to dismiss. We have not answered the  
24 complaint. So any time to object to their jury trial right  
25 would be in the context of the answer. So the implication

1 that we have not raised the issue and therefore it doesn't  
2 exist is just not a correct implication and connection he's  
3 trying to draw.

4 THE COURT: Okay. All right.

5 Well, let me also ask you about this. I'm obsessing a  
6 little over the *Barton* doctrine and your insistence that it  
7 does not provide authority or an analogy here.

8 Well, for one thing, is there anything in the Fifth  
9 Circuit case *Sherman v. Ondova* that you think either helps you  
10 or hurts you on that point? I'm intimately familiar with it,  
11 although I haven't read it in a while, because it was my  
12 opinion that the Fifth Circuit affirmed. And I spent a lot of  
13 time thinking about that. It was a trustee, a traditional --  
14 well, no, a Chapter 11 trustee and his counsel. But anything  
15 from that case that you think is worthy of pointing out here?

16 MR. BRIDGES: No, Your Honor. I'm not -- nothing  
17 comes to mind. That case is not fresh on my mind.

18 What I would tell you is that *Barton* doctrine and the  
19 business judgment rule are incompatible, and the appointment  
20 of a trustee never involves application of the business  
21 judgment rule or deference to the Debtor or another party in  
22 terms of making that appointment.

23 The *Barton* doctrine, as it applies to trustees, is viewed  
24 as an extension, to some extent, of judicial immunity to the  
25 trustee, who is chosen by, selected by the Court and assigned

1 by the Court to carry out certain functions. That --

2 THE COURT: Well, let me --

3 MR. BRIDGES: -- quasi-immunity --

4 THE COURT: -- stop you there. You say it's an  
5 extension of immunity. But isn't it, by nature, really a  
6 gatekeeping provision? It's a gatekeeping provision, right?  
7 Before you even get to immunity, maybe, in a lawsuit, it's a  
8 gatekeeping function that the Supreme Court has blessed, you  
9 know, obviously in the context of a receiver, but appellate  
10 courts have blessed it in the bankruptcy context. The  
11 Bankruptcy Court can be the gatekeeper on whether the trustee  
12 or someone I think in a similar position can get sued or not.

13 And then we had that Fifth Circuit case after *Ondova*. It  
14 begins with a *V, Villegas* or something like that. Didn't  
15 that, I don't know, further ratify, if you will, the whole  
16 *Barton* doctrine by saying, oh, just because they're noncore  
17 claims, state law or non-bankruptcy law claims, doesn't mean,  
18 after *Stern*, the Bankruptcy Court still cannot serve the  
19 gatekeeper function.

20 Tell me what you disagree. That's my kind of combined  
21 reading of all of that.

22 MR. BRIDGES: Your Honor, I have to parse it out.  
23 There's a lot to unpack there. If I can make sure to get in  
24 the follow-ups, I can start with saying it's okay for the  
25 Court in many instances to act as a gatekeeper.

1 THE COURT: Okay.

2 MR. BRIDGES: Both under *Barton* -- under *Barton*, or  
3 when the *Barton* exception in 959(a) applies, under the Court's  
4 general equitable powers, that gatekeeping functions are not  
5 across-the-board prohibited, --

6 THE COURT: Okay.

7 MR. BRIDGES: -- and we aren't trying to argue that  
8 they're prohibited across the board.

9 THE COURT: Okay.

10 MR. BRIDGES: Now, to try to dig into that a little  
11 deeper, the order does two things: gatekeeping as to some  
12 claims, and, frankly, discharging or barring other claims.  
13 Those are two separate functions.

14 The first one, the gatekeeping, may be, in some  
15 circumstances, which we'll come to, many circumstances, may be  
16 allowable, may be even mandatory under *Barton*, not even  
17 requiring an order from this Court, for the gatekeeping of  
18 *Barton* to apply. But nonetheless, allowable in many instances  
19 under the Court's general equity powers under 959(a). That  
20 part is right about gatekeeping.

21 It does not create jurisdiction in this Court where 157(d)  
22 deprives this Court of jurisdiction. Just because it's  
23 related to bankruptcy isn't enough to say that the Court  
24 therefore has jurisdiction if, one, if mandatory withdrawal of  
25 the reference is required.

1           Furthermore, Your Honor, that gatekeeping function, under  
2 the equity powers authorized by 959(a), will not allow a court  
3 to discharge or -- or deprive, is the word I'm looking for --  
4 deprive a litigant of their right to a trial -- a specific  
5 kind of trial, a jury trial -- but a trial. And by crafting  
6 an order that says certain kinds of claims that do (garbled)  
7 jury rights are barred, rather than just providing a  
8 gatekeeper provision, flat-out bars them, that doesn't -- that  
9 doesn't comply with 959.

10           THE COURT: Okay.

11           MR. BRIDGES: Your Honor, if I could add one last  
12 thing.

13           THE COURT: Go ahead.

14           MR. BRIDGES: The Supreme Court's *Stern* case points  
15 out that -- that it's -- well, actually, it's the *Villegas*  
16 case from the Fifth Circuit --

17           THE COURT: The one I mentioned.

18           MR. BRIDGES: -- points out that *Stern* -- *Stern* --  
19 yes, you did. *Stern* did not create an exception to the *Barton*  
20 doctrine. And that gives -- that endorses a *Barton* court's  
21 ability to perform gatekeeping, even over claims that *Stern*  
22 says there would not be jurisdiction over.

23           Contrast that with 959(a), which *Collier on Bankruptcy* and  
24 the Fifth Circuit have held is an exception to the *Barton*  
25 doctrine. Because of that exception, *Barton* no longer

1 applies, and what you're using in invoking a gatekeeper order  
2 is the Court's inherent equitable powers, its general powers  
3 in equity. And those equity powers are cabined. They're  
4 broad, but they're cabined by 959(a)'s prohibition of doing  
5 away with a litigant's right to a trial, a jury trial.

6 Now, I also -- counsel is telling me I should note for the  
7 record that Mr. Mark Patrick is here as a representative of  
8 our clients. But Your Honor, I'll -- I will quit now unless  
9 you have further questions for me.

10 THE COURT: All right. I do not at this time. Mr.  
11 Morris or Mr. Pomerantz, who's going to make the argument?

12 MR. POMERANTZ: It's me, Your Honor.

13 OPENING STATEMENT ON BEHALF OF THE DEBTOR

14 MR. POMERANTZ: And I'll start with the jury trial  
15 right. In the last few minutes, we have been able to  
16 determine that the Second Amended and Restated Investment  
17 Advisory Agreement between the DAF and the Debtor has a broad  
18 jury trial waiver under 14(f). And in addition, as I will  
19 include in my discussion, there is no private right of action  
20 under the Investment Advisers Act.

21 I think those two points are fatal to Movants' argument,  
22 and probably I can get away with not even responding to the  
23 others. But since I prepared a lengthy presentation to  
24 address the issues that were raised today, and also the half  
25 hour that Mr. Bridges spent with Your Honor on June 8th in

1 which was his first opening statement on the motion for  
2 reconsideration, I'll now proceed.

3 THE COURT: All right.

4 MR. POMERANTZ: The arguments that the Movants made  
5 in the original motion essentially boil down to one legal  
6 proposition, that the Court did not have jurisdiction to enter  
7 the July 16th order because those orders impermissibly  
8 stripped the District Court from jurisdiction, in violation of  
9 (inaudible) Supreme Court precedent and 28 U.S.C. Section  
10 157(d).

11 As with all things Dondero, the arguments continue to  
12 morph, and you heard argument at the contempt hearing on June  
13 8th and further argument today that now the prospective  
14 exculpation for negligence in the order is also unenforceable  
15 and should be modified.

16 Movants continue to try to distance themselves from the  
17 January 9th order and argue that it is not relevant because  
18 they seek to pursue claims against Mr. Seery as CEO and not as  
19 an independent director. Movants ignore, however, that the  
20 January 9th order not only protects Mr. Seery in his role as  
21 the independent director, but also as an agent of the board.  
22 I will walk the Court through my arguments on that issue in a  
23 few moments.

24 Of course, the Movants had no explanation, Your Honor, for  
25 the question of why it took them until May of 2021, 10 months



1 after the entry of the July 16th order that appointed Mr.  
2 Seery as CEO and CRO, and 16 months after the Court appointed  
3 the independent board, with Mr. Dondero's blessing and  
4 consent, as a substitute for what would have surely been the  
5 imminent appointment of a Chapter 11 trustee.

6 Movants try to distance themselves from the prior orders  
7 by essentially arguing that the DAF is a newcomer to the  
8 Chapter 11 and is not under Mr. Dondero's control but is  
9 rather managed separately and independently by Mr. Patrick,  
10 who recently replaced Mr. Scott.

11 The Movants admit, as they must, that the DAF is the  
12 parent and the sole shareholder of CLO Holdco and conducts its  
13 business through CLO Holdco, and both entities conduct their  
14 business through one individual. It was Grant Scott then;  
15 it's Mark Patrick now. So even if Mr. Dondero does not  
16 control the DAF and CLO Holdco, which issue was the subject of  
17 lengthy testimony in connection with the DAF hearing, both the  
18 DAF and the CLO Holdco are bound by the Debtor's res judicata  
19 argument, which I will discuss shortly.

20 In any event, I really doubt the Court is convinced that  
21 the DAF operates truly independently of Mr. Dondero any more  
22 than the Court has been convinced that the Advisors, the  
23 Funds, Dugaboy and Get Good, all operate independently from  
24 Mr. Dondero. The only explanation for the delay is that Mr.  
25 Dondero has been and continues to be unhappy with the Court's

1 rulings and has now hired a new set of lawyers in a desperate  
2 attempt to evade this Court's jurisdiction. Having failed in  
3 their attempt to recuse Your Honor from the case, this is  
4 essentially their last hope.

5 And these new lawyers, Your Honor, have not only filed  
6 this DAF lawsuit in the District Court which is the subject of  
7 the contempt motion and today's motion, but they also filed  
8 another lawsuit in the District Court on behalf of an entity  
9 called PCMG, another Dondero entity, challenging yet another  
10 of Mr. Seery's postpetition decisions.

11 And there's no doubt that this is only the beginning. Mr.  
12 Dondero recently told Your Honor at a hearing that there were  
13 many more sets of lawyers waiting in the wings. And as the  
14 Court remarked at the hearing on the Trusts' motion to compel  
15 compliance with Rule 2015.3, the Trusts were trying through  
16 that motion to obtain information about the Debtor's control  
17 entities so that they could file more lawsuits against the  
18 Debtor, a concern that Mr. Draper unconvincingly denied.

19 I would like to focus the Court preliminarily on exactly  
20 what the January 9th and July 16th orders do, because Movants  
21 try to confuse things by casting the entire order with a broad  
22 brush of their jurisdictional overreach arguments, and they  
23 misinterpret Supreme Court and Fifth Circuit precedent.

24 I would like to put up on the screen the language of  
25 Paragraph 10 of the January 9th order and Paragraph 35

1 (garbled) of the July 16th.

2 Your Honor is very familiar with these orders, I'm sure,  
3 having dealt with them in connection with confirmation and in  
4 prior proceedings. But to recap, the orders essentially do  
5 three things.

6 First, they require the parties to first come to the  
7 Bankruptcy Court before commencing or pursuing a claim against  
8 certain parties.

9 Second, they provided the Court with the sole jurisdiction  
10 to make a finding of whether the party has asserted a  
11 colorable claim of negligence -- of willful misconduct or  
12 gross negligence.

13 And lastly, the orders provided the Court with exclusive  
14 jurisdiction over any claims that the Court determined were  
15 colorable.

16 The protected parties under the January 9th order are the  
17 independent directors, their agents and advisors, which, as I  
18 mentioned earlier, includes Mr. Seery -- who, at least as of  
19 March 2020, was acting as the agent on the board's behalf as  
20 the CEO -- for any actions taken under their direction.

21 The protected parties under the July 16th order are Mr.  
22 Seery, as the CEO and CRO, and his agents and advisors.

23 Movants spend a lot of time in their moving papers and  
24 reply arguing that the Court may not assert exclusive  
25 jurisdiction over any claims that pass through the gate. They

1 also spend a lot of time arguing that the Bankruptcy Court  
2 does not even have jurisdiction at all to assert -- to  
3 adjudicate claims against Mr. Seery because such claims are  
4 subject to mandatory withdrawal under Section 157(d).

5 The Debtor doesn't agree, and has briefed why mandatory  
6 withdrawal of the reference is inapplicable. The Debtor has  
7 also filed in the District Court a motion to enforce the  
8 reference in effect in this district which refers cases in  
9 this district arising under, arising in, or related to Chapter  
10 11 to the Bankruptcy Court.

11 The motion to enforce the reference, Your Honor, which  
12 extensively briefs this issue, is contained in Exhibit 3 of  
13 the Debtor's exhibits.

14 We were somewhat surprised that the complaint filed in the  
15 District Court wasn't automatically referred to this Court  
16 under the standing order in effect in this district, given the  
17 related bankruptcy case, the Court's prior approval of the  
18 HarbourVest settlement, and the appeal in the District Court  
19 of the HarbourVest settlement.

20 When we dug a little further, we found out that Movants  
21 filed a civil case cover sheet accompanying the complaint in  
22 the District Court. They neglected in that initial filing to  
23 point out that there was any related case to the lawsuit they  
24 filed.

25 Mr. Bridges fell on his sword at the contempt hearing on

1 June 8th and took complete responsibility for the oversight.  
2 I commend him for not trying to argue that the bankruptcy  
3 case, the HarbourVest settlement, and the District Court  
4 appeal are not related cases that would require disclosure, an  
5 argument that surely would have been unsupportable.

6 But as I said at the contempt hearing, I find it curious  
7 that such an important issue was overlooked, an issue which  
8 would have likely changed the entire trajectory of the  
9 proceedings and landed the DAF lawsuit in this Court rather  
10 than the District Court.

11 And this Tuesday, Your Honor, Movants filed a revised  
12 civil cover sheet with the District Court. Although they  
13 referenced the bankruptcy case as a related case, they didn't  
14 bother to mention the appeal already pending in the District  
15 Court regarding the HarbourVest settlement -- surely, a  
16 related case.

17 Your Honor also asked Mr. Bridges at the June 8th hearing  
18 whether it was an oversight or intentional that he didn't  
19 mention 28 U.S.C. Section 1334 as a basis for jurisdiction in  
20 his complaint. Mr. Bridges had no answer for Your Honor then,  
21 and has given no answer now. His only comment at the hearing  
22 last time was that it must have been Ms. Sbaiti that wrote it  
23 because he had no recollection of it.

24 So, Your Honor, it's no surprise that Movants conveniently  
25 found themselves in the District Court, which was their

1 ultimate strategy from the get go.

2 In any event, Your Honor, we have briefed the withdrawal  
3 of the reference issue. A response by the Movants is due --  
4 CLO Holdco and DAF is due on June 29th. And we hope the  
5 District Court will decide soon thereafter whether to enforce  
6 the reference.

7 While I'm happy to argue why Movants' mandatory withdrawal  
8 of the reference argument is [not] persuasive, I don't think  
9 it's necessary, but I do, again, want to highlight that there  
10 is no private right of action under the Investment Advisers  
11 Act.

12 Your Honor, it's not really relevant to today's hearing,  
13 since we have argued in opposition to the motion before Your  
14 Honor that resolving the issue of the Bankruptcy Court's  
15 jurisdiction to adjudicate claims contained in the complaint  
16 as they relate to Mr. Seery is premature at this point. The  
17 January 9th and July 16th orders first require the Court to  
18 determine whether a claim is colorable. It's not until this  
19 Court determines if a claim is colorable that the decision on  
20 where the lawsuit should be tried is relevant.

21 Having said that, Your Honor, we read the Movants' reply  
22 brief very carefully and noticed in Footnote 6 that the  
23 Movants state that modifying the exclusive grant of  
24 jurisdiction to adjudicate any claims that pass through the  
25 gate to include the language "to the extent permissible by

1 law," in the same way the Debtor modified the plan, would  
2 resolve the motion. So let's look at the provision as it  
3 exists in the plans.

4 Ms. Canty, if you can put up the next demonstrative,  
5 please.

6 This provision provides that the Bankruptcy Court will  
7 have sole and exclusive jurisdiction to determine whether a  
8 claim or cause of action is colorable, and, only to the extent  
9 legally permissible and provided in Article XI, shall have  
10 jurisdiction to determine -- to adjudicate the underlying  
11 colorable claim or cause of action.

12 The Movants request in their reply brief in Footnote 6  
13 that the July 16th order be given the plan treatment. That  
14 treatment: sole authority to determine colorability and  
15 jurisdiction, and, to the extent legally permissible, to  
16 adjudicate underlying claim, only if jurisdiction existed.

17 After reviewing the reply brief and prior to the June 8th  
18 hearing, we decided that we would agree to modify both the  
19 January 9th and the July 16th orders to provide that the  
20 Bankruptcy Court would only have jurisdiction to adjudicate  
21 claims that pass through the colorability gate to the extent  
22 permissible by law.

23 Prior to the June 8th hearing, Mr. Morris and I had a  
24 conversation with Mr. Bridges. We conferred about a potential  
25 resolution and a proposed modification. Mr. Bridges indicated



1 they were interested in exploring a resolution and wanted to  
2 --

3 MR. BRIDGES: Objection, Your Honor.

4 THE COURT: There's an objection?

5 MR. BRIDGES: Objection, Your Honor. There's a Rule  
6 408 settlement discussion. He's welcome to talk about the  
7 results, but he shouldn't be talking about what was -- what  
8 was proposed by opposing counsel in a settlement conversation.

9 THE COURT: Okay. I overrule.

10 MR. POMERANTZ: Your Honor, this was not --

11 THE COURT: I don't think this is a 408 issue.  
12 Continue.

13 MR. BRIDGES: Thank you.

14 MR. POMERANTZ: The stipulation and order which we  
15 provided to counsel is attached to my declaration, which is  
16 found at Document 2418, and it was filed in connection with a  
17 Notice of Revised Proposed Orders that we filed at Docket  
18 2417. And I would like to put up on the screen the relevant  
19 paragraphs of the order that we provided to the Movants.

20 So, you see, we agreed to modify each of the orders at the  
21 end to do what the plan says. The Court would only have  
22 jurisdiction for claims passing through the gate if the Court  
23 had jurisdiction and it was legally permissible.

24 Movants' counsel, however, responded with a mark-up that  
25 went beyond -- went beyond what Movants proposed in Footnote 6

1 and sought to fundamentally change the January 9th and July  
2 16th orders in ways that were not acceptable to the Debtor and  
3 not even contemplated by the original motion.

4 Ms. Canty, can you put up on the screen the relevant  
5 paragraphs of the response we received?

6 Specifically, Your Honor, you see at the first part they  
7 wanted to provide that the only -- the order only applied to  
8 claims involving injury to the Debtor, presumably as opposed  
9 to alleged injuries to affiliated funds or third parties.  
10 They also provided that the Court's ability to make the  
11 initial colorability determination was also qualified by "to  
12 the extent permissible by law" in the way that the Court --  
13 that the Debtor agreed to modify the ultimate adjudication  
14 jurisdiction provision.

15 Your Honor, Movants haven't even talked about this back  
16 and forth. They haven't talked about their about-face. And  
17 I'll leave it for Your Honor to read their Footnote 6 that  
18 said it would resolve their motion, the back and forth, our  
19 proposal, and now Mr. Bridges' modified, morphed arguments  
20 that now point out other issues.

21 In any event, Your Honor, we made the change, and we think  
22 it should resolve the motion, or at least it resolves part of  
23 the motion. There can't be any argument that the Court is  
24 trying to exert exclusive jurisdiction on claims that pass  
25 through the gate.

1           What apparently remains from the arguments raised by the  
2 Movants is the argument that the Court does not even have  
3 jurisdiction to act as a gatekeeper in the first place because  
4 it doesn't have jurisdiction of the underlying lawsuit. And  
5 on June 8th and today, they've added a new argument, that the  
6 orders impermissibly exculpate Mr. Seery and others, violate  
7 their jury trial rights, and are contrary to the Fifth Circuit  
8 precedent.

9           Movants claims that the orders are a jurisdictional  
10 overreach, a violation of constitutional proportions, a  
11 violation of due process, and inconsistent with several U.S.  
12 Supreme Court cases. But, of course, they cite no cases whose  
13 facts are even remotely similar to this one. Instead, they  
14 are content to rely on general statements regarding bankruptcy  
15 jurisdiction, how it is derived from district court  
16 jurisdiction and is constitutionally limited, legal  
17 propositions which are not terribly controversial or even  
18 applicable to these facts.

19           There are several arguments -- I mean, there are several  
20 reasons, Your Honor, why Movants' arguments fail. Initially,  
21 Movants have not cited any authority, any statute, or any rule  
22 which would allow this Court to revisit the January 9th and  
23 July 16th orders. As I will discuss in a moment, Your Honor,  
24 *Republic v. Shoaf*, a case the Court is very familiar in and  
25 relied on in connection with plan confirmation, bars a

1 collateral attack on these orders under the doctrine of res  
2 judicata.

3 Similarly, as the Court remarked on June 8th, the Supreme  
4 Court's *Espinosa* decision, which rejected an attack based upon  
5 Federal Rule of Civil Procedure 60(b)(4) to a prior order that  
6 may have been unlawful, prohibits the Court from now  
7 reconsidering the January 9th and July 16th orders.

8 But even if Your Honor rules that res judicata does not  
9 apply, there are two independent reasons why the orders were  
10 not an unlawful extension of the Court's jurisdiction. The  
11 first is because the Court had jurisdiction to enter both of  
12 those orders as the ability to determine the colorability of  
13 claims is within the jurisdiction of the Court. The second is  
14 because the orders are justified by the *Barton* doctrine.

15 Lastly, Your Honor, Movants' argument that the Court may  
16 not act as a gatekeeper to determine the colorability of a  
17 claim for which it may not have jurisdiction is incorrect, and  
18 as Your Honor has mentioned and as Mr. Bridges unconvincingly  
19 tried to distinguish, the Fifth Circuit *Villegas v. Schmidt*  
20 case is a case on point and resolves that issue.

21 Turning to res judicata, Your Honor, it prevents the Court  
22 from revisiting these governance orders. CLO Holdco had  
23 formal notice of the Seery CEO motion and the opportunity to  
24 respond. It failed to do so. It is clearly bound.

25 As reflected on Debtor's Exhibit 4, CLO Holdco is a

1 wholly-owned subsidiary of the DAF. The DAF is its sole  
2 shareholder. There is no dispute about that. Importantly, at  
3 the time of both the January and July orders, Grant Scott was  
4 the only human being authorized to act on behalf of CLO Holdco  
5 and the DAF. The DAF did not respond to the Seery CEO motion,  
6 either.

7 And why is that important, Your Honor? It's because  
8 Movants argue in their reply that the DAF cannot be bound by  
9 res judicata because they did not receive notice of the July  
10 16th order. However, Your Honor, that is not the law. Res  
11 judicata binds parties to the dispute and their privies, and  
12 the DAF is bound to the prior orders even though it did not  
13 receive notice.

14 There are several cases, Your Honor, that stand for this  
15 unremarkable proposition. First I would point Your Honor to  
16 the Fifth Circuit's opinion of *Astron Industrial Associates v.*  
17 *Chrysler*, found at 405 F.2d 958, a Fifth Circuit case from  
18 1968. In that case, Your Honor, the Fifth Circuit held that  
19 the appellant was barred by the doctrine of res judicata from  
20 bringing a claim because its parent, which was its sole  
21 shareholder, would have been bound by res judicata.

22 *Astron* is consistent with the 1978 Fifth Circuit case of  
23 *Pollard v. Cockrell*, 578 F.2d 1002 (1978). And the Northern  
24 District of Texas in 2000 case of *Bank One v. Capital*  
25 *Associates*, 2000 U.S. Dist. LEXIS 11652, found that a parent

1 and a sole shareholder of an entity couldn't assert res  
2 judicata as a defense when those claims could have been  
3 brought against its wholly-owned subsidiary.

4 And lastly, Your Honor, the 2011 Southern District of  
5 Texas case, *West v. WRH Energy Partners*, 2011 LEXIS 5183, held  
6 that res judicata applied with respect to a partnership's  
7 general partner because the general partner was in privity  
8 with the partnership.

9 These cases are spot on and make sense. DAF is CLO  
10 Holdco's parent. Grant Scott was the only live person to  
11 represent these entities in any capacity at the relevant  
12 times. Accordingly, just as CLO Holdco is bound, DAF is  
13 bound.

14 Allowing DAF to assert a claim when its wholly-owned and  
15 controlled subsidiary is barred would allow entities to  
16 transfer claims amongst their related entities in order to  
17 relitigate them and they would never be finality. And, of  
18 course, Jim Dondero, as we know, consented to the January 9th  
19 order, which provided Mr. Seery protection in a variety of  
20 capacities.

21 And as Your Honor has pointed out, and as Mr. Bridges  
22 didn't have an answer for, neither CLO Holdco nor the DAF or  
23 any other party appealed any of the governance orders. And  
24 nobody challenged the validity of these orders at the  
25 confirmation hearing, where the terms of these orders were

1 front and center.

2 And importantly, Your Honor, the orders are clear and  
3 unambiguous. They require a Bankruptcy Court [sic] to seek  
4 Bankruptcy Court approval before they commence or pursue an  
5 action against the independent board, the CEO, CRO, or their  
6 agents. And they clearly and unambiguously set the standard  
7 of care for actions prospectively: gross negligence or  
8 willful misconduct.

9 The Bankruptcy Court had jurisdiction to enter the  
10 governance orders, which, as expressly indicated in the  
11 orders, were core proceedings dealing with the administration  
12 of the estate. No one challenged this finding of core  
13 jurisdiction. And as I will discuss later, the failure to  
14 challenge core jurisdiction is waived under applicable Supreme  
15 Court and Fifth Circuit precedent.

16 Your Honor, the Court [sic] does not argue that Movants  
17 have waived their right to seek adjudication of a lawsuit that  
18 passes through the colorability gate by an Article III Court.  
19 The issue is not before the Court, but the changes to the  
20 order that the Debtor agreed to make clearly -- clearly will  
21 provide Mr. Bridges' clients the ability to make that  
22 determination.

23 The Debtor is, however, arguing that the Movants have  
24 waived their right to contest the core jurisdiction of the  
25 Bankruptcy Court to make the determination that the claims are



1 colorable in the first place, and to challenge the exculpation  
2 provisions provided to the beneficiaries of those orders.

3 Accordingly, Your Honor, the elements of res judicata are  
4 satisfied. Both proceedings involve the same parties. The  
5 prior judgment was entered by a court of competent  
6 jurisdiction. The prior order was a final judgment on its  
7 merits. And they involved the same causes of action.

8 Importantly, the members of the independent board,  
9 including Jim Seery, relied on the protections contained in  
10 the January 9th and July 16th orders and would not have  
11 accepted these appointments if the protections weren't  
12 included. And how do we know this? Because each of them,  
13 both Mr. Seery and Mr. Dubel, both testified at the  
14 confirmation hearing on this very topic.

15 And I would like to put up on the screen an excerpt from  
16 Mr. Seery's testimony at confirmation, which is testimony  
17 included in the February 2nd, 2021 transcript, which is  
18 Exhibit 2 of the Debtor's exhibits.

19 THE COURT: Okay.

20 MR. POMERANTZ: And I would like to just read this,  
21 Your Honor.

22 "Q Okay. You mentioned that there were certain  
23 provisions of the January 9th order that were important  
24 to you and the other independent directors. Do I have  
25 that right?"

1 MR. POMERANTZ: A little bit later on, Mr. Seery  
2 testifies:

3 "A And then ultimately there'll be another provision  
4 in the agreement here, I don't see it off the top of my  
5 head, but a gatekeeper provision. And that provision"  
6 --

7 "Q Hold on one second, Mr. Seery."

8 MR. POMERANTZ: Please scroll.

9 "Q So, Paragraph 4 and 5, were those -- were those --  
10 were those provisions put in there at the insistence of  
11 the prospective independent directors?

12 "A Yes.

13 "Q Okay. Can we go to Paragraph 10, please? There  
14 you go."

15 Mr. Morris: Is this the other provision that you were  
16 referring to?

17 "A This is -- it's become to be known as the  
18 gatekeeper provision, but it's a provision that I  
19 actually got from other cases -- again, another very  
20 litigious case -- that I thought it was appropriate to  
21 bring it into this case. And the concept here is that  
22 when you are dealing with parties that seem to be  
23 willing to engage in decade-long litigation and  
24 multiple forums, not only domestically but even  
25 throughout the world, it seemed important and prudent

1 to me and a requirement that I set out that somebody  
2 would have to come to this Court, the Court with  
3 jurisdiction over these matters, and determine whether  
4 there was a colorable claim. And that colorable claim  
5 would have to show gross negligence and willful  
6 misconduct -- i.e., something that would not otherwise  
7 be indemnifiable" --

8 MR. POMERANTZ: Hold on one second.

9 "A So, basically, it set an exculpation standard for  
10 negligence. It exculpates the directors from  
11 negligence, and if somebody wants to bring a cause  
12 against the directors, they have to come to this Court  
13 first to get a finding that there's a colorable claim  
14 for gross negligence or willful misconduct."

15 "Q Would you have accepted the engagement as an  
16 independent director without the Paragraphs 4, 5, and  
17 10 that we just looked at?

18 "A No, these were very specific requests. The  
19 language here has been smithed, to be sure, but I  
20 provided the original language for Paragraph 10 and  
21 insisted on the guaranty provisions above to ensure  
22 that the indemnity would have some support.

23 "Q And ultimately did the Committee and the Debtor  
24 agree to provide all the protections afforded by  
25 Paragraphs 4, 5, and 10?

1 "A Yes."

2 MR. POMERANTZ: So, Your Honor, these -- this  
3 testimony also applied to as well as the CEO.

4 The testimony was echoed by Mr. Dubel, another member of  
5 the board. And I'm not going to put his testimony on the  
6 screen, but it can be found at Pages 272 to 281 of Exhibit 2,  
7 which is the February 2nd transcript.

8 Movants argue, however, that res judicata doesn't apply  
9 because the Court didn't have jurisdiction to enter these  
10 orders. And they argue that the order stripped the District  
11 Court of this jurisdiction. As I previously described, the  
12 Debtor is prepared to modify the governance orders to provide  
13 that the Court shall retain jurisdiction to -- on claims that  
14 pass through the gate only to the extent legally permissible.  
15 The modification does not appear to be good enough for the  
16 Movants. They continue to argue that the Bankruptcy Court  
17 can't even act as the exclusive gatekeeper to determine  
18 whether such actions are colorable as a prerequisite for  
19 commencing or pursuing an action.

20 The problem Movants run into is the Fifth Circuit's  
21 opinion of *Republic v. Shoaf* and various Supreme Court  
22 decisions, including *Espinosa*.

23 In *Shoaf*, the Fifth Circuit held that a party cannot  
24 subsequently challenge a confirmed plan that clearly and  
25 unambiguously released a third party, even if the Bankruptcy

1 Court lacked jurisdiction to approve the release in the first  
2 place. Movants' proper recourse was to appeal the governance  
3 orders, not to seek to collaterally attack them.

4 In *Shoaf*, the Fifth Circuit held that the confirmed plan  
5 was res judicata with respect to a suit by the creditor  
6 against the guarantor. And in so ruling, the Fifth Circuit  
7 says that the prong of res judicata standard that requires an  
8 order, prior order to be made by a court of competent  
9 jurisdiction is satisfied regardless of whether the issue was  
10 actually litigated. This is because whenever a court enters  
11 an order, it does so by implicitly making a finding of its  
12 jurisdiction, a determination that can't be attacked. And in  
13 fact, in the January 9th and the July 16th orders, it wasn't  
14 implicit, the Court's jurisdiction; it was set out that the  
15 Court had core jurisdiction.

16 Movants try to brush *Shoaf* aside, arguing that is the only  
17 case the Debtor cites to support res judicata argument and is  
18 a narrow opinion that has been questioned and distinguished.  
19 That's just not correct, Your Honor. Movants ignore that we  
20 have cited two United States Supreme Court cases, *Stoll v.*  
21 *Gottlieb* and *Chicot County Drainage District*, upon which the  
22 Fifth Circuit based its *Shoaf* decision. In each case, the  
23 U.S. Supreme Court gave res judicata effect to a Bankruptcy  
24 Court order that made a ruling party -- that a ruling party  
25 later claimed was beyond the Court's jurisdiction to do so.

1 In *Stoll*, it was a release of guaranty without jurisdiction,  
2 like *Shoaf*. In *Chicot*, it was an extinguishment of a bond  
3 claim without jurisdiction.

4 Similarly, Your Honor, the U.S. Supreme Court held in  
5 *Espinosa* that a party was not entitled to reconsideration of a  
6 Bankruptcy Court order under Federal Rule of Civil Procedure  
7 60(b)(4) discharging a student loan without making the  
8 required statutory finding of undue hardship in an adversary  
9 proceeding. And the Supreme Court reasoned in that opinion as  
10 follows: A judgment is not void, for example, simply because  
11 it may have been erroneous. Similarly, a motion under  
12 60(b)(4) is not a substitute for a timely appeal. Instead,  
13 60(b)(4) applies only in the rare instance where a judgment is  
14 premised either on a certain type of jurisdictional error or a  
15 violation of due process that deprives a party of notice or  
16 the opportunity to be heard.

17 Federal courts considering Rule 60(b)(4) motions that  
18 assert a judgment is void because of a jurisdictional defect  
19 generally have reserved it only for the exceptional case in  
20 which the court that rendered the judgment lacked even an  
21 arguable basis for jurisdiction. This case is not the  
22 exceptional -- exceptional circumstance that was referred to  
23 by *Espinosa*.

24 In addition, we argue in our brief, and I'll get to in a  
25 few moments, that both of the orders are justified under the

1 *Barton* doctrine.

2       Actually, before I go to that, Your Honor, I think Movants  
3 are really trying to distinguish *Espinosa* by arguing that the  
4 Court's order exculpating Mr. Seery for negligence liability  
5 did not provide people, mom-and-pop investors, with the due  
6 process informing them that they would not be able to assert  
7 duty claims based upon mere negligence. I think that's the  
8 core of Mr. Bridges' argument, that, hey, you entered an  
9 order, you gave this exculpation, it was inappropriate, and it  
10 couldn't be done.

11       There are several problems with Movants' argument. First,  
12 Movants mischaracterize both the facts and the law in  
13 connection with the Debtor's relationship with its investors.  
14 The Debtor is the registered investment advisor for HCLOF as  
15 well as approximately 15 to 18 CLOs. The only investor in  
16 HCLOF other than the Debtor is CLO Holdco. The investors in  
17 the CLOs are the retail funds advised by the Dondero advisors  
18 and the other -- and other institutional investors.  
19 Accordingly, the thousands of investors, the mom-and-pop  
20 investors whose due process rights have allegedly been  
21 trampled by the January 9th and July 16th orders, are not  
22 investors in any funds managed by the Debtor.

23       And, of course, I have mentioned, as I've mentioned  
24 before, no non -- non-Dondero investor, be it a mom-and-pop  
25 investor, another institutional investor, anyone unrelated to



1 Mr. Dondero, has ever appeared in this Court to challenge the  
2 Debtor's activities.

3 But more fundamentally, Your Honor, the Debtor does not  
4 owe fiduciary duties to investors in any of the funds that the  
5 Debtor advises. The fiduciary duty that the Debtor owes is to  
6 the funds themselves, not the investors in the funds.

7 And while Movants point to Mr. Seery's prior testimony to  
8 support the argument that the Debtor owes a duty to investors,  
9 Mr. Seery was not testifying as a lawyer and his testimony  
10 just cannot change the law.

11 As to each of the funds that the Debtor manages, HCLOF and  
12 the CLOs, they were each provided with actual notice of the  
13 January 16th -- the July 16th order and didn't object. And as  
14 Your Honor will recall, the Trustees for the CLOs, the party  
15 that could potentially have claims for breach of fiduciary  
16 duty, they participated in the January 9th hearing. They came  
17 to the Court and were concerned about the protocols that the  
18 Debtor was agreeing to with the Committee. We revised them.  
19 The Trustees didn't object. They didn't object then; they  
20 didn't object now. And, in fact, they consented to the  
21 assumption of the contracts between the Debtor and the CLOs.

22 So the argument that the orders, by having this  
23 exculpation for future conduct, violated due process rights of  
24 anyone and is the type -- essentially, the type of order that  
25 *Espinosa* would have contemplated could be attacked, is --

1 relies on faulty legal and factual premises. No duty to  
2 investors. No private right of action. And both -- and all  
3 the funds received due process.

4 In addition, Your Honor, as we argue in our brief and I'll  
5 get to in a few moments, both of the orders are justified  
6 under the *Barton* doctrine, as Mr. Seery is entitled to  
7 protection based upon how courts around the country have  
8 interpreted the *Barton* doctrine. As such, Mr. Seery is  
9 performing his role both as an agent of the independent board  
10 under the January 9th order, as a CEO under the July 16th  
11 order, as a quasi-judicial officer. And as Your Honor  
12 examined in the *Ondova* opinion which you mentioned, trustees  
13 are entitled to qualified immunity for damage to third parties  
14 resulting from simple negligence, provided that the trustee is  
15 operating within the scope of his duties and is not acting in  
16 an *ultra vires* manner.

17 So, exculpating the independent directors, their agents,  
18 and the CEO in the January 9th and July 16th orders was a  
19 recognition by this Court that they would be entitled to  
20 qualified immunity, much in the same way trustees are.

21 No doubt that Movants contend that this was error and that  
22 the Court overreached. However, the remedy for that overreach  
23 was an appeal, not a reconsideration 16 months later. The  
24 Court's orders based upon the determination that in this  
25 highly contentious case that these court officers needed to be

1 protected from negligence suits is not the exceptional case  
2 where the Court lacked any arguable basis for jurisdiction.  
3 Accordingly, this Court must follow *Espinosa, Shoaf, Stoll,*  
4 and *Chicot* and reject the attack on the prior court orders.

5 The only case Movants cite to challenge the Supreme  
6 Court's decision -- to challenge the Supreme Court precedent I  
7 mentioned and the Fifth Circuit's *Shoaf* decision is the  
8 *Applewood* case. *Applewood* is totally consistent with *Shoaf*.  
9 *Applewood* also involved a plan that purported to release a  
10 guaranty claim that the guarantor argued was res judicata in  
11 subsequent litigation regarding the guaranty. The Fifth  
12 Circuit held in that case that the plan was not res judicata.  
13 It made that ruling because the plan did not contain clear and  
14 unambiguous language releasing the guaranty. In that way, the  
15 Fifth Circuit distinguished *Shoaf*.

16 *Applewood* and *Shoaf* are consistent. A Bankruptcy Court  
17 order will be given res judicata effect, even if the Court  
18 didn't have jurisdiction to enter it, if the order was clear  
19 and unambiguous. In *Shoaf*, the release was. In *Applewood*, it  
20 wasn't.

21 Movants argued on June 8th and argue now that the  
22 *Applewood* case really argues -- really deals with prospective  
23 exculpation of claims. I went back and read Mr. Bridges'  
24 comments carefully of June 8th. He said *Applewood*,  
25 exculpation. Well, that's just not correct. *Applewood* is all

1 about requiring specificity of a (garbled) to give it res  
2 judicata effect. Claims that existed at that time, were they  
3 described clearly and unambiguously? Yes? *Shoaf* applies.  
4 No? *Applewood* does -- applies.

5 So how should the Court apply these principles here? The  
6 Court approved a procedure for certain claims in the  
7 governance orders. The procedure: come to Bankruptcy Court  
8 before pursuing a claim against the independent directors and  
9 Seery or their agents so that the Court can make a  
10 colorability determination. Clear and unambiguous. The  
11 governance orders each provide that the Bankruptcy Court had  
12 jurisdiction to enter the orders, and the orders were not  
13 appealed.

14 Movants attempt to confuse the Court and argue *Applewood*  
15 is on point because the January 9th and July 16th orders do  
16 not clearly identify specific claims that Movants now have  
17 that are being released. And because they're not specific,  
18 then basically it's an ambiguous release and *Applewood*  
19 applies.

20 The problem with the Movants' argument is that neither the  
21 January 9th or July 16th orders released claims that existed  
22 at that time. If they did, and if there wasn't an adequate  
23 description, I might agree with Mr. Bridges that *Applewood*  
24 applied. But there were no claims. It was prospective. It  
25 was a standard of care. The Court clearly and unambiguously

1 said what the standard of care would be going forward.  
2 Clearly, under *Shoaf* and Supreme Court precedent, they are  
3 entitled to res judicata because it's a clear and unambiguous  
4 provision. *Applewood* just simply doesn't apply.

5 Mr. Phillips at the last hearing made an impassioned plea  
6 to the Court for a narrow interpretation of the exculpation  
7 provisions in the January 9th and July 16th orders, and he  
8 argued that the Court could not possibly have intended for the  
9 exculpation for negligence to apply on a go forward basis. He  
10 thus argued to the Court that the Court should construe the  
11 exculpation narrowly and only apply it to potential claims of  
12 harm caused to the Debtor, as opposed to harm caused to third  
13 parties, which he said included thousands of innocent  
14 investors.

15 Of course, Mr. Phillips made those arguments unburdened by  
16 the actual facts and the prior proceedings which led to the  
17 entry of these orders, because, as he was the first to admit,  
18 he only became involved in the case a month ago.

19 As the Court recalls, and as reinforced by Mr. Seery's and  
20 Mr. Dubel's testimony I just mentioned, the exculpation  
21 provisions were included precisely to prevent Mr. Dondero,  
22 through any one of the entities he's owned and controlled, the  
23 Movants being two of those, from asserting baseless claims  
24 against the beneficiaries of those orders, exactly the  
25 situation Mr. Seery now finds himself in.

1 And, again, it bears emphasizing: throughout this case,  
2 not one of the purported public investors Mr. Phillips  
3 lamented would be prevented from holding Mr. Seery responsible  
4 for his conduct has ever appeared in this case to object about  
5 anything. And none of the directors of the funds, the funds  
6 where the Debtor acts as an investment adviser, have ever  
7 stepped foot in this court, either.

8 Even if the Court declines to apply res judicata, Your  
9 Honor, to prevent challenges to the governance orders, the  
10 Court has the jurisdiction, had the jurisdiction to include  
11 the gatekeeping provisions in those orders. The Bankruptcy  
12 Court derives its jurisdiction from 28 U.S.C. Section 157, and  
13 bankruptcy jurisdiction is divided into two parts: core  
14 matters, which are those arising in or arising under Title 11,  
15 and noncore matters, those matters which are related to a  
16 Chapter 11 case.

17 Bankruptcy Courts may enter final orders in core  
18 proceedings, and with the consent of parties, noncore  
19 proceedings. If a party does not consent to a final judgment  
20 in the noncore matters or waives its right to consent, then  
21 the Bankruptcy Court -- or does not waive its right to  
22 consent, then the Bankruptcy Court issues a report and  
23 recommendation to the District Court.

24 The seminal Fifth Circuit case on bankruptcy court  
25 jurisdiction is the 1987 case of *Wood v. Wood*, 825 F.2d 90.

1 There, the Fifth Circuit held that the Bankruptcy Court has  
2 related to jurisdiction over matters if the outcome of that  
3 proceeding could conceivably have any effect on the estate  
4 being administered in the bankruptcy.

5 More recently, the Fifth Circuit, in the 2005 case, in  
6 *Stonebridge Tech's*, elaborated on when a matter has a  
7 conceivable effect on the estate such as to confer Bankruptcy  
8 Court jurisdiction. There, the Fifth Circuit held that an  
9 action is related to bankruptcy if the outcome could alter the  
10 debtor's rights, liabilities, options, or freedom of action,  
11 either positively or negatively, and which in any way impacts  
12 upon the handling and the administration of the bankruptcy  
13 estate. It is against this backdrop, Your Honor, that the  
14 Court should evaluate its jurisdiction to have entered the  
15 orders.

16 So, again, what did the orders do? They established  
17 governance over the Chapter 11 debtor with new independent  
18 directors being approved. They established the procedures and  
19 protocols of how transactions were going to be presented to  
20 and approved by the Committee. They vested in the Committee  
21 certain related-party claims, and they provided for the  
22 procedures parties would have to follow to assert any claims  
23 against the independent directors and the CRO and the agents  
24 and advisors.

25 Your Honor, it's hard to imagine that there is a more core



1 order than the entry of these orders. At the time the orders  
2 were entered, the Court was well aware of the potential for  
3 acrimony from Mr. Dondero and his related entities, and  
4 included the gatekeeper provisions to prevent the Debtor's  
5 estate from being embroiled in frivolous litigation against  
6 the board and the CEO.

7 Such protections were clearly within the Court's  
8 jurisdiction, both to protect the administration of the estate  
9 but also under applicable Fifth Circuit law dealing with  
10 vexatious litigants, as set forth in the *Baum* and *Carroll*  
11 cases that the Court cited in its confirmation order.

12 Not that it was hard to predict, but the last several  
13 months have reinforced how important the gatekeeping  
14 provisions in the order are and how important similar  
15 provisions in the plan are.

16 The Court heard extensive testimony at the confirmation  
17 hearing regarding the havoc continued litigation by Mr.  
18 Dondero and his related entities would cause, which  
19 predictions have unfortunately been borne out by the  
20 unprecedented blizzard of litigation involving Mr. Dondero and  
21 his related entities that has consumed the Court over the last  
22 several months and caused the estate to incur millions of  
23 dollars in fees that could have been used to pay its  
24 creditors.

25 And these attacks are continuing. As I mentioned before,

1 in addition to the DAF lawsuit, Sbaiti & Co. filed an action  
2 against the Debtor on behalf of PCMG, another related entity,  
3 alleging postpetition mismanagement of the Select Fund.

4 And to complete the hat trick, they are the lawyers  
5 seeking to sue Acis in the Southern District of New York for  
6 allegedly post-confirmation matters.

7 The Court knew then and certainly knows now that the  
8 potential for sizable indemnification claims could consume the  
9 estate. The Court used that as the potential basis for  
10 determining that the orders were within its jurisdiction, just  
11 as it used that potential to justify the exculpation  
12 provisions in the plan as being consistent with *Pacific*  
13 *Lumber*.

14 Movants also ignore the cases -- and we cited in our  
15 opposition -- where courts in this district, including Judge  
16 Lynn in *Pilgrim's Pride* in 2010 and Judge Houser in the *CHC*  
17 *Group* in 2016, approved gatekeeper provisions that provided  
18 the Bankruptcy Court with exclusive jurisdiction to adjudicate  
19 claims against postpetition fiduciaries.

20 Movants also ignore cases outside this district, including  
21 *General Motors* and *Madoff*, which we cited in our brief as  
22 examples of cases where Bankruptcy Courts have been used as  
23 gatekeepers to determine if claims are colorable or being  
24 asserted against the correct entity.

25 And there's another reason, Your Honor, why Movants may

1 now not contest the Court's jurisdiction to have entered those  
2 orders. Each of those orders, as I said before, include a  
3 finding that the Court had core jurisdiction to enter the  
4 orders. No party contested that finding or refused to consent  
5 to the core jurisdiction.

6 Under well-established Supreme Court precedent, parties  
7 can waive their right to challenge the Bankruptcy Court's  
8 jurisdiction, core jurisdiction, by failing to object. In  
9 *Wellness v. Sharif* in 2015, the Supreme Court expressly held  
10 that Article III was not violated if parties knowingly and  
11 voluntarily consented to adjudication of *Stern v. Marshall*-  
12 type alter ego claims, and that the consent need not be  
13 express, so long as it was knowing and voluntary.

14 And *Wellness* confirmed the pre-*Stern* opinion of the Fifth  
15 Circuit in the 1995 *McFarland* case, which held that a person  
16 who fails to object to the Bankruptcy Court's assumption of  
17 core jurisdiction is deemed to have consented to the entry of  
18 a final order by the Bankruptcy Court.

19 Your Honor, I'd now like to turn to the *Barton* doctrine.  
20 The Court also has jurisdiction to have entered the orders  
21 based upon the *Barton* doctrine. The *Barton* doctrine dates  
22 back to an old United States Supreme Court case and provides  
23 as a general rule that, before a suit may be brought against a  
24 trustee, consent from the appointing court must be obtained.

25 Movants essentially make two arguments why the *Barton*

1 doctrine doesn't apply.

2 First, Movants, without citing any authority, argue that  
3 it does not apply to Mr. Seery because he is not a trustee or  
4 receiver and was not appointed by the Court. Although the  
5 doctrine was originally applied to receivers, it has been  
6 extended over time to cover various court-appointed  
7 fiduciaries and their agents in bankruptcy cases, including  
8 debtors in possession, officers and directors of the debtor,  
9 and the general partner of the debtor. And although Mr.  
10 Bridges says he couldn't find one case that applied the *Barton*  
11 doctrine to a court-retained professional, I will now talk  
12 about several such cases.

13 In *Helmer v. Pogue*, a 2012 case cited in our brief, the  
14 District Court for the Northern District of Alabama  
15 extensively analyzed the *Barton* doctrine jurisprudence from  
16 the Eleventh Circuit and beyond and concluded that it applied  
17 to debtors in possession. The *Helmer* Court relied in part on  
18 a prior 2000 decision of the Eleventh Circuit in *Carter v.*  
19 *Rodgers*, which held that the doctrine applies to both court-  
20 appointed and court-approved officers of the debtor, which is  
21 consistent with the law in other circuits.

22 And subsequently, the Eleventh Circuit again considered --  
23 and in that case, the distinction of a court-appointed as a  
24 court-retained professional was -- was not persuasive to the  
25 Court, and the Court held that a court-retained professional

1 can still have *Barton* protection, notwithstanding that he  
2 wasn't appointed, the argument that Mr. Bridges tries to make.

3 And subsequently, --

4 THE COURT: I wonder, was that -- was that Judge  
5 Clifton Jessup, by chance? Or maybe Bennett?

6 MR. POMERANTZ: Your Honor, this was -- this was the  
7 Eleventh Circuit *Carter v. Rodgers*, so I think Judge Jessup  
8 was --

9 THE COURT: Oh, I thought you were still talking  
10 about the Alabama case. No?

11 MR. POMERANTZ: Yeah, the Alabama -- well, the  
12 Alabama case referred to the Eleventh Circuit case, *Carter v.*  
13 *Rodgers*, --

14 THE COURT: Okay.

15 MR. POMERANTZ: -- and the appointment and -- or  
16 retention issue was discussed in the *Carter v. Rodgers* case.

17 THE COURT: Okay.

18 MR. POMERANTZ: And subsequently, the Eleventh  
19 Circuit again considered the contours of the *Barton* doctrine  
20 in *CDC Corp.*, a 2015 case, 2015 U.S. App. LEXIS 9718. In that  
21 case, which Your Honor referenced in your *Ondova* opinion,  
22 which I will discuss in a few moments, the Eleventh Circuit  
23 held that a debtor's general counsel who had been approved by  
24 the Court, who was appointed by a chief restructuring officer  
25 who was also approved by the Court, was covered by the *Barton*

1 doctrine for acts taken in furtherance of the administration  
2 of the estate and the liquidation of the assets.

3 And the Eleventh Circuit last year, in *Tufts v. Hay*, 977  
4 F.3d 204, reaffirmed that court-approved counsel who function  
5 as the equivalent of court-appointed officers are entitled to  
6 protection under *Barton*. While the Court in that case  
7 ultimately ruled that counsel could be sued without first  
8 going to the Bankruptcy Court, it did so because it determined  
9 that the suit between two sets of lawyers would not have any  
10 effect on the administration of the estate.

11 So, Your Honor, not only is there authority, there is  
12 overwhelming authority that Mr. Seery is entitled to the  
13 protections.

14 In *Gordon v. Nick*, a District -- a case from 1998 from the  
15 Fourth Circuit, the Court that the *Barton* doctrine applied to  
16 a lawsuit against a general partner who was responsible for  
17 administering the bankruptcy estate.

18 And as I mentioned, Your Honor, and as Your Honor  
19 mentioned, Your Honor had reason to look at the *Barton*  
20 doctrine in length and in depth in the 2017 *Ondova* opinion.  
21 And in the course of the opinion, Your Honor discussed one of  
22 the policy rationales for the doctrine, which you took from  
23 the Seventh Circuit's *Linton* opinion, and you said as follows:  
24 "Finally, another policy concern underlying the doctrine is a  
25 concern for the overall integrity of the bankruptcy process

1 and the threat of trustees being distracted from or  
2 intimidated from doing their jobs. For example, losers in the  
3 bankruptcy process might turn to other courts to try to become  
4 winners there by alleging the trustee did a negligent job."

5 Here, the independent board was approved by the Court as  
6 an alternative to the appointment of a Chapter 11 trustee.  
7 And it and its agent, including Mr. Seery as the CEO, even  
8 before the July 16th order, were provided protections in the  
9 form of the gatekeeper order and exculpation.

10 I'm sure the Court has a good recollection of the January  
11 9th hearing -- we've talked about it a lot in the proceedings  
12 before Your Honor -- where the Debtor and the Committee  
13 presented the governance resolution to Your Honor. And as  
14 Your Honor will recall, the appointment of the board was a  
15 hotly-contested issue among the Debtor and the Committee and  
16 was heavily negotiated. And the appointment of the  
17 independent board was even contested by the United States  
18 Trustee at a hearing on January 20th, 2020.

19 I refer the Court to the transcripts of the hearings on  
20 January 9th and January 20th of 2020, which clearly  
21 demonstrate that appointing this board and giving it the  
22 rights and protections and its agents the rights and  
23 protections was not your typical corporate governance issue,  
24 but it was essentially the Court's alternative to appointing a  
25 trustee. And recognizing that the members of the independent



1 board were essentially officers of the Court, the Court  
2 approved the gatekeeper provision, requiring parties first to  
3 come and seek the Court's permission before suing them, in  
4 order to prevent them from being harassed by frivolous  
5 litigation.

6 And the independent board was given the responsibility in  
7 the January 9th order to retain a CEO it deemed appropriate,  
8 and it did so by retaining Mr. Seery.

9 Recognizing the *Barton* doctrine as it applies to Mr. Seery  
10 is consistent with a legion of cases throughout the United  
11 States, and Movants' argument that Mr. Seery is not court-  
12 appointed is just wrong.

13 Second, Your Honor, Movants cite without any authority,  
14 argue that even if the *Barton* doctrine applied there is an  
15 exception which would allow it to pursue a claim against Mr.  
16 Seery without leave of the Court.

17 The Debtor agrees the 28 U.S.C. § 959 is an exception to  
18 the *Barton* doctrine. Section 959(a) provides that trustees,  
19 receivers, or managers of any property, including debtors in  
20 possession, may be sued without leave of the court appointing  
21 them with respect to any of their acts or transactions in  
22 carrying on business connected with such property.

23 As the Court also pointed out at the June 8th hearing, and  
24 Mr. Bridges alluded to in his argument, the last sentence of  
25 959(a) provides that such actions -- clearly referring to

1 actions that may be pursued without leave of the appointing  
2 court -- shall be subject to the general equity power of such  
3 court, so far as the same may be necessary to the ends of  
4 justice.

5 And Mr. Bridges made a plea, saying you can't take away my  
6 jury trial right there. You just cannot do that. Well, I  
7 have two answers to that, Your Honor. One, they relinquished  
8 their jury trial right. We've established that. Okay?

9 The second is allowing Your Honor to act as a gatekeeper  
10 has nothing to do with their jury trial right. Allowing Your  
11 Honor to act as a gatekeeper allows you to determine whether  
12 the action could go forward, and it'll either go forward in  
13 Your Honor's court or some other court.

14 And the argument that the exculpation was essentially a  
15 violation of 959 is just -- is just -- it just is twisting  
16 what happened. You have an exculpation provision. We already  
17 went through the authority the Court had to give an  
18 exculpation. With respect to these litigants who are before  
19 Your Honor -- we're not talking about anyone else who's coming  
20 in to try to get relief from the order; we're talking about  
21 these litigants -- we've already established that they were  
22 here, they're bound by res judicata. So their 959 argument  
23 goes away.

24 And as the Court -- and separate and apart from that, the  
25 issue at issue in the District Court litigation is -- is not

1 even subject to 959.

2 Mr. Bridges says, well, of course it is because it deals  
3 with the administration of the estate. I'd like to refer to  
4 what the Court said -- this Court said in its *Ondova* opinion:  
5 The exception generally applies to situations in which the  
6 trustee is operating a business and some stranger to the  
7 bankruptcy process might be harmed, such as a negligence claim  
8 in a slip-and-fall case, and is inapplicable to suits based  
9 upon actions taken to further the administering or liquidating  
10 the bankruptcy estate.

11 And your *Ondova* opinion is consistent with the Third and  
12 Eleventh Circuit opinions Your Honor cited in your opinion, as  
13 well as numerous other --

14 (Interruption.)

15 MR. POMERANTZ: -- from the -- from around the  
16 country, including cases from the First, Second, Sixth,  
17 Seventh, and Ninth Circuits. And I'm not going to give all  
18 the cites to those cases, but it's not a -- it's not a  
19 remarkable proposition that Your Honor relied on in *Ondova*.

20 In addition, several of these cases, including the  
21 Eleventh Circuit's *Carter* opinion, have been cited with  
22 approval by the Fifth Circuit in *National Business Association*  
23 *v. Lightfoot*, a 2008 unpublished opinion for this very point.  
24 The *Barton* exception of 959 does not apply to actions taken in  
25 the administration of the case and the liquidation of assets

1 in the estate.

2 Suffice it to say that it's clear that the Section 959  
3 exception to *Barton* has no applicability in this case.  
4 Movants, hardly strangers to the bankruptcy case, want to sue  
5 Mr. Seery for acts taken relating to a settlement of very  
6 complex and significant claims against the estate. They want  
7 to sue a court-appointed fiduciary for doing his job,  
8 resolving claims against the estate and his management of the  
9 bankruptcy estate. And they want to do this outside of the  
10 Bankruptcy Court.

11 Settlement of the HarbourVest claim, which is where this  
12 claim arises under -- whether it's a collateral attack now or  
13 not, and we say it is, is for another issue -- but it clearly  
14 arises in the context of settlement of the HarbourVest claim,  
15 is the quintessential act to further the administration and  
16 liquidation of the bankruptcy estate, and certainly doesn't  
17 fall within the 959 exception.

18 Movants seem to be arguing that 959(a) makes a distinction  
19 between claims against Mr. Seery that damaged the Debtor and  
20 claims against Mr. Seery that damaged third parties. However,  
21 the Movants make up that distinction, and it's not in the  
22 statute, it's not in the case law. The focus is not on who  
23 the conduct damages, but it's rather on whether the conduct  
24 was taken in connection with the administration or the  
25 liquidation of the estate.

1 And even if the Debtor is wrong, Your Honor, which it's  
2 not, the savings clause allows the Court to determine whether  
3 leave to be -- sue will be granted. Given that these claims  
4 are asserted by Dondero-related entities, if not controlled  
5 entities, no serious argument exists that the equities do not  
6 permit this Court to determine if leave to sue is appropriate.

7 Accordingly, Movants' argument that the orders create this  
8 tension with 959 is simply an over-dramatization. And in any  
9 event, Your Honor, there's a basis independent of *Barton* that  
10 supports the jurisdiction to enter the orders, as I mentioned.

11 But even if the orders only relied on *Barton*, there is an  
12 easy fix to Movants' concerns: let them come to court and  
13 argue that the type of suit they are bringing allegedly falls  
14 within the exception of 959.

15 Your Honor, Movants argue that the Bankruptcy Court may  
16 not act as a gatekeeper if it would not have jurisdiction to  
17 deal with the underlying action. They essentially argue that  
18 an Article I judge may not pass on the colorability of a  
19 claim, that it should be decided by an Article III judge.  
20 This is the same argument, Your Honor, that Your Honor  
21 rejected in connection with plan confirmation and which I  
22 touched on earlier.

23 And the reason why Your Honor rejected it is because  
24 there's no law to support it. In fact, there is Fifth Circuit  
25 law that holds to the contrary. And we talked about a little

1 bit the Fifth Circuit case decided is *Villegas v. Schmidt* in  
2 2015. And *Villegas* is a simple case. Schmidt was appointed  
3 trustee over a debtor and liquidated its estate and the  
4 Bankruptcy Court approved his final fees. Four years later,  
5 Villegas and the prior debtor sued Schmidt in District Court,  
6 the district in which the Bankruptcy Court was pending,  
7 arguing that he was negligent in the performance of his  
8 duties. The District Court dismissed the case because  
9 Villegas failed to obtain Bankruptcy Court approval to bring  
10 the suit under the *Barton* doctrine.

11 On appeal, Villegas argued *Barton* didn't apply for two  
12 reasons. First, that *Stern v. Marshall* created an exception  
13 to the *Barton* doctrine for claims that the Bankruptcy Court  
14 would not have the jurisdiction to adjudicate. And second,  
15 that *Barton* did not apply if the suit is brought in the  
16 District Court, which exercises supervisory authority over the  
17 Bankruptcy Court that appointed the trustee. Pretty much the  
18 argument that was made by Movants at the contempt hearing.

19 The Fifth Circuit rejected both arguments. It held that  
20 the existence of a *Stern* claim does not impact the Bankruptcy  
21 Court's authority because *Stern* did not overrule *Barton* and  
22 the Supreme Court had cautioned circuit courts against  
23 interpreting later cases as impliedly overruling prior cases.

24 More importantly, the Fifth Circuit pointed to a post-  
25 *Stern* 2014 case, *Executive Benefits v. Arkison*, 573 U.S. 25

1 (2014), which held that *Stern* does not decide how a Bankruptcy  
2 Court or District Courts should proceed when a *Stern* creditor  
3 is identified, as support for the argument that *Barton* is  
4 still good law, even dealing with a *Stern* claim.

5 Second, the Fifth Circuit, joining every circuit to have  
6 addressed the issue, ruled that the District Court and the  
7 Bankruptcy Court are distinct from one another and the  
8 Bankruptcy Court has the exclusive authority to determine the  
9 colorability of *Barton* claims and that the supervisory  
10 District Court does not.

11 Movants didn't address *Villegas* in their reply. Briefly  
12 tried to distinguish it, unconvincingly, today. The bottom  
13 line is *Villegas* is directly applicable. Your Honor cited it  
14 in the *Ondova* opinion for precisely the proposition that  
15 *Barton* applies whether or not the Court has authority to  
16 adjudicate the claim.

17 Accordingly, Your Honor, it was within the Court's  
18 jurisdiction to require a party to seek approval of Your Honor  
19 on the colorability of a claim before an action may be  
20 commenced or pursued against the protected parties, even if  
21 Your Honor wouldn't have authority to adjudicate the claim at  
22 the end of the day.

23 In fact, some courts have even addressed the proper  
24 procedure for doing so, requiring the putative plaintiff to  
25 not only seek leave of Bankruptcy Court but also to provide a



1 draft complaint and a basis for the Court to determine if the  
2 claim is colorable.

3 Movants have done neither, and they should not be  
4 permitted to modify the final orders of the Court as a  
5 workaround.

6 Your Honor, that concludes my presentation. I'm happy to  
7 answer any questions Your Honor may have.

8 THE COURT: All right. Not at this time. All right.  
9 I'm going to figure out, do we need a break or not, depending  
10 on what Mr. Bridges tells me. I assume we're just doing this  
11 on argument today. I think that's what I heard. No witnesses  
12 or exhibits.

13 MR. BRIDGES: That is correct, Your Honor.

14 THE COURT: Okay. Mr. Bridges, how long do you  
15 expect your rebuttal to take so I can figure out does the  
16 Court need a break?

17 MR. BRIDGES: Fifteen minutes plus whatever it takes  
18 to submit agreed-to exhibits.

19 THE COURT: Okay. Let's take a five-minute bathroom  
20 break. We'll come back. It's -- what time is it? It's 1:11  
21 Central time. We'll come back in five minutes.

22 THE CLERK: All rise.

23 (A recess ensued from 1:11 p.m. until 1:17 p.m.)

24 THE CLERK: All rise.

25 THE COURT: All right. Please be seated. We're

1 going back on the record in the Highland matters.

2 Mr. Bridges, time for your rebuttal. I want to ask you a  
3 question right off the bat. Mr. Pomerantz pointed out  
4 something that was on my list that I forgot to ask you when  
5 you made your initial presentation. What is the authority  
6 you're relying on? You did not cite a statute or a rule *per*  
7 *se*, but I guess we can probably all agree that Bankruptcy Rule  
8 9024 and Federal Rule 60 is the authority that would govern  
9 your motion, correct?

10 MR. BRIDGES: I don't agree, Your Honor. I don't  
11 believe this is a final order that we're contesting here. And  
12 I think that's demonstrated by the Court's final confirmation  
13 -- plan -- plan confirmation order that seeks to modify this  
14 order or will modify this order upon being -- being effective.  
15 So I don't think so.

16 In the alternative, if we are challenging a final order,  
17 then I think you're right as to the rules that would be  
18 controlling.

19 THE COURT: All right. Well, let me back up. Why  
20 exactly do you say this would be an interlocutory order as  
21 opposed to a final order?

22 MR. BRIDGES: Because of its nature, Your Honor.  
23 While the appointment in the order or the approval of the  
24 appointment in the order might, as a separate component of the  
25 order, have -- have finality, the provisions -- the provisions

1 in it relating to gatekeeping and exculpation are, we think,  
2 by their very nature, quite obviously interlocutory and not  
3 permanent. They don't seem to indicate an intention by any of  
4 the parties that, 30 years from now, if Mr. Seery is still CEO  
5 at Highland, long after the bankruptcy case has ended, that  
6 nonetheless parties would be prohibited from bringing claims,  
7 strangers to this action would be prohibited from bringing  
8 claims related to his CEO role.

9 I think the nature of it demonstrates that, the  
10 modifications to it, and even the inclusion of it in the final  
11 plan confirmation, as well as -- can't read that.

12 THE COURT: Can you give me some authority? Because  
13 as we know, there's a lot of authority out there in the  
14 bankruptcy universe on what discrete orders are interlocutory  
15 in nature that a bankruptcy judge might routinely enter and  
16 which ones are final. You know, it would just probably, if I  
17 flipped open *Collier's*, I could -- you know, it would be mind-  
18 numbing.

19 So what authority can you rely on? I mean, is there any  
20 authority that says an employment order is not a final order?  
21 That would be shocking to me if you have cases to that effect,  
22 but, I mean, of course, sometimes we do interim on short  
23 notice and then final. But this would be shocking to me if  
24 there is case authority to support the argument this is not a  
25 final order. But I learn something new every day, so maybe I

1 would be shocked and there is.

2 MR. BRIDGES: Your Honor, I'd point you to *In re*  
3 *Smyth*, 207 F.3d 758, and *In re Royal Manor*, 525 B.K. 338  
4 [sic], for the proposition that retaining a bankruptcy  
5 professional is an interlocutory order.

6 THE COURT: Okay. Stop for a moment. The *Smyth*  
7 case. Which court is that?

8 MR. BRIDGES: Fifth Circuit.

9 THE COURT: Okay. So tell me the facts. I'm  
10 surprised I don't know about this case. But, again, I don't  
11 know every case. So, it held that an employment order is an  
12 interlocutory order?

13 MR. BRIDGES: Appointing counsel. A professional in  
14 the bankruptcy context, Your Honor.

15 THE COURT: Counsel for a debtor-in-possession? An  
16 order approving counsel was an interlocutory order?

17 MR. BRIDGES: Yes, or the Trustee's counsel.

18 THE COURT: Or the Trustee's counsel? Okay. What  
19 were the circumstances? Was this on an expedited basis and  
20 there wasn't a follow-up final order, or what?

21 MR. BRIDGES: Your Honor, I don't have -- I don't  
22 have that at the tip of my memory. I'm sorry.

23 THE COURT: Okay. And the other one, 525 B.R. 338,  
24 what court was that?

25 MR. BRIDGES: It's a Bankruptcy Court within the

1 Sixth Circuit. I'm not certain which district.

2 THE COURT: All right. Well, maybe one of you two  
3 over there can look them up and give me the context, because  
4 that is surprising authority. Or other lawyers on the WebEx  
5 maybe can do some quickie research.

6 Okay. We'll come back to that. But assuming that this  
7 was a final order, which I have just been presuming it was,  
8 Rule 60 is the authority you're going under? 9024 and Rule  
9 60, correct?

10 MR. BRIDGES: Your Honor, we have not invoked those  
11 rules. Alternatively, I think you're right that they would  
12 control if we are wrong about the interlocutory nature of the  
13 order.

14 THE COURT: Well, you have to be going under certain  
15 -- some kind of authority when you file a motion. So I'm --

16 MR. BRIDGES: As an alternative --

17 THE COURT: I'm approaching this exactly, I assure  
18 you, as the District Court or a Court of Appeals would. You  
19 know, you start out, what is the legal authority that is being  
20 invoked here?

21 MR. BRIDGES: Well, --

22 THE COURT: So I just assume Rule 60. I can't, you  
23 know, come up with anything else that would be the authority.

24 MR. BRIDGES: Yes, Your Honor. You also have  
25 inherent power to modify orders that are in violation of the

1 law. And we pointed you to --

2 THE COURT: Now, is that right? Is that really  
3 right? Why do we have Rule 60 if I can just willy-nilly, oh,  
4 I feel like I got that wrong two years ago? I can't do that,  
5 can I? Rule 60 is the template for when a court can do that.  
6 Parties are entitled to rely on orders of courts. And that's  
7 why we have Rule 60, right? So, --

8 MR. BRIDGES: Your Honor, I think -- I think that  
9 we're miscommunicating. I'm trying not to rely on Rule 60 in  
10 the first instance because in the first instance we view this  
11 as not a final order. So, in the first instance, --

12 THE COURT: I got that. And I've got my law clerks  
13 looking up your cases to see if they convince me. But I'm  
14 asking you to go to layer two. Assuming I don't agree with  
15 you these are final orders, what is your authority for the  
16 relief you're seeking?

17 MR. BRIDGES: Yes, Your Honor. Rule 60 would apply  
18 in the alternative.

19 THE COURT: All right.

20 MR. BRIDGES: That's correct.

21 THE COURT: So, which provision? Which provision of  
22 Rule 60? (b) what?

23 MR. BRIDGES: Your Honor, I'm not prepared to concede  
24 any of them. I don't have the rule in front of me.

25 THE COURT: You're not prepared to concede what?

1 MR. BRIDGES: Any of the provisions of Rule 60. Just  
2 (b) (1), (b) (2), especially, but I'm -- I'm -- Rule 60 is our  
3 basis, as is the particulars (b) (1), (2), (6) --

4 (Garbled audio.)

5 THE COURT: Okay. You're breaking up. Can you  
6 restate?

7 MR. BRIDGES: (b) (1), (2), and (6), as -- as well as  
8 any other provision, Your Honor, of Rule 60.

9 THE COURT: Okay. Well, so (1), mistake,  
10 inadvertence, surprise, excusable neglect. Which one of  
11 those?

12 MR. BRIDGES: All of the above, Your Honor.

13 THE COURT: Surprise? Who's surprised?

14 MR. BRIDGES: Your Honor, I think every potential  
15 litigant who discovers that your order purports to bar  
16 prospective unaccrued claims at the time the order issued  
17 would be surprised.

18 Frankly, I think Mr. Seery would be surprised, given his  
19 testimony that he owes fiduciary duty -- duties that he must  
20 abide by and that he appears to have, as I continue to  
21 represent to clients, to advisees, and to the SEC, that those  
22 duties are owing.

23 THE COURT: Okay. I'm giving you one more chance  
24 here to make clear on the record what provision of Rule 60 (b)  
25 are you relying on, okay? I need to know. It's not in your



1 pleading.

2 MR. BRIDGES: Your Honor, --

3 THE COURT: So tell me specifically. I can only --

4 MR. BRIDGES: -- (b) (1) --

5 THE COURT: -- come up with a result here if I know  
6 exactly what's being presented.

7 MR. BRIDGES: Your Honor, (b) (1), (b) (2), and (b) (6)

8 --

9 THE COURT: Which, okay, there are multiple parts to  
10 (1). You're saying somebody's surprised by the ruling. I  
11 don't know who. Really, all that matters is your client, the  
12 Movants. You're saying, even though they participated, --

13 MR. BRIDGES: Yes, Your Honor.

14 THE COURT: -- got notice, they're somehow surprised?  
15 Why are they surprised?

16 MR. BRIDGES: Yes, Your Honor.

17 THE COURT: Do you have evidence of their surprise?

18 MR. BRIDGES: Your Honor, our brief shows the  
19 intentions of all involved were not the interpretation of that  
20 order being advanced at this -- at this point in time. And  
21 so, yes, I believe that is evidence. The transcripts of the  
22 hearings I believe evidence that as well, that the  
23 understanding of everyone involved was not that future --  
24 unspecified future claims that had not accrued yet would be  
25 released under (b) (1). Yes, Your Honor.

1 THE COURT: Okay.

2 MR. BRIDGES: Under (b) (2), --

3 THE COURT: I don't have any evidence of that. All I  
4 have is the clear wording of the order. Okay. Let me just --  
5 just let me go through this.

6 Assuming Rule 60 (1) through (6) are what you're arguing  
7 here, what about Rule 60(c): a motion under Rule 60(b) must  
8 be made within a reasonable time? We're now 11 months --

9 MR. BRIDGES: Your Honor, --

10 THE COURT: We're now 11 months past the July 2020  
11 order. What is your authority for this being a reasonable  
12 time?

13 MR. BRIDGES: Yes, Your Honor. If I may back up one  
14 step before answering your question. Under (b) (2), we're  
15 relying on newly-discovered evidence that was discovered in  
16 late March and caused both the filing of this motion and the  
17 filing of the District Court action.

18 Under (b) (4), we believe that the order is --

19 THE COURT: Let me stop. Let me stop. What is my  
20 evidence that you're putting in the record that's newly  
21 discovered?

22 MR. BRIDGES: The evidence is detailed in the  
23 complaint that is in the record. You know, --

24 THE COURT: That's not evidence.

25 MR. BRIDGES: -- honestly, Your Honor, --

1 THE COURT: That is not evidence. Okay? A lawyer-  
2 drafted complaint in another court is not evidence. Okay?

3 MR. BRIDGES: Your Honor, I think, to be technical,  
4 that there is not a record yet, that we have evidence yet to  
5 be admitted on our exhibit list. I believe in this  
6 circumstance -- I understand that, in general, allegations in  
7 a pleading are not evidence. In this instance, when we're  
8 talking about whether or not new facts led to the filing of a  
9 lawsuit, I do believe that the allegations in the lawsuit are  
10 evidence of those new facts.

11 THE COURT: All right. Go on.

12 MR. BRIDGES: Under (b) (4), we believe the order is,  
13 in part, void. It is void because of the jurisdictional and  
14 other defects noted in our argument.

15 And also, under (b) (6) (garbled) ground for relief that  
16 we're appealing to the equitable powers of this Court to  
17 correct errors and manifest injustice towards not just the  
18 litigants here but to correct the order of the Court to make  
19 it comply with -- with the law, with the statutes promulgated  
20 by Congress and to respect the jurisdiction of the District  
21 Court.

22 THE COURT: All right. Do you agree with Mr.  
23 Pomerantz that the case law standard for Rule 60(b) (4) is  
24 exceptional circumstances? It's only applied so that a  
25 judgment is voided in exceptional circumstances. Do you

1 disagree with that case authority?

2 MR. BRIDGES: I would -- I would agree, in part, that  
3 unusual circumstances is not the ordinary case. I'm not  
4 entirely sure what you mean by exceptional, but I think we're  
5 on the same page.

6 THE COURT: Okay. It's not what I mean. That's just  
7 the case law standard. And I'm asking, do you agree with Mr.  
8 Pomerantz that that is the standard set forth in case law when  
9 applying 60(b)(4)? There have to be some sort of exceptional  
10 circumstances where there's just basically no chance the Court  
11 had authority to do what it did.

12 MR. BRIDGES: Out of the ordinary would be the phrase  
13 I would use, Your Honor.

14 THE COURT: Okay. So I guess then I'll go from  
15 there. Is it your argument that gatekeeping provisions in the  
16 bankruptcy world are out of the ordinary?

17 MR. BRIDGES: The exculpation of Mr. Seery for  
18 liability falling short of gross negligence or intentional  
19 wrongdoing in connection with his continuing to conduct the  
20 business of the Debtor as an investment advisor subject to the  
21 Advisers Act, yes, I would say that is out of the ordinary,  
22 that it is extraordinary, that it is --

23 THE COURT: Okay. What is your authority or evidence  
24 on that? Because this Court approves exculpation provisions  
25 regularly in connection with employment orders, and pretty

1 much every judge I know does. In fact, I'm wondering why this  
2 isn't just a term of compensation. You know, he's going to do  
3 x, y, z in the case. His compensation is going to be a, b, c,  
4 d, e. And by the way, we're going to set a standard of  
5 liability for his performance as CEO or investment banker,  
6 financial advisor, whatever, so that no one can sue him  
7 regarding his performance of his job duties unless it rises to  
8 the level of gross negligence, willful misconduct.

9 It's a term of employment that, from my vantage point,  
10 seems to be employed all the time. So it would be anything  
11 but exceptional circumstances. Do you have authority or  
12 evidence --

13 MR. BRIDGES: Your Honor, frankly, --

14 THE COURT: -- to the contrary?

15 MR. BRIDGES: Your Honor, frankly, I'm astonished at  
16 your view of that situation, that it would merely be a term of  
17 his employment, that vitiates the entire fiduciary duty  
18 standard created by the Advisers Act that tells him, with  
19 hundreds of millions of dollars of assets under management for  
20 people he's advising as a registered investment advisor,  
21 people he's advising who believe that he has a fiduciary duty  
22 to them and that it's enforceable, that the SEC, who monitors,  
23 believes he has an enforceable fiduciary duty to those people,  
24 and that he's testified that he has fiduciary duties to those  
25 people, and that Your Honor is saying no, just as a regular

1 term of employment we have undone the Advisers Act's  
2 imposition of an unwaivable fiduciary duty.

3 Your Honor, the order is void to the extent that it  
4 attempts to do so.

5 This is not an ordinary employment agreement, Your Honor.  
6 This is an attempt to exculpate someone from the key thing  
7 that our entire investment system depends upon, regulation by  
8 the SEC and the requirement in investment advisors to act as  
9 fiduciaries when they manage the money of another.

10 It would be the equivalent of telling lawyers who are  
11 appointed in a bankruptcy proceeding that they don't have any  
12 duties to their client, or at least not fiduciary duties.  
13 That the lawyers merely owe a duty not to be grossly negligent  
14 to their clients. That's not an ordinary term of employment,  
15 Your Honor.

16 THE COURT: All right. So I guess we're back to my  
17 question, was this brought within a reasonable time under Rule  
18 60(c)?

19 MR. BRIDGES: It was brought very quickly after the  
20 new evidence was discovered at the end of March, Your Honor,  
21 yes.

22 THE COURT: Okay. Well, I guess I'll just ask you  
23 one more question before you continue on with your rebuttal  
24 argument. I mean, again, I want your best argument of why  
25 *Villegas* doesn't absolutely permit the gatekeeping provisions

1 that you're challenging. And many cases were cited by Mr.  
2 Pomerantz in his brief where courts have extended the *Barton*  
3 doctrine to persons other than trustees. And so what is your  
4 best rebuttal to that?

5 MR. BRIDGES: Your Honor, we've already given it.

6 I'm afraid --

7 THE COURT: Okay. If you don't want to say more, --

8 MR. BRIDGES: -- what I have is not --

9 THE COURT: -- I'm not going to make you say more.

10 MR. BRIDGES: I --

11 THE COURT: I'm just telling you what's on my brain.

12 MR. BRIDGES: I do. I want to -- I am apologizing in  
13 advance for repeating, but yes, *Villegas, Villegas*, however  
14 that case is pronounced, says that *Stern* is not an exception  
15 to the *Barton* doctrine.

16 THE COURT: Uh-huh.

17 MR. BRIDGES: 959(a) is an exception to the *Barton*  
18 doctrine. You are not operating under the *Barton* doctrine  
19 here. Even counsel's brief, the Debtor's brief, doesn't say  
20 *Barton* applies. It says it's consistent with *Barton*.

21 Your Honor, in our previous hearing, you directed me to  
22 the second sentence of 959(a) because you believe it's what  
23 empowers you to do the gatekeeping. It limits the gatekeeping  
24 that you can do by protecting jury rights, the right to trial,  
25 says you cannot discharge, undo, deprive a litigant of their



1 right to a trial, a jury trial.

2 THE COURT: Well, you mentioned it again, jury trial  
3 rights. Do you have any argument --

4 MR. BRIDGES: Yes, Your Honor.

5 THE COURT: -- of why that hasn't flown out the  
6 window?

7 MR. BRIDGES: Yes, Your Honor. I am told that  
8 Section 14(f) that counsel for the Debtor referred to is not a  
9 waiver of jury rights at all. It is an arbitration agreement.  
10 Your Honor is probably familiar how arbitration agreements  
11 work, is that they need not be elected. They need not be  
12 invoked by the parties. When they are, they create a  
13 situation where arbitration may be required. But a waiver of  
14 a jury right outside of arbitration is not part of this  
15 arbitration clause, or of any. The issue is not briefed or in  
16 evidence before the Court. We're relying on representations  
17 of counsel as to what that provision contains. That Mr. Seery  
18 wasn't even a party to that agreement, the advisory agreement,  
19 with the Charitable DAF. The arbitration agreement is subject  
20 to defenses that are not at issue here before the Court. That  
21 Movants' rights, their contractual rights to invoke the  
22 arbitration clause, also appear to be terminated by the  
23 orders' assertion of sole jurisdiction in this matter.

24 Your Honor, yes, our jury rights survive Section 14(f) in  
25 the advisory agreement with the DAF for all of those potential

1 reasons.

2 On top of that, it doesn't go to all of our causes of  
3 action. It goes to the contract cause of action. And to the  
4 extent they can argue that the other claims are subject to  
5 arbitration, that also is a defense and -- defensible and  
6 complex issue requiring the application of the Federal  
7 Arbitration Act, requiring consideration of the Federal  
8 Arbitration Act, which this Court doesn't have jurisdiction to  
9 do under 157(d).

10 THE COURT: What? Repeat that.

11 MR. BRIDGES: Yes. This Court does not have  
12 jurisdiction to determine whether or not arbitration --  
13 arbitration is enforceable due to the mandatory withdrawal of  
14 the reference provisions of 157(d).

15 THE COURT: That's just not consistent with Fifth  
16 Circuit authority. *National Gypsum*. What are some of these  
17 other arbitration cases? I've written an article on it. I  
18 can't remember them. That's just not right. Bankruptcy  
19 courts look at arbitration clauses all the time. Motions to  
20 compel arbitration.

21 MR. BRIDGES: Your Honor, under 157(d), in the  
22 circumstances of this case, if the Court is going to take into  
23 consideration an arbitration clause under the Federal  
24 Arbitration Act, when that clause is not in evidence and is  
25 not before the Court, then Movants respectfully move to

1 withdraw the reference of your consideration of that issue and  
2 of any proceeding and ask that you would issue only a report  
3 and recommendation rather than an order on that issue.

4 THE COURT: Okay. I regret that we even got off on  
5 this trail. I'm sorry. So just proceed with your rebuttal  
6 argument as you had envisioned it, Mr. Bridges.

7 MR. BRIDGES: Thank you, Your Honor.

8 Debtor's counsel says there's no private right of action  
9 under the Advisers Act. That is both inaccurate and  
10 misleading. The Advisory Act creates, imposes fiduciary  
11 duties that state law provides the cause of action for. It is  
12 a state law breach of fiduciary duty claim regarding --  
13 regarding fiduciary duties imposed as a matter of law by the  
14 Investment Advisers Act that is Count One in the District  
15 Court action.

16 Furthermore, that Act does create a private right of  
17 action for rescission. That would be rescission of the  
18 advisory agreement with the Charitable DAF, not rescission of  
19 the HarbourVest settlement.

20 Second, Your Honor, the notion that this Court has related  
21 to jurisdiction is irrelevant and beside the point. I would  
22 like to note for the record that the District Court civil  
23 cover sheet that omitted to state that this was a related  
24 action has been corrected, has been amended, and that that has  
25 taken place.

1 Counsel for the Debtor also appears to agree with us that  
2 the order ought to be modified for having asserted exclusive  
3 jurisdiction over colorable claims to the extent it's not  
4 legally permissible to do. And in trying to invoke the  
5 discussions between us as to how the orders might be fixed,  
6 what counsel does is tries to cabin the legally-permissible  
7 caveat to just the second half of the paragraph at issue. It  
8 is both -- both portions, the gatekeeping and the subsequent  
9 hearing of the claims, that should be limited to the extent it  
10 would be impermissible legally for this Court to make those  
11 decisions.

12 On top of that, Your Honor, merely stating "to the extent  
13 legally permissible" would result in a considerable amount of  
14 ambiguity in the order that would lead it, I fear, to be  
15 unenforceable as a matter of law.

16 Next, Your Honor, when Debtor's counsel talks about the  
17 authority in this case, it feels like we're ships passing in  
18 the night. He says that we're wrong in asserting that no case  
19 we can find involves both the *Barton* doctrine and the  
20 application of the business judgment rule where the Court is  
21 asked to defer, and he mentions cases that apply the *Barton*  
22 doctrine to an approval rather than an appointment. The Court  
23 is asked to --

24 (Garbled audio.)

25 THE COURT: I lost you for a moment. Could you

1 repeat the last 30 seconds?

2 MR. BRIDGES: Thank you, Your Honor. Yes. He points  
3 -- opposing counsel points us to case law where the *Barton*  
4 doctrine has been applied despite the Bankruptcy Court having  
5 merely approved rather than appointed the trustee or the, I'm  
6 sorry, the professional. But in doing so, he doesn't  
7 reference any case that has done so in the context of business  
8 judgment rule deference. It's like we're ships passing in the  
9 night.

10 What we're saying isn't that a mere approval can never  
11 rise to the level of the *Barton* doctrine. What we're saying  
12 is that, in combination with the business judgment rule  
13 deference, the two cannot go together. There's no authority  
14 for saying that they do.

15 We -- I further feel like we're ships passing in the night  
16 when he talks about *Shoaf*. Counsel says that in *Shoaf* there  
17 was a confirmed final plan and it specifically identified the  
18 released guaranty. And yeah, that distinguishes it from this  
19 case, just as it distinguished -- just as the *Applewood Chair*  
20 case distinguished it when there's not that specific  
21 identification. And here, we don't even have a final plan  
22 confirmation at the time these orders are being issued.  
23 Without that express -- express notion of what the claims are  
24 being discharged, *Shoaf* doesn't apply.

25 There, there was a guaranty to a party on a specific

1 indebtedness that was listed, identified with specificity, and  
2 disappeared as a result of the judgment, as a result of the  
3 judgment in the underlying case. Here, we're talking about  
4 any potential claim that might arise in the future. As of the  
5 July order's issuance, it didn't apply on its -- either it  
6 didn't apply to future claims that had not yet accrued or else  
7 in violation of *Applewood Chair*, it was releasing claims  
8 without identifying them.

9       Who does Seery owe a fiduciary duty to? Is it, as  
10 Debtor's counsel says, only to the funds and not to the  
11 investors, or does he also owe those duties to the investors  
12 as well? Your Honor, that is going to be a hotly-contested  
13 issue in this litigation, and it involves -- it requires  
14 consideration of the Advisers Act and the multitude of  
15 accompanying regulations. To just state that his fiduciary  
16 duties are limited in a way that couldn't affect anyone that  
17 is -- whose claims are precluded by the July order is both  
18 wrong on the law and is invoking something that will be a  
19 hotly-contested issue that falls under 157(d), where, again,  
20 this Court doesn't have the jurisdiction to decide that, other  
21 than in a report and recommendation.

22       The order is legally infirm because it's issued without  
23 jurisdiction for doing that as well.

24       Finally, Your Honor, I think (garbled) wrong direction  
25 with a statement that suggests that Mr. Seery is an agent of

1 the independent directors under the January order. He is, in  
2 fact, not an independent agent -- not an agent of any of the  
3 independent directors, but, at most, of the company that is  
4 controlled by the board, not -- not of individual directors  
5 who could confer on him -- who could confer on him any  
6 immunity that they have obtained from the January order just  
7 by having appointed him.

8 The proposed order from the other side failed to address  
9 either the ambiguity in the order or its attempt to exculpate  
10 Mr. Seery from the liability, including liability for which  
11 there is a jury trial right, and it is not a fix to the  
12 problem for that reason.

13 In order to make the order enforceable and to fix its  
14 infirmities, the Court would have to do significantly more.  
15 It would have to both apply the caveat from the final  
16 confirmation plan order, rope that caveat to the first part of  
17 the relevant paragraph, as well as the second part, and it  
18 would have to provide directive clarity to be enforceable  
19 rather than too vague.

20 Your Honor, I think that's all I have.

21 THE COURT: Okay. Just FYI, my law clerk pulled the  
22 *Smyth* case from 21 years ago from the Fifth Circuit. And  
23 while it more prominently deals with the issue of whether  
24 trustees -- in this case, it was a Chapter 11 trustee -- could  
25 be subjected to personal liability for damages to the



1 bankruptcy estate --

2 (Echoing.)

3 THE COURT: Someone, put your phone on mute. I don't  
4 know who that is.

5 It dealt with, you know, the standard of liability, that  
6 the trustee could not be sued for matters not to the level of  
7 gross negligence.

8 But it does say, in the very last paragraph, to my shock  
9 and amazement, that -- it's just one sentence in a 10-page  
10 opinion -- orders appointing counsel -- and it was talking  
11 about the trustee's lawyer he hired to handle appeals to the  
12 Fifth Circuit -- orders appointing counsel under the  
13 Bankruptcy Code are interlocutory and are not generally  
14 considered final and appealable. And it cites one case from  
15 1993, the Middle District of Florida. Live and learn. There  
16 is one sentence in that opinion that says that. But I don't  
17 know that it's hugely impactful here, but I did not know about  
18 that opinion and I'm rather surprised.

19 All right. You were going to walk me through evidence,  
20 you said?

21 MR. BRIDGES: Well, do I -- Your Honor, do you want  
22 to do that first before I submit --

23 THE COURT: Yes, please.

24 MR. BRIDGES: -- my rebuttal argument?

25 THE COURT: Please.

1 MR. BRIDGES: Okay.

2 THE COURT: Uh-huh.

3 MR. BRIDGES: Your Honor, we would submit and offer  
4 Exhibits 1 through 44, with the exception of those that have  
5 been withdrawn, that are 2, 13 --

6 THE COURT: Okay. Slow down. Slow down. I need to  
7 get to the docket entry number we're talking about. Are we  
8 talking -- are your -- the Debtor's exhibits are at 2412. But  
9 Nate, I misplaced my notes. Where are Charitable DAF and  
10 Holdco's?

11 THE CLERK: I have 2411.

12 THE COURT: 2411? Is that it?

13 MR. BRIDGES: 2420, Your Honor.

14 THE COURT: 2420? Okay. Give me a minute. (Pause.)  
15 2420?

16 MR. BRIDGES: Yes, Your Honor.

17 THE COURT: Okay, I'm there. And it's which  
18 exhibits?

19 MR. BRIDGES: It's Exhibits 1 through 44, Your  
20 Honor, with four exceptions. We have agreed to withdraw  
21 Exhibit 2, 13, 14, and 29.

22 THE COURT: All right.

23 MR. BRIDGES: Also, Your Honor, we'd like to submit  
24 Debtor's Exhibit 1, which is under Exhibit 49 on our list,  
25 would be anything offered by the other side. But we'd like

1 to make sure that Debtor's Exhibit 1 gets in the record as  
2 well.

3 THE COURT: Let me back up. When I pull up the  
4 docket entry you just told me, I have Exhibits 44, 45, and 46  
5 only. Am I misreading this?

6 MR. BRIDGES: I have a chart showing Exhibits 1  
7 through 49 titled Docket 2420 filed 6/7/21.

8 THE COURT: Okay. The docket entry number you told  
9 me, 2420, it only has three exhibits: 44, 45, and 46. So,  
10 first off, I understand -- are you offering 45 and 46 or not?

11 MR. BRIDGES: No, Your Honor.

12 THE COURT: Okay. So you said you were offering 1  
13 through 44 minus certain ones. 44 is here.

14 MR. BRIDGES: Yes.

15 THE COURT: But I've got to go back to a different  
16 docket number.

17 THE CLERK: It's actually 2411.

18 THE COURT: It's at 2411. That has all the others?

19 THE CLERK: Yes.

20 THE COURT: Okay.

21 So, Mr. Pomerantz, do you have any objection to Exhibits  
22 1 through 44, which he's excepted out 2, 13, 14, and 29, and  
23 then he's added Debtor's Exhibit 1? Any objection?

24 MR. POMERANTZ: I don't believe so. I just would  
25 confirm with John Morris, who has been focused on the

1 exhibits, just to confirm.

2 THE COURT: Mr. Morris?

3 MR. MORRIS: No objection, Your Honor. It's fine.

4 THE COURT: Okay. They're admitted.

5 (Movants' Exhibits 1, 3 through 12, 15 through 28, and 30  
6 through 44 are received into evidence. Debtor's Exhibit 1 is  
7 received into evidence.)

8 THE COURT: So, any --

9 MR. BRIDGES: Thank you, Your Honor.

10 THE COURT: Anything you wanted to call to my  
11 attention about these?

12 MR. BRIDGES: Your Honor, the things that we  
13 mentioned in the argument, for sure, but especially that the  
14 word "trustee" is not used in the January hearing's  
15 transcript, nor is it under discussion in that transcript  
16 that it would be a trustee-like role being played by the  
17 Strand directors, as well as the transcript of the July  
18 hearing on the order at issue here, Your Honor, where you are  
19 asked to defer both in that transcript and in the motion, the  
20 motion that was at issue in that hearing, you are asked to  
21 defer to the business judgment of the company.

22 And finally, Your Honor, I'd ask you to look at the  
23 allegations in the District Court complaint.

24 THE COURT: All right.

25 Mr. Pomerantz or Morris, let's see what exhibits you're

1 wanting the Court to consider. Your exhibits, it looks like,  
2 are at Docket Entry 2412.

3 MR. MORRIS: As subsequently amended at 2423.

4 THE COURT: Oh. All right. So which ones are you  
5 offering?

6 MR. MORRIS: We're offering all of the exhibits on  
7 2423, which is 1 through 17.

8 (Echoing.)

9 THE COURT: Whoops. We got some distortion there.  
10 Say again?

11 MR. MORRIS: Yeah. All of the exhibits that are on  
12 2423, which are Exhibits 1 through 17. But I want to make  
13 sure that, as I did earlier, that that has the exhibits that  
14 we're relying on. Does that --

15 (Pause.)

16 THE COURT: Okay. Let me make sure I know what's  
17 going on here. You're double-checking your exhibits, Mr.  
18 Morris?

19 MR. MORRIS: Yes, Your Honor.

20 THE COURT: Okay.

21 (Pause.)

22 MR. MORRIS: Your Honor, we start with Docket No.  
23 2419, --

24 THE COURT: Okay.

25 MR. MORRIS: -- which was the amended exhibit list.

1 And that actually had Exhibits 1 through 17. And then that  
2 was amended at Docket 2423. So, the exhibits on both of  
3 those lists.

4 THE COURT: Well, they're one and the same, it looks  
5 like, right?

6 MR. MORRIS: Yes.

7 THE COURT: Okay. So you're offering those?

8 MR. MORRIS: I think -- yeah.

9 THE COURT: Any objection?

10 MR. BRIDGES: No objection.

11 THE COURT: All right. They're admitted.

12 (Debtor's Exhibits 1 through 17 are received into  
13 evidence.)

14 MR. POMERANTZ: Your Honor, if I may take a few  
15 moments to respond to Mr. Bridges' reply?

16 THE COURT: All right. Is he still within his hour  
17 and a half?

18 THE CLERK: At an hour and one minute.

19 THE COURT: Okay. All right. You have a little  
20 time left, so go ahead.

21 MR. POMERANTZ: Thank you, Your Honor.

22 So look, I -- it sort of was really not fair to us. Mr.  
23 Bridges was really making things up on the fly. He was  
24 changing the theories of his case and responding to Your  
25 Honor. But I'm going to do my best to respond to the

1 arguments made, many of which I sort of anticipated.

2 I'll first start with the issue that Your Honor raised,  
3 which was whether this is under Rule 60 or not. Mr. Bridges  
4 identified a couple of cases, said that the order was  
5 interlocutory, said that somehow the orders have anything to  
6 do with a plan confirmation order. They do not. Your Honor  
7 didn't hear that argument at the plan confirmation. The  
8 January 9th and July 16th orders are old and cold. There's  
9 an exculpation provision in the plan. There's a gatekeeper  
10 in the plan. The provisions do not overlap entirely. The  
11 gatekeeper applies prospectively. The exculpation provision  
12 includes additional parties.

13 So the arguments that basically the plan had anything to  
14 do -- and the fact that the plan is not a final order -- has  
15 anything to do with the January 9th and July 16th orders is  
16 just wrong. It's just wrong.

17 More fundamentally, Your Honor, as Your Honor pointed  
18 out, the *Smyth* case is a professional employment order. And  
19 ironically, if you abide by the *Smyth* case, that order is  
20 never appealable because it's interlocutory.

21 But more fundamentally, Your Honor, that's dealing with  
22 327 professionals. And again, there's not much analysis in  
23 the *Smyth* case, but we're not dealing with a 327  
24 professional. We're dealing with orders that were approved  
25 under 363.



1 So the premise of the argument that Rule 60(b) -- 60  
2 doesn't apply and they have other arguments just doesn't make  
3 any sense.

4 Okay. So now that gets us to Rule 60. And Your Honor,  
5 Your Honor hit the nail on the head. They haven't presented  
6 any evidence. Allegations in a complaint aren't evidence.  
7 They can't stand up there and say surprise evidence. They  
8 had the opportunity -- and this hearing's been continued a  
9 few weeks -- they had the opportunity to bring it up, and  
10 it's -- they had the opportunity to claim that there was  
11 surprise, but they just didn't. Okay?

12 So to go on to the Rule 60 arguments. Surprise.  
13 Surprise and reasonable delay are really -- go hand in hand  
14 with Mr. Bridges' argument. He says, well, we didn't find  
15 out that -- months after the order was entered that he  
16 violated a duty to us, so we are surprised by that, and it's  
17 a reasonable time. Well, Your Honor, the order provided for  
18 an exculpation. CLO Holdco and DAF knew that it applied to  
19 an exculpation. They were bound. They knew based upon that  
20 order that they would not be able to bring claims for normal  
21 negligence. There is no surprise.

22 If you take Mr. Bridges' argument to its conclusion, he  
23 could wait until the end of the statute of limitations after  
24 an order and have come in four years from now and say, Your  
25 Honor, we just found out facts so we should go back four

1 years before. That, Your Honor, that's not how the surprise  
2 works. That's not how the reasonable time works.

3 Mr. Bridges did not contest that they're bound by res  
4 judicata. He did not contest that the exculpation itself was  
5 clear and unambiguous. Of course he argued Your Honor  
6 couldn't enter an order saying there was exculpation, again,  
7 with no authority. And he seemed surprised, as I suspect he  
8 should, since he's not a bankruptcy lawyer, that retention  
9 orders, whether it's investment bankers, financial advisors,  
10 include exculpations all the time. So there's no grounds  
11 under surprise.

12 There's no grounds -- the motions are late under 60(c).

13 And they're not void. I went through a painstaking  
14 analysis, Your Honor, and I described in detail what the  
15 *Espinosa* case held, and the exceptional circumstances which  
16 Mr. Bridges tried to get away from as much as he could.  
17 Maybe he can try to get away from language in a district  
18 Court opinion, in a Bankruptcy Court opinion, in a Circuit  
19 Court opinion. You can't get away from language in a Supreme  
20 Court opinion. The Supreme Court opinion said exceptional  
21 circumstances, where there was arguably no basis for  
22 jurisdiction for what the Court did. They have not even come  
23 close to convincing Your Honor that there was absolutely no  
24 basis.

25 Now, they disagree. We granted, we think it's a good-

1 faith disagreement, but they haven't come close to  
2 establishing the *Espinosa* standard, so their motion under 60  
3 does not -- it fails.

4 And I don't think -- look, these are good lawyers. Mr.  
5 Bridges and Mr. Sbaiti are good lawyers. They didn't just  
6 inadvertently not mention Rule 60. They never mentioned it  
7 because they knew they had no claim under Rule 60.

8 Your Honor, Mr. Bridges has made comments about the  
9 fiduciary duty of Mr. Seery, about what the Investor's Act  
10 provides. He's just wrong on the law. Now, Your Honor  
11 doesn't have to decide that. Whichever court adjudicates the  
12 DAF lawsuit will have to decide it. But there is no private  
13 cause of action for damages. There are no fiduciary duties to  
14 the investors.

15 And what Mr. Bridges doesn't even mention, in that the  
16 investment agreement that's so prominent in his complaint,  
17 they waived claims other than willful misconduct and gross  
18 negligence against Highland. They waived those claims. So  
19 for Mr. Bridges to come in here and argue that there's some  
20 surprise, when he hasn't even bothered to look at the document  
21 that's underlying the contractual relationship between the DAF  
22 and the Debtor, is -- you know, I'll just say it's  
23 inadvertence.

24 Your Honor, Mr. Bridges tried to argue that Mr. Seery is  
25 not a beneficiary of the January 9th order. He's not an

1 agent. Well, again, Your Honor, Mr. Bridges wasn't there.  
2 Your Honor and we were. On January 9th, an independent board  
3 was picked, and at the time Mr. Dondero ceased to become the  
4 CEO. So you have three gentlemen coming in -- Mr. Seery, Mr.  
5 Dubel, and Mr. Nelms -- coming in to run Highland, in a very  
6 chaotic time. They had to act through their agents. There  
7 was no expectation that this board was going to actually run  
8 the day-to-day operations of the Debtor. Of course not. They  
9 needed someone to run. And they picked Mr. Seery. And the  
10 argument that well, he's an agent of the company, he's not an  
11 agent of the board, that just doesn't make sense. The  
12 independent board had to act. The directors had to act. And  
13 the directors, how do they deal with that? They acted through  
14 Mr. Seery. So he is most certainly governed by the January  
15 9th order.

16 Your Honor, I want to talk about the jury trial right.  
17 Mr. Bridges said that Paragraph 14 is an arbitration clause  
18 and not a jury trial waiver. Now, again, I will forgive Mr.  
19 Bridges because I assume he didn't read the provision, okay,  
20 and he -- somebody told him that, and that person just got it  
21 wrong. But what I would like to do is read for Your Honor  
22 Paragraph 14(f). It doesn't have to do with arbitration.  
23 It's a waiver of jury trial. 14(f), Jurisdiction Venue,  
24 Waiver of Jury Trial. The parties hereby agree that any  
25 action, claim, litigation, or proceeding of any kind

1 whatsoever against any other party in any way arising from or  
2 relating to this agreement and all contemplated transactions,  
3 including claims sounding in contract, equity, tort, fraud,  
4 statute defined as a dispute shall be submitted exclusively to  
5 the U.S. District Court for the Northern District of Texas, or  
6 if such court does not have subject matter jurisdiction, the  
7 courts of the State of Texas, City of Dallas County, and any  
8 appellate court thereof, defined as the enforcement court.  
9 Each party ethically and unconditionally submits to the  
10 exclusive personal and subject matter jurisdiction of the  
11 enforcement court for any dispute and agrees to bring any  
12 dispute only in the enforcement court. Each party further  
13 agrees it shall not commence any dispute in any forum,  
14 including administrative, arbitration, or litigation, other  
15 than the enforcement court. Each party agrees that a final  
16 judgment in any such action, litigation, or proceeding is  
17 conclusive and may be enforced through other jurisdictions by  
18 suit on the judgment or in any manner provided by law.

19 And then the kick, Your Honor, all caps, as jury trial  
20 waiver always are: Each party irrevocably and unconditionally  
21 waives to the fullest extent permitted by law any right it may  
22 have to a trial by jury in any legal action, proceeding, cause  
23 of action, or counterclaim arising out of or relating to this  
24 agreement, including any exhibits, schedules, and appendices  
25 attached to this agreement or the transactions contemplated

1 hereby. Each party certifies and acknowledges that no  
2 representative of the owner of the other party has represented  
3 expressly or otherwise that the other party won't seek to  
4 enforce the foregoing waiver in the event of a legal action.  
5 It has considered the implications of this waiver, it makes  
6 this waiver knowingly and voluntarily, and it has been induced  
7 to enter into this agreement by, among other things, the  
8 mutual waivers and certifications in this section.

9 Your Honor, I will forgive Mr. Bridges. I assume he just  
10 did not read that. But to represent to the Court that that  
11 language does not contain a jury trial waiver is -- is just  
12 wrong.

13 THE COURT: All right. I'm going to stop right  
14 there. And you were reading from the Second Amended and  
15 Restated Shared Services Agreement between Highland --

16 MR. POMERANTZ: Not shared services. I'm reading  
17 from the Second Amended and Restated Investment Advisory  
18 Agreement --

19 THE COURT: Investment --

20 MR. POMERANTZ: -- between the Charitable DAF, the  
21 Charitable DAF GP, and Highland Capital Management. The  
22 agreement whereby the Debtor was the investment advisor to the  
23 Charitable DAF Fund and the Charitable DAF GP.

24 THE COURT: All right. Well, Mr. Bridges, I'm going  
25 to bounce quickly back to you. This is your chance to defend

1 your honor.

2 MR. BRIDGES: Yeah, we're -- we're looking at a  
3 different agreement, where -- where literally the words that  
4 were read to you are not in the agreement in front of us and  
5 it is news to me. So, Your Honor, this is a problem --

6 THE COURT: What is the agreement you're looking at?

7 MR. BRIDGES: It is the Amended -- I assume that  
8 means First Amended -- Restated Advisory Agreement.

9 MR. POMERANTZ: Your Honor, we are happy to file this  
10 agreement with the Court so the Court has the benefit of it in  
11 connection with Your Honor's ruling.

12 THE COURT: Okay. I would like you to do that. Uh-  
13 huh.

14 MR. BRIDGES: I'd like -- I'd like to request -- I'll  
15 withdraw that.

16 THE COURT: Okay. Go on, Mr. Pomerantz.

17 MR. POMERANTZ: Mr. Bridges, if you could put us on  
18 mute. If you could put us on mute, Mr. Bridges, so I don't  
19 hear your feedback. Thank you.

20 Mr. Bridges also complains about the language "to the  
21 extent permissible by law." As Your Honor knows and as has  
22 been my practice over 30 years, that language is probably in  
23 every plan where there's a retention of jurisdiction: to the  
24 extent permissible by law. And Mr. Bridges says that this  
25 will create ambiguity in the order that couldn't be enforced.



1 There's no basis for that. Our including the language "to the  
2 extent permissible by law" in the orders, as we are prepared  
3 to do, is consistent with the plan confirmation order where we  
4 addressed that issue. And we addressed that issue because we  
5 didn't want to put Your Honor in a position where thereby Your  
6 Honor may have an action before Your Honor that passes the  
7 colorability gate that Your Honor may not be able to assert  
8 jurisdiction. And since jurisdiction can't be waived in that  
9 regard, we will agree to amend that.

10 There's nothing ambiguous about that, and there's no  
11 reason, though, that clause has to modify the Court's ability  
12 to act as a gatekeeper, because, as we've argued *ad nauseam*,  
13 gatekeeper provisions where the Court has that ability is not  
14 only part of general bankruptcy jurisprudence but also part of  
15 the Bankruptcy Code.

16 Counsel says that *Barton* doesn't apply because the  
17 business judgment of Your Honor was used in retaining Mr.  
18 Seery as opposed to in some other capacity. There's no basis  
19 for that, Your Honor. A court-appointed -- a court-approved  
20 CEO, CRO, professional, they are all entitled to protection  
21 under the *Barton* act. And the argument -- and again, this is  
22 separate and apart from whether he's entitled to protection  
23 under the January 9th order. But the argument that because it  
24 was the business judgment -- again, business judgment in doing  
25 something that Your Honor expressly contemplated under the

1 January 9th corporate governance order -- there's just no law  
2 to support that. And I guess he's trying to get around the  
3 plethora of cases that deal with the situation where *Barton*  
4 has been extended.

5 Your Honor, Mr. Bridges, again, in arguing that we're  
6 ships passing in the night on *Shoaf* and *Applewood* and  
7 *Espinosa*, no, we're not ships passing in the night. We have a  
8 difference in agreement on what these cases stand for. These  
9 cases stand for the proposition that a clear and unambiguous  
10 provision, plain and simple, if it's clear and unambiguous, it  
11 will be given res judicata effect. The release in *Shoaf*,  
12 clear and unambiguous. The release in *Applewood*, not. The  
13 issue here is the exculpation language. That was clear and  
14 unambiguous. It applied prospectively. The argument makes no  
15 sense that we didn't identify -- we didn't identify claims  
16 that might arise in the future, so therefore an exculpation  
17 clause doesn't apply? That doesn't make any sense.

18 Your Honor clearly exculpated parties. Mr. Dondero knew  
19 it. CLO Holdco knew it. The DAF knew it. So the issue Your  
20 Honor has to decide is whether that exculpation was a clear  
21 and unambiguous provision such that it should be entitled to  
22 res judicata effect. And we submit that the answer is  
23 unequivocally yes.

24 That's all I have, Your Honor.

25 THE COURT: All right. Well, --

1 MR. MORRIS: Your Honor? I apologize.

2 THE COURT: Okay.

3 MR. MORRIS: This is John Morris.

4 THE COURT: Yes?

5 MR. MORRIS: I just want to, with respect to the  
6 exhibits, I know there was no objection, but I had cited to  
7 Docket Nos. 2419 and 2423. The original exhibit list is at  
8 Docket No. 2412. So it's the three of those lists together.  
9 2412, as amended by 2419, as amended by 2423. Thank you very  
10 much.

11 THE COURT: All right. Thank you. All right.

12 MR. BRIDGES: Your Honor, I still have no objection  
13 to that, but may I have the last word on my motion?

14 THE COURT: Is there time left?

15 THE CLERK: Yes.

16 THE COURT: Okay. Go ahead.

17 MR. BRIDGES: I just need a minute, Your Honor. They  
18 agreed to change the order. They proposed it to us. They  
19 proposed it in a proposed order to you. They can't also say  
20 that it cannot be changed.

21 Secondly, Your Honor, in *Milic v. McCarthy*, 469 F.Supp.3d  
22 580, the Eastern District of Virginia points out that the  
23 Fourth Circuit treats appointment of estate professionals as  
24 interlocutory orders as well.

25 That's all. Thank you, Your Honor.

1 THE COURT: All right. Here's what we're going to  
2 do. We've been going a very long time. I'm going to take a  
3 break to look through these exhibits, see if there's anything  
4 in there that I haven't looked at before and that might affect  
5 the decision here. So we will come back at 3:00 o'clock  
6 Central Time -- it's 2:22 right now -- and I will give you my  
7 bench ruling on this. All right.

8 So, Mike, they can all stay on the line, right?

9 Okay. You can stay on, and we'll be back at 3:00 o'clock.

10 THE CLERK: All rise.

11 (A recess ensued from 2:22 p.m. to 3:04 p.m.)

12 THE CLERK: All rise.

13 THE COURT: All right. Please be seated. All right.  
14 Everyone presented and accounted for. We're going back on the  
15 record.

16 MR. POMERANTZ: Your Honor, before you start, this is  
17 Jeff Pomerantz. We had sent to your clerk, and hopefully it  
18 got to you, a copy of the Second Amended and Restated  
19 Investment Advisory Agreement. We also copied Mr. Sbaiti with  
20 it as well. And we would also like to move that into  
21 evidence, just so that it's part of the Court's record.

22 THE COURT: All right.

23 MR. BRIDGES: We would object to that, Your Honor.  
24 We haven't had an opportunity to even verify its authenticity  
25 yet.

1 THE COURT: All right. Well, I'll tell you what.  
2 I'm going to address this in my ruling. So it's not going to  
3 be part of the record for this decision, and yet -- well, I'll  
4 get to it.

5 All right. So we're back on the record in Case Number 19-  
6 34054, Highland Capital. The Court has deliberated, after  
7 hearing a lot of argument and allowing in a lot of documentary  
8 evidence, and the Court concludes that the motion of CLO  
9 Holdco, Ltd. and The Charitable DAF to modify the retention  
10 order of James Seery, which was entered almost a year ago, on  
11 July 16th, 2020, should be denied.

12 This is the Court's oral bench ruling, but the Court  
13 reserves discretion to supplement or amend in a more fulsome  
14 written order what I'm going to announce right now, pursuant  
15 to Rule 7052.

16 First, what is the Movants' authority to request the  
17 modification of a bankruptcy court order that has been in  
18 place for so many months, which was issued after reasonable  
19 notice to the Movants, and after a hearing, which was not  
20 objected to by the Movants, or appealed, when the Movants were  
21 represented by sophisticated counsel, I might add, and which  
22 order was relied upon by parties in this case, most notably  
23 Mr. Seery and the Debtor, and in fact was entered after  
24 significant negotiations involving a sophisticated court-  
25 appointed Unsecured Creditors' Committee with sophisticated

1 professionals and sophisticated members, and after negotiation  
2 with an independent board of directors, court-appointed, one  
3 of whose members is a retired bankruptcy judge? What is the  
4 Movants' authority?

5 Movants fumbled a little on that question, in that the  
6 exact authority wasn't set forth in the motion. But Movants'  
7 primary argument is that Movants think the Seery retention  
8 order was an interlocutory order and that the Court simply has  
9 the inherent authority to modify it as an interlocutory order.

10 The Court disagrees with this analysis. I do not think  
11 the Fifth Circuit's *Smyth* case dictates that the Seery  
12 retention order is still interlocutory. The Seery retention  
13 order was an order entered pursuant to Section 363 of the  
14 Bankruptcy Code, not a Section 327 professionals to a debtor-  
15 in-possession, professionals to a trustee employment order  
16 such as the one involved in the *Smyth* case.

17 But even if the Seery retention order is interlocutory --  
18 the Court feels strongly that it's not, but even if it is --  
19 the Court believes it would be an abuse of this Court's  
20 inherent discretion or authority to modify that order almost a  
21 year after the fact and under the circumstances of this case.

22 Now, assuming Rule 60(b) applies to the Movants' request,  
23 the Court determines that the Movants have not made their  
24 motion anywhere close to within a reasonable time, as Rule  
25 60(c) requires, nor do I think the Movants have demonstrated

1 any exceptional circumstances to declare the order or any of  
2 its provisions void. The Movants have put on no evidence that  
3 constitutes surprise or constitutes newly-disputed evidence.  
4 So why are there no exceptional circumstances here such that  
5 the Court might find, you know, a void order or void  
6 provisions of an order?

7 First, this Court concludes that there's no credible  
8 argument that the Court overreached its jurisdiction with the  
9 gatekeeping provisions in the order. Gatekeeping provisions  
10 are not only very common in the bankruptcy world -- in  
11 retention orders and in plan confirmation orders, for example  
12 -- but they are wholly consistent with the *Barton* case, the  
13 U.S. Supreme Court's *Barton's* case, and its progeny that has  
14 become known collectively as the *Barton* doctrine. Gatekeeping  
15 provisions are wholly consistent with 28 U.S.C. Section  
16 959(a)'s complete language.

17 The Fifth Circuit has blessed gatekeeping provisions in  
18 all sorts of contexts. It has blessed them in the situation  
19 of when *Stern* claims are involved in the *Villegas* case. It  
20 even blessed Bankruptcy Courts' gatekeeping functions a long  
21 time ago, in 1988, in a case that I don't think anyone  
22 mentioned in the briefing, but as I've said, my brain  
23 sometimes goes down trails, and I'm thinking of the *Louisiana*  
24 *World Exposition* case in 1988, when the Fifth Circuit blessed  
25 there a procedure where an unsecured creditors' committee can



1 bring causes of action against persons, such as officers and  
2 directors or other third parties, if they first come to the  
3 Bankruptcy Court and show a colorable claim. They have to  
4 come to the Bankruptcy Court, show they have a colorable claim  
5 and they're the ones that should be able to pursue them. Not  
6 exactly on point, but it's just one of many cases that one  
7 could cite that certainly approve gatekeeper functions of  
8 various sorts of Bankruptcy Courts.

9 It doesn't matter which court might ultimately adjudicate  
10 the claims; the Bankruptcy Court can be the gatekeeper.

11 And the Court agrees with the many cases cited from  
12 outside this circuit, such as the case in Alabama, in the  
13 Eleventh Circuit, and there was another circuit-level case, at  
14 least one other, that have held that the *Barton* doctrine  
15 should be extended to other types of case fiduciaries, such as  
16 debtor-in-possession management, among others.

17 Finally, as I pointed out in my confirmation ruling in  
18 this case, gatekeeping provisions are commonplace for all  
19 types of courts, not just Bankruptcy Courts, when vexatious  
20 litigants are involved. I have commented before that we seem  
21 to have vexatious litigation behavior with regard to Mr.  
22 Dondero and his many controlled entities.

23 Now, as far as the Movants' argument that there was not  
24 just improper gatekeeping provisions but actually an improper  
25 discharge in the Seery retention order of negligence claims or

1 other claims that don't rise to the level of gross negligence  
2 or willful misconduct, again, I reiterate there's nothing  
3 exceptional in the bankruptcy world about exculpation  
4 provisions like this. They absolutely are a term of  
5 employment very often. Just like compensation, they're  
6 frequently requested, negotiated, and approved. They are  
7 normal in the corporate governance world, generally. They are  
8 normal in corporate contracts between sophisticated parties.  
9 And most importantly of all, even if this Court overreached  
10 with the exculpation provisions in the Seery retention order,  
11 even if it did, res judicata bars the attack of these  
12 provisions at this late stage, under cases such as *Shoaf*,  
13 *Republic Supply v. Shoaf* from the Fifth Circuit, the *Espinosa*  
14 case from the U.S. Supreme Court, and even *Applewood*, since  
15 the Court finds the language in this order was clear,  
16 specific, and unambiguous with regard to the gatekeeping  
17 provisions and the exculpation provisions.

18 Last, and this is the part where I said I'm going to get  
19 to this agreement that has been submitted, the Second Amended  
20 and Restated Investment Advisor Agreement or whatever the  
21 title is. I am more than a little disturbed that so much of  
22 the theme of the Movants' pleadings and arguments, and I think  
23 even representations to the District Court, have been they  
24 have these sacred jury trial rights, these inviolate jury  
25 trial rights, and an Article I Court like this Court should

1 have no business through a gatekeeping provision impinging on  
2 the possible pursuit of an action where there's a jury trial  
3 right.

4 I was surprised initially when I thought about this. I  
5 thought, wow, I've seen so many agreements over the months. I  
6 can't say every one of them waived the jury trial right, but I  
7 just remembered seeing that a lot, and seeing arbitration  
8 provisions, and so that's why I asked. It just was lingering  
9 in my brain. So I'm going to look at what is submitted. I'm  
10 not relying on that as part of my ruling. As you just heard,  
11 I had a multi-part ruling, and whether there's a jury trial  
12 right or not is irrelevant to how I'm choosing to rule on this  
13 motion. But I do want to see the agreement, and then I want  
14 Movants within 10 days to respond with a post-hearing trial  
15 brief either saying you agree that this is the controlling  
16 document or you don't agree and explain the oversight, okay?  
17 Because it feels like a gross omission here to have such a  
18 strong theme in your argument -- we have a jury trial right,  
19 we have a jury trial right, by God, the gatekeeping  
20 provisions, among other things, impinge on our sacred pursuit  
21 of our jury trial right -- and then maybe it was very  
22 conspicuous in the controlling agreement that you'd waived  
23 that, the Movants had waived that.

24 So, anyway, I'm requiring some post-hearing briefing, if  
25 you will, on whether omissions, misrepresentations were made

1 to the Court.

2           Anyway, so I reserve the right to supplement or amend this  
3 ruling with a more fulsome written order. I am asking Mr.  
4 Pomerantz to upload a form of order that is consistent with  
5 this ruling, and --

6           MR. POMERANTZ: Your Honor, we will do so. I do have  
7 one thing to bring to the Court's attention, unrelated to the  
8 motion, before Your Honor leaves the bench.

9           THE COURT: All right. So just a couple of follow-up  
10 things. Have you -- I'm not clear I heard what you said about  
11 this agreement. Did you email it to my courtroom deputy or  
12 did you file it on the docket?

13           MR. POMERANTZ: We emailed it to your courtroom  
14 deputy. We're happy to file it on the docket. And we also  
15 provided a copy to Mr. Sbaiti.

16           I would note for the Court that it's signed both by The  
17 Charitable DAFs by Grant Scott, just for what it's worth.

18           THE COURT: Okay. All right. Well, I'm trying to  
19 think what I want -- I do want you to file it on the docket,  
20 and I'm trying to think of what you label it. Just call it  
21 Post-Hearing Submission or something and link it to the motion  
22 that we adjudicated here today. And then, again, you've got  
23 10 days, Mr. Bridges, to say whatever you want to say about  
24 that agreement.

25           I guess the last thing I wanted to say is we sure devoted

1 a lot of time to this motion today. We have -- this is a  
2 recurring pattern, I guess you can say. We have a lot of  
3 things that we devote a lot of time to in this case that I get  
4 surprised, but it is what it is. You file a motion. I'm  
5 going to give it all the attention Movants and Respondents  
6 think it warrants. I'm going to develop a full record,  
7 because, you know, there's a recurring pattern of appeals  
8 right now, 11 or 12 appeals, I think, not to mention motions  
9 to withdraw the reference. If we're going to have higher  
10 courts involved in the administration of this case, I'm going  
11 to make a very thorough record so nobody is confused about  
12 what we did, what I considered, what my reasoning was.

13 So I kind of think it's unfortunate for us to have to  
14 spend case resources and so much time and fees on things like  
15 this, but I'm going to make sure a Court of Appeals is not  
16 ever confused about what happened and what we did. So that's  
17 just the way it's going to be. And I feel like we have no  
18 choice, given, again, the pattern of appeals.

19 All right. So, with that, Mr. Pomerantz, you had one  
20 other case matter, you said?

21 MR. POMERANTZ: Yes. But before I get to that, Your  
22 Honor, I assume that, in response to the Movants' submission  
23 on the agreement, that we would have right at four or seven  
24 days to respond if we deem it's appropriate?

25 THE COURT: I think that's reasonable. That's

1 reasonable.

2 MR. POMERANTZ: Okay. Thank you, Your Honor.

3 THE COURT: So let me think of how I want to do this.  
4 I'll just do a short scheduling order of sorts that just, it  
5 says in one or two paragraphs, at the hearing on this motion,  
6 the Court raised questions about the jury trial rights and the  
7 Debtor has now submitted the controlling agreements, I'm  
8 giving the Movants 10 days to respond to whether this is  
9 indeed a controlling agreement, and why, if it is, the Movants  
10 have heretofore taken the position they have jury trial  
11 rights. And then I will give you seven days thereafter to  
12 reply, and then the Court will set a further status conference  
13 if it determines it's necessary. Okay?

14 So, Nate, we'll do a short little order to that effect.  
15 Okay?

16 MR. POMERANTZ: Thank you, Your Honor.

17 I -- again, before I raise the other issue, I want to pick  
18 up on a comment Your Honor just made towards the end. I know  
19 the Court has been frustrated with the time and effort we've  
20 been spending. The Debtor and the creditors have been  
21 extremely frustrated, because in addition to the time and  
22 effort everyone's spending, we're spending millions of  
23 dollars, millions of dollars on litigation that --

24 THE COURT: It's one of the reasons you needed an  
25 exit loan, right?

1 MR. POMERANTZ: Right. No, exactly. That's  
2 frivolous, that we think is made in bad faith.

3 And Your Honor, and everyone else who's hearing this on  
4 behalf of Mr. Dondero, should understand we're looking into  
5 what appropriate authority Your Honor would have to shift some  
6 of the costs. Your Honor did that in the contempt motion.  
7 Your Honor can surely do that in connection with the notes  
8 litigation. But all this other stuff that is requiring us to  
9 spend hundreds and hundreds of hours and spend millions of  
10 dollars, we are clearly looking into whether it would be  
11 appropriate and what authority there is. I just wanted to let  
12 Your Honor know that.

13 And in connection with that, the last point, Your Honor, I  
14 can't actually even believe I'm saying this, but there was  
15 another lawsuit filed -- we just found out in the break -- on  
16 Wednesday night by the Sbaiti firm on behalf of Dugaboy in the  
17 District Court.

18 Now, to make matters worse, Your Honor, the litigation  
19 relates to alleged improper management by the Debtor of Multi-  
20 Strat. If Your Honor will recall, at many times I've told  
21 this Court what Dugaboy's claims they filed in this case.  
22 Dugaboy has a claim that is filed in this case for  
23 mismanagement postpetition of Multi-Strat. Now the Sbaiti  
24 firm, in addition to representing CLO Holdco, in addition to  
25 representing the DAF, and whatever the Plaintiffs' lawyers are



1 in that other District Court, PCMG, and in connection with the  
2 Acis matter, they've decided they haven't had enough. They've  
3 now filed another motion that -- you know, why they filed it  
4 in District Court and there's a proof of claim on the same  
5 issues, I don't know. But I thought Your Honor should know.  
6 I'm not asking Your Honor to do anything about it. But we  
7 will act aggressively, strongly, and promptly.

8 Thank you, Your Honor.

9 THE COURT: All right. Well, you've reminded me of  
10 what came out earlier today about the entity -- I left my  
11 notepad in my chambers -- PMC or PMG or something.

12 Mr. Bridges, we're not going to have a hearing right now  
13 on me doing anything, but what are you thinking? What are you  
14 doing?

15 MR. BRIDGES: Your Honor, I'm not trying to duck your  
16 question. I literally have no involvement with any other  
17 claim, and we would have to ask Mr. Sbaiti to answer your  
18 questions.

19 THE COURT: All right. Is he there?

20 MR. BRIDGES: He is.

21 THE COURT: I'll listen.

22 MR. BRIDGES: I'll switch seats and give him this  
23 chair.

24 MR. SBAITI: Sorry, Your Honor. We had two computers  
25 going and weren't able to use the sound on one, so we ended up

1 turning that off.

2 Your Honor, I'm not sure what the question is about when  
3 you say what are we thinking. We have a client that's asked  
4 us to file something, and when we're advised by bankruptcy  
5 counsel that it's not prohibited for us to do so, and don't  
6 know why we're precluded from doing so, and when the time  
7 comes I'm sure we'll be able to explain to Your Honor --  
8 someone will be able to explain to Your Honor why what we're  
9 doing, despite Mr. Pomerantz's exacerbation, or excuse me,  
10 exasperation, why that wasn't improper. It's our belief that  
11 it wasn't improper or a violation of the Court's rule.

12 THE COURT: Just give me a quick shorthand *Readers'*  
13 *Digest* of why you don't think it's improper.

14 MR. SBAITI: Sure. My understanding is, Your Honor,  
15 there's not a rule that says we can't file it against the  
16 Debtor for postpetition actions. So that, that's as -- that's  
17 as much as I understand. And I'm going to -- I'm not trying  
18 to duck it, either. And if I'm wrong about that and someone  
19 wants to correct me on our side offline and if we have to  
20 explain to the Court why that's so or what rule has been  
21 violated, I'm sure we'll be able to put together something for  
22 that. But that's what I've been advised.

23 THE COURT: Have you done thorough --

24 MR. POMERANTZ: Your Honor, I think what --

25 MR. SBAITI: (garbled), Your Honor.

1 THE COURT: Have you done thorough research yourself?  
2 Your Rule 11 signature is on the line, not some bankruptcy  
3 counsel you talked to. Have you done the research yourself?

4 MR. SBAITI: Well, Your Honor, I've relied on the  
5 research and advice of people who are experts, and I believe  
6 my Rule 11 obligations also allow me to do that, so yes.

7 MR. POMERANTZ: Your Honor, I think we're entitled to  
8 know if it's Mr. Draper's firm who has been representing  
9 Dugaboy. He's the bankruptcy counsel. I don't think it's an  
10 attorney-client privilege issue. If Mr. Sbaiti is going to be  
11 here and sort of say, hey, bankruptcy counsel said it was  
12 okay, I think we would like to know and I'm sure Your Honor  
13 would like to know who is that bankruptcy counsel.

14 THE COURT: Yes. Fair enough. Mr. Sbaiti?

15 MR. SBAITI: Your Honor, in consultation with Mr.  
16 Draper and with consultation with other counsel that we've  
17 spoken to, that has been our understanding.

18 THE COURT: Who's the other counsel?

19 MR. SBAITI: Well, we've talked to Mr. Rukavina about  
20 some of these things for the PCMG and the Acis case. We've  
21 talked to the people who, when they tell us you can't do this  
22 because they're bankruptcy counsel for our client, then we  
23 don't do something. So, and I'm not trying to throw anybody  
24 under the bus, but my understanding of what goes on in  
25 Bankruptcy Court is incredibly limited, so, you know, and if

1 it's a mistake then I'll own it, if I have a mistaken  
2 understanding, but I also wasn't anticipating having to make a  
3 presentation about this right here right now, so --

4 THE COURT: Well, you're filing lawsuits that involve  
5 this bankruptcy case during the hearing, so --

6 MR. SBAITI: Oh, we didn't file it during the  
7 hearing, Your Honor. It was filed last night, I believe.

8 THE COURT: Okay. Well, I assume that you're going  
9 to go back and hit the books, hit the computer, and be  
10 prepared to defend your actions, because your bankruptcy  
11 experts, they may think they know a lot, but the judge is not  
12 very happy about what she's hearing.

13 MR. POMERANTZ: Your Honor, if I may ask when Your  
14 Honor intends to issue the contempt ruling in connection with  
15 the June 8th hearing? I strongly believe -- and, obviously,  
16 this has nothing to do with the contempt hearing; this  
17 happened after -- but I strongly believe that sending a  
18 message that Your Honor is inclined to hold counsel in  
19 contempt, which obviously is one of the violators we said  
20 should be held in contempt, it may be important to do that  
21 sooner rather than later so that people know that Your Honor  
22 is serious.

23 THE COURT: All right. Well, I understand and  
24 respect that request. And let me tell you all, I had a seven-  
25 day -- okay. You all were here on that motion June 8th. I

1 had a seven-day, all-day, every-day, 9:00 to 5:00, 45-minute  
2 lunch break, in-person hearing with a dozen or so live  
3 witnesses that I just finished Tuesday at 5:00 o'clock. So  
4 you all were here on the 8th, and then -- what day was that --  
5 what was -- Tuesday, I finished. Tuesday was the 22nd. So I  
6 started on the 14th, okay? So you all were here on the 8th  
7 and I had a live jury trial -- I mean, not jury trial, a live  
8 bench trial -- live human beings in the courtroom, beginning  
9 June 14th. So you're here the 8th. June 14th through 22nd, I  
10 did my trial. And here we are on the 25th. And guess what, I  
11 have another live human-being bench trial next week, Monday  
12 through Friday.

13 So we've been working in other things like this in between  
14 those two. So I'm telling you that not to whine, I'm just  
15 telling you that, that's the only reason I didn't get out a  
16 quick ruling on this, okay?

17 MR. POMERANTZ: And Your Honor, I was not at all  
18 making that comment to imply anything about the Court.

19 THE COURT: Well, --

20 MR. POMERANTZ: The time and effort that you have  
21 given to this case is extraordinary, --

22 THE COURT: Okay.

23 MR. POMERANTZ: -- so please don't misunderstand my  
24 comment.

25 THE COURT: Okay. And I didn't mean to express

1 annoyance or anything like that. I guess what I'm trying to  
2 do is I don't want anyone to mistake the delay in ruling on  
3 the contempt motion to mean I'm just not that -- you know, I'm  
4 not prioritizing it, other things are more serious to me or  
5 important to me, or I'm going to take two months to get to it.  
6 It's literally been I've been in trial almost all day long  
7 every day since you were here. But trust me, I'm about as  
8 upset as upset can be about what I heard on June 8th, and I'm  
9 going to get to that ruling, and I know what I'm going to do.  
10 And, well, like I said, it's just a matter of figuring out  
11 dollars and whom, okay? There's going to be contempt. I just  
12 haven't put it on paper because I've been in court all day and  
13 I haven't come up with a dollar figure. Okay?

14 So I hope -- I don't know if that matters very much, but  
15 it should.

16 All right. We stand adjourned.

17 (Proceedings concluded at 3:35 p.m.)

18 --oOo--

19

20

CERTIFICATE

21

22

I certify that the foregoing is a correct transcript from  
the electronic sound recording of the proceedings in the  
above-entitled matter.

23

**/s/ Kathy Rehling**

**06/29/2021**

24

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

25

		122
1	INDEX	
	<i>Excerpt</i>	
2	11:33 a.m. to 3:35 p.m.	
3	PROCEEDINGS	3
4	OPENING STATEMENTS	
5	- By Mr. Bridges	3
	- By Mr. Pomerantz	23
6	WITNESSES	
7	-none-	
8	EXHIBITS	
9		
10	Movants' Exhibits 1, 3 through 12, 15 through 28, and 30 through 44	Received 91
11	Debtor's Exhibit 1	Received 91
12	Debtor's Exhibits 1 through 17	Received 93
13	RULINGS	106
14	END OF PROCEEDINGS	121
15	INDEX	122
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		



## **EXHIBIT 22**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	.	Case No. 19-34054-11 (SGJ)
	.	
HIGHLAND CAPITAL	.	
MANAGEMENT, L.P.,	.	
	.	
Debtor.	.	
.....	.	
	.	Adv. No. 21-03067 (SGJ)
CHARITABLE DAF FUND, LP,	.	
et al.,	.	
	.	
Plaintiffs,	.	Earle Cabell Federal Building
	.	1100 Commerce Street
v.	.	Dallas, Texas 75242
	.	
HIGHLAND CAPITAL,	.	
MANAGEMENT, L.P., et al.,	.	
	.	
Defendants.	.	Tuesday, November 23, 2021
.....	.	9:40 a.m.

TRANSCRIPT OF HEARING ON  
PLAINTIFFS' MOTION TO STAY ALL PROCEEDINGS (55);  
PLAINTIFFS' MOTION TO STRIKE REPLY APPENDIX (47); AND  
DEFENDANTS' MOTION TO DISMISS COMPLAINT (26)

**BEFORE HONORABLE STACEY G. JERNIGAN  
UNITED STATES BANKRUPTCY COURT JUDGE**

TELEPHONIC APPEARANCES CONTINUED ON NEXT PAGE.

Audio Operator: Hawaii S. Jeng

Proceedings recorded by electronic sound recording, transcript  
produced by a transcript service.

---

**LIBERTY TRANSCRIPTS  
7306 Danwood Drive  
Austin, Texas 78759  
E-mail: DBPATEL1180@GMAIL.COM  
(847) 848-4907**

TELEPHONIC APPEARANCES:

For CLO Holdco, Ltd.: Sbaiti & Company PLLC  
BY: MAZIN AHMAD SBAITI, ESQ.  
JP Morgan Chase Tower  
2200 Ross Avenue, Suite 4900 W  
Dallas, Texas 75201

For Highland Capital Management: Pachulski Stang Ziehl & Jones LLP  
BY: JOHN MORRIS, ESQ.  
780 3rd Avenue, 34th Floor  
New York, NY 10017

Pachulski Stang Ziehl & Jones LLP  
BY: JEFFREY N. POMERANTZ, ESQ.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, California 90067

For Highland CLO Funding, Ltd.: Brobeck Phleger & Harrison  
BY: JONATHAN W. JORDAN, ESQ.  
4801 Plaza on the Lake  
Austin, Texas 78746

King & Spalding LLP  
BY: PAUL RICHARD BESSETTE, ESQ.  
500 West 2nd Street, Suite 1800  
Austin, Texas 78701

**INDEX**

	<b><u>PAGE</u></b>
PLAINTIFFS' MOTION TO STAY ALL PROCEEDINGS (55) Court's Ruling - Denied	29
PLAINTIFFS' MOTION TO STRIKE REPLY APPENDIX (47) Court's Ruling - Denied	32
DEFENDANTS' MOTION TO DISMISS COMPLAINT (26) Court's Ruling - Under Advisement	103

1 THE COURT: Good morning. Please be seated.

2 All right. We have a setting in the Charitable DAF  
3 Fund, et al., v. Highland, Adversary 21-3067. We have three  
4 motions that are set.

5 Let me get appearances from the Plaintiffs' counsel  
6 first. Go ahead.

7 MR. SBAITI: Good morning, Your Honor. This is Mazin  
8 Sbaiti for the Plaintiffs.

9 THE COURT: Okay. Thank you.

10 Now for the Defendants, who do we have appearing?

11 MR. POMERANTZ: Good morning, Your Honor. It's Jeff  
12 Pomerantz and John Morris from Pachulski Stang Ziehl & Jones.  
13 Your Honor, before -- I understand Your Honor is going to take  
14 up the motion to stay first.

15 Before Your Honor does so, I have a procedural issue  
16 relating to that motion that I would like to address the Court  
17 after appearances are made.

18 THE COURT: All right. I assume that's all the  
19 lawyer appearances for this adversary.

20 MR. JORDAN: Your Honor?

21 THE COURT: Oh, go ahead.

22 MR. JORDAN: Your Honor, we are a nominal defendant,  
23 but John Jordan on behalf of Highland CLO Funding, Ltd.

24 THE COURT: Okay. Thank you. Sorry about that.

25 MR. BESSETTE: And, Your Honor, Paul Bessette, Mr.

1 Jordan's colleague is on the phone, as well.

2 THE COURT: Okay. Thank you.

3 All right. Anyone else I missed?

4 (No audible response)

5 THE COURT: All right. Mr. Pomerantz, your  
6 procedural issue?

7 MR. POMERANTZ: Thank you, Your Honor.

8 Your Honor, I must once again bring to this Court's  
9 attention a violation of the Court Rules by the various counsel  
10 representing Mr. Dondero. This time it's by Mr. Sbaiti.

11 When the district court entered its order granting  
12 Highland's motion to enforce the reference and referring this  
13 matter to Your Honor, there were three matters on the Court's  
14 docket, district court's docket that got transferred. First  
15 was the motion to dismiss, second was the motion to stay, and  
16 third was the motion to strike, which essentially has been  
17 rendered moot.

18 The briefing was complete with respect to the first  
19 two matters, the motion to dismiss and the motion to stay. And  
20 all that remained for the Court to do was to set a hearing and  
21 have oral argument. Your Honor, on October 13th, Your Honor  
22 set a hearing for today for each of those two motions.  
23 Nevertheless, on November 10th, almost a month after the Court  
24 set the matters for hearing and after pleadings were closed,  
25 Plaintiffs filed what they called their amended motion to stay.

1           As an initial matter, Your Honor, the amended motion  
2 was not even filed in this adversary proceeding initially. It  
3 was filed in the main case, and there was an error that Mr.  
4 Sbaiti corrected on November 18th, five days before this  
5 hearing. Plaintiff did not ask for leave of court to file any  
6 further pleadings. They did not provide the time under the  
7 local rules for response. And, in fact, they raised additional  
8 arguments in their amended motion.

9           Well, Your Honor, we can certainly argue to the Court  
10 that the amended motion constitutes a new motion, is untimely,  
11 and the hearing should be continued to allow us to file a  
12 response. We're not going to do that, Your Honor. As I will  
13 discuss when it's my time to respond substantively to the  
14 motion, the new arguments to stay the proceedings, the amended  
15 motion are equally as frivolous as the arguments contained in  
16 the original motion.

17           But I bring this to the Court's attention because,  
18 again, it's extremely frustrating to have the lawyers  
19 representing Mr. Dondero's related entities continue to act as  
20 if the rules do not apply to them. Your Honor will recall just  
21 a week or so ago, Your Honor made a -- we had a similar issue  
22 in connection with the motion to dismiss. Failure to follow  
23 the rules is unprofessional, and it's disrespectful not only to  
24 Highland's professionals but also to the Court and it  
25 interferes with Your Honor's ability to control your docket and



1 sufficiently prepare for contested matters.

2 At some point, Your Honor, there should be real  
3 consequences for the continued violation of the rules. Having  
4 said that, Your Honor, we are prepared to go forward with the  
5 motion to stay today.

6 THE COURT: All right. Mr. Sbaiti, what say you?  
7 I'm looking at Docket Entry Number 69 in the adversary  
8 proceeding that was filed last Thursday. So, obviously, very,  
9 very late in the game, shall we say. What is your response to  
10 this?

11 MR. SBAITI: Your Honor, that was not filed in the  
12 adversary as an error. When we asked one of our paralegals to  
13 file it, we're not as familiar with the bankruptcy court system  
14 and it was an error. It was corrected once the lawyers  
15 realized it, which was last -- which was on November the 18th.  
16 It was filed in, I guess in the main case. But it was simply  
17 an inadvertent error, Your Honor.

18 MR. POMERANTZ: I would add, Your Honor, the original  
19 motion filed inadvertently was November 10th. It still was not  
20 timely. I think Mr. Sbaiti needs to answer the question of why  
21 that was filed untimely, okay.

22 THE COURT: All right. Thank you, Mr. Sbaiti.

23 So, one of my pet peeves in life is people blaming  
24 paralegals, by the way. But be that as it may, as Mr.  
25 Pomerantz points out that it was still untimely the motion

1 filed in the underlying bankruptcy case November 10th. So what  
2 is your --

3 MR. SBAITI: Your Honor, when we looked at the motion  
4 and looked at the progression of the case, we filed an amended  
5 motion simply to clarify our position. And really I don't  
6 think we've changed our arguments all that much. We simply  
7 clarified our position. We've seen amended motions filed in  
8 the bankruptcy in our prior dealings, and so at that point, we  
9 felt like there wasn't a rule explicitly saying we couldn't  
10 have an amended motion.

11 But if it's untimely, Your Honor, you know, we don't  
12 think it changes the underlying arguments. As Mr. Pomerantz  
13 said, we don't think there's any prejudice to Highland either.

14 THE COURT: All right. Well, just to be clear, you  
15 know, it's one thing in an underlying bankruptcy case to file  
16 an amended motion after you've gotten a motion set for hearing  
17 that might slightly adjust, you know, facts or relief sought.  
18 And, of course, we independently look at it when it happens in  
19 an underlying case to see do we need more notice to affected  
20 parties.

21 But in an adversary proceeding, you know, you just  
22 don't do this. All right? If you have some sort of  
23 exceptional circumstances, you can file I guess a motion to  
24 amend because I got to include this new information that didn't  
25 exist. But you just don't do this, okay?

1           So I don't -- could you be clear what was the new  
2 information? What was the new information that had to be  
3 brought before the Court suddenly?

4           MR. SBAITI: Your Honor, there wasn't new  
5 information. We were simply giving notice of our understanding  
6 of where the legal arguments were going. The reason being is  
7 that after those motions were filed and recently, the debtor  
8 took the position in two other cases that they should be  
9 dismissed pursuant to the permanent injunction.

10           And so that clarified for us at least a couple of  
11 arguments that were unclear to us where the debtor stood on  
12 whether or not the permanent injunction would be a basis to  
13 dismiss or stay any of the claims that were pending. There are  
14 two other claims pending in district court. Since we had filed  
15 that motion, the debtor filed a motion to reconsider the stays  
16 that were granted in those two courts. And then they also  
17 moved to dismiss on the basis of the permanent injunction.

18           And so given that the debtor took the position that  
19 they were willing to dismiss those cases based upon the  
20 permanent injunction, it in many ways contravenes the position  
21 they took in response to our motion which is that the -- for  
22 example, they somewhat take the position in Paragraph 22, it  
23 wasn't as clear then but it's clear -- it seems clearer now  
24 that the permanent injunction is not relevant to whether or not  
25 the case can go forward in any capacity.

1           And so we simply wanted to incorporate that, but it's  
2 mainly legal argument about the choices that are before the  
3 Court. That was really it. I mean, theoretically, I would  
4 have made them for the first time during oral argument and we  
5 thought we were doing something good by giving -- apprising the  
6 Court in writing and giving notice of these arguments to the  
7 other side by filing an amended motion. We didn't add new  
8 evidence or anything like that.

9           MR. POMERANTZ: Your Honor, that argument is  
10 completely disingenuous because our motion to dismiss and  
11 motion for reconsideration that Mr. Sbaiti refers to is several  
12 weeks ago, okay. It wasn't November 10th. It was several  
13 weeks ago.

14           I will respond substantively why Mr. Sbaiti is wrong  
15 and there's no inconsistent positions when it's my time to  
16 speak. But for Mr. Sbaiti to say he was doing us a favor and  
17 he was reacting to recent new information is just wrong, Your  
18 Honor. And they should just not be continued to allowed to get  
19 away with flouting the rules.

20           THE COURT: All right. Well, let me just say I'm  
21 confused, maybe I should say baffled, about this amended  
22 motion. You know, the motion to dismiss that is before the  
23 Court for oral argument today isn't about the injunction, isn't  
24 about the plan injunction. It's about res judicata and other  
25 12(b)(6) arguments.

1           So I'm confused and I think, you know, it's been  
2 clear for many months in this adversary proceeding, in  
3 particular, the debtor's position on the plan injunction,  
4 particularly, you know, in the whole argument on the motion to  
5 leave to add Mr. Seery as a defendant.

6           So I'm confused, but we're going to go forward on the  
7 argument today, whatever argument you want to make. And you've  
8 been, I guess, forewarned. I will say that these last-minute  
9 amended motions are not going to be tolerated, are not going to  
10 be considered. And so, you know, I hope you won't do it again.  
11 Your firm has already been sanctioned once in this adversary  
12 proceeding. I'm sure we all remember.

13           So, you know, I'm just kind of baffled why you would  
14 take a chance filing an amended motion without leave or somehow  
15 getting it to the attention of the Court or running it by the  
16 other parties for their consent to you doing it. But we're  
17 going to go forward and just hear the arguments, okay. And so  
18 --

19           MR. SBAITI: Thank you.

20           THE COURT: -- I'll hear your argument.

21           I'm letting people know I don't know where this time  
22 estimate came on the calendar today, three hours. I don't know  
23 if someone specifically expressed that. But I'm letting you  
24 know at noon I have a swearing-in ceremony that I'm doing back  
25 in my chambers. So I will stop at noon Central time.

1 And so does anyone think that's going to be a  
2 problem?

3 MR. SBAITI: It should not be, Your Honor, from our  
4 perspective.

5 THE COURT: Mr. Pomerantz?

6 MR. POMERANTZ: I don't believe so. Mr. Morris is  
7 going to handle the motion to dismiss which is going to be the  
8 bulk. My presentation on the motion to stay is only going to  
9 be around ten minutes or so.

10 THE COURT: Okay. Thank you.

11 Mr. Sbaiti, your argument on the motion for stay.

12 MR. SBAITI: Thank you, Your Honor.

13 Your Honor, may I share my screen?

14 THE COURT: You may.

15 MR. SBAITI: I have a PowerPoint that can kind of --

16 THE COURT: Okay. You may.

17 MR. SBAITI: -- walk us through. Thank you.

18 Is Your Honor able to see my screen?

19 THE COURT: I can, yes.

20 MR. SBAITI: Thank you, Your Honor.

21 Your Honor, what I would point you to is, first, the  
22 injunction language. This is what Your Honor's permanent  
23 injunction says, and this is really what animates our motion to  
24 stay. Our motion to stay is derived specifically because my  
25 clients and I feel like our case has been enjoined by this

1 injunction, if not completely disposed of.

2 The language says that we're enjoined:

3 "An enjoined party is permanently enjoined from  
4 commencing, conducting, or continuing in any manner  
5 any suit, action, or other proceeding of any kind  
6 including any proceeding in a judicial, arbitral,  
7 administrative, or other forum against or affecting  
8 the debtor or the property of the debtor."

9 And then (v) of that injunction says:

10 "or acting or proceeding in any manner in any place  
11 whatsoever that does not conform to or comply with  
12 the provisions of the plan."

13 One of the things that was suggested in Paragraph 22  
14 of their response was that the DAF and Holdco are not enjoined  
15 parties. But the final plan defines an enjoined party in  
16 Article 1(b) (56) as any entity who has or -- all entities who  
17 have held, hold, or may hold claims against the debtor; any  
18 entity that has appeared and/or filed any motion, objection, or  
19 other pleading in this Chapter 11 case regardless of the  
20 capacity in which such entity appeared and any other party in  
21 interest. And, five, the related persons of each of the  
22 foregoing.

23 Article 1(b) (22) defines a claim as any claim that's  
24 defined in Section 1015 of the Bankruptcy Code. And Section  
25 1015 of the Bankruptcy Code defines a claim as a right to



1 payment whether or not such right is reduced to judgment,  
2 liquidated, unliquidated, fixed, contingent, matured,  
3 unmatured, disputed, undisputed, legal, equitable, secured, or  
4 unsecured.

5           So given this definition, when we've read this  
6 injunction, we believed that we were enjoined parties, the DAF  
7 and Holdco were both enjoined parties. They had appeared in  
8 the -- they have claims. Obviously, those are the claims being  
9 asserted here.

10           And so going back to the injunction language, we  
11 believe this lawsuit has been disposed of by this permanent  
12 injunction. We believe there's really only one or two things  
13 that should probably happen with this lawsuit. Either it could  
14 be dismissed based upon the permanent injunction or what we  
15 proposed in our motion to stay is that the Court exercise its  
16 inherent authority to simply stay the case pending the appeal  
17 of this language, which is up on appeal in the Fifth Circuit  
18 right now.

19           If that language, and if the injunction gets affirmed  
20 by the Fifth Circuit, then certainly the dismissal can happen  
21 once that affirmance happens and there's no harm, no foul, and  
22 no one's wasted any time.

23           If they're not, if it's overturned, then, obviously,  
24 the injunction would be vacated, presumably by the Fifth  
25 Circuit. And at some point, if the Court decides not to enter

1 a similar injunction that would likewise dispose of this case,  
2 then the case could proceed on the merits.

3           The issue we've identified both in our original  
4 motion and as we fleshed out in our -- as a matter of law in  
5 our amended motion to simply put a finer point on it is that  
6 the merits are now -- have been disposed of. This injunction  
7 ends this case, at least as far as we read it. It ends this  
8 case irrespective of the underlying merits of the lawsuit,  
9 which means that the lawsuit merits themselves have become moot  
10 and any opinion or any attempt to resolve it is obviously an  
11 advisory opinion by the Court.

12           So we really only see two ways that this could go  
13 right now without either gutting the injunction or  
14 circumventing it completely, which is to say that either the  
15 case should be dismissed based upon the permanent injunction or  
16 the case should be stayed based upon the permanent injunction.

17           Mr. Pomerantz or the debtors' brief suggests that,  
18 well, the injunction doesn't prevent hearing pending motions.  
19 But I would respectfully disagree with that. If you look at  
20 the language, "commencing, conducting, or continuing in any  
21 manner in any suit, action, or other proceeding against or  
22 affecting the debtor."

23           As 12(b)(6) hearing, I would imagine, was intended to  
24 fall under the umbrella of a proceeding. And us arguing a  
25 12(b)(6) motion would us be conducting and maybe even

1 continuing the suit because we're trying to protect the merits  
2 of the suit, which as I said are at this juncture already moot.

3           And so it comes down to I think a very simple  
4 question, which is what do we do at this juncture. Do we just  
5 simply dismiss the lawsuit in light of this permanent  
6 injunction or stay the lawsuit in light of this permanent  
7 injunction?

8           The debtor makes a lot of hay out of the fact that,  
9 well, there are special rules that apply when you're trying to  
10 stay a case pending appeal. But if you look at all of their  
11 case law, it has to do with different circumstances where an  
12 appeal -- where there's a matter on appeal that could  
13 substantially affect the resolution of the case, which here we  
14 think it actually could. But in those cases, those appeals  
15 would affect the resolution of the case on the merits; whereas,  
16 here, the question goes to whether or not a permanent  
17 injunction that really has stopped us all in our tracks.

18           As soon as we understood this injunction and its  
19 scope, we're the ones who reached out to the debtor's counsel  
20 and asked them on a meet-and-confer whether or not they would  
21 just agree to stay the matter. And we were a little bit  
22 surprised by their reaction when they first didn't think that  
23 this applied to our case, and we didn't understand how. And  
24 then they changed their mind, said it did apply to our case but  
25 they didn't think that we should stay the case. And they

1 didn't suggest let's just dismiss it based upon the permanent  
2 injunction.

3           So it kind of comes down to the same small -- same  
4 simple issue, Your Honor. There's this permanent injunction,  
5 and I don't think there's any way for us to get around it at  
6 this juncture.

7           THE COURT: Mr. Pomerantz:

8           MR. POMERANTZ: Yes, Your Honor.

9           I'm going to respond to several of the arguments Mr.  
10 Sbaiti made in his motion, which apparently he's abandoned  
11 because he only is focused on the injunction. And I'm also  
12 going to tell Your Honor, what our arguments are because  
13 despite Mr. Sbaiti's efforts, he's completely misquoted them.

14           So in the motion and the amended motion, the  
15 Plaintiffs make several arguments why this Court should stay  
16 the matter. First, they argue they're entitled to a stay  
17 because the exculpation provision in the plan prohibits them  
18 from proceeding against the Defendants in the action. And  
19 there are several problems with that argument.

20           First, Mr. Sbaiti and the Plaintiffs don't even  
21 attempt to meet the Fifth Circuit's standards for a stay  
22 pending appeal because, of course, they can't. Mr. Sbaiti's  
23 trying to sidestep the grounds for a stay pending appeal by  
24 arguing it doesn't apply just is incorrect.

25           They would have to show that there is a likelihood of

1 success on the merits, they would suffer irreparable harm, the  
2 debtor wouldn't suffer irreparable harm, and there is -- public  
3 interest supports a stay. They can't do any of them.

4 In fact, as Your Honor is well aware, Your Honor  
5 denied the actual appellants in that suit, in that order, the  
6 confirmation order, a stay pending appeal and that was denied  
7 by the district court and also denied by the Fifth Circuit  
8 Court of Appeals.

9 The Plaintiffs didn't object to the plan, they are  
10 not parties to the appeal, and they never sought a stay pending  
11 appeal. So they really can't explain why they as really  
12 strangers to the appeal are entitled to a stay of the  
13 effectiveness of the plan when the actual appellants to that  
14 order were denied a stay pending appeal up through the  
15 appellate ladder.

16 Second, notwithstanding Mr. Sbaiti's arguments in the  
17 motion, the exculpation provision is neither as broad nor does  
18 it affect all the parties that are subject to this litigation.  
19 There are three Defendants in the complaint. The only  
20 Defendant that is covered by the exculpation provision is the  
21 debtor. The exculpation provision does not apply HCF Advisors,  
22 and it does not apply to Highland CLO Funding.

23 Also, while the exculpation provision does apply to  
24 the debtor, it only exculpates the debtor from claims of  
25 negligence. The complaint raises a variety of causes of action

1 that have nothing to do with negligence and would not be  
2 covered by the exculpation provision.

3           But, Your Honor, the biggest problem with their  
4 argument that the exculpation provision supports a stay is that  
5 the exculpation -- the appeal of the exculpation provision has  
6 nothing to do with this case. Why? Because the Fifth Circuit  
7 appeal concerns whether the exculpation provision is  
8 appropriate for parties other than the debtor. The debtor is  
9 the only Defendant in this case that obtains the benefit of the  
10 exculpation.

11           And there is no dispute, there was no dispute at  
12 confirmation, there's no dispute in the case law, there's no  
13 dispute in Pacific Lumber, there's no dispute in the appeal  
14 that a plan can exculpate the debtor. So the Fifth Circuit  
15 appeal doesn't implicate the exculpation provision and cannot  
16 support a basis for a stay.

17           The next argument Mr. Sbaiti makes is the injunction  
18 provision, and the injunction provision is on appeal to the  
19 Fifth Circuit. But the aspect of the appeal of the injunction  
20 is not the provision that Mr. Sbaiti points to.

21           And, again, as with the exculpation provision, the  
22 same arguments about failure to obtain a stay, failure to be  
23 party to the appeals, and failure to object to the plan apply,  
24 as well. But as is the case with the exculpation provision,  
25 the resolution of the appeal of the injunction provision will

1 not affect this case in any way.

2           They point to the portion of the injunction that  
3 prohibits enjoined parties from directly or indirectly  
4 continuing, commencing, or conducting in any manner any suit or  
5 action proceeding against the debtor. They argue that they  
6 cannot proceed without violating the injunction because the  
7 injunction was intended to put all litigation against the  
8 debtor to an end.

9           But, of course, Your Honor, that is not true. That  
10 is not what the injunction is. The issue on appeal before the  
11 Fifth Circuit as it relates to the injunction is whether the  
12 injunction impermissibly enjoins parties from enforcing their  
13 rights with respect to post-effective date commercial  
14 relationships with the reorganized debtor. And, of course, we  
15 argue that it's appropriate, but it has nothing to do with the  
16 provision Mr. Sbaiti identified.

17           The appeal does not impact in any way whether a plan  
18 can enjoin prosecution of claims that arose prior to the  
19 effective date. And, of course, such a plan provision is  
20 completely appropriate and is customary. The plan provided the  
21 debtor as the plan provides all debtors with a fresh start and  
22 enjoins litigation against the debtor.

23           But importantly, Your Honor, that does not mean as  
24 Plaintiffs argue that any liability for pre-effective date  
25 conduct just goes away and that creditors are left without a



1 remedy to pursue claims against the debtor for pre-effective  
2 date conduct.

3           Rather, if they have a pre-petition claim in lieu of  
4 their litigation that's pending, they file a pre-petition claim  
5 against the estate and that matter is resolved in the claims  
6 objection procedure. Or, as in the case here, when they make  
7 an allegation that there is a post-petition claim, what do they  
8 do? They file a request for payment of an administrative  
9 claim, and this Court addresses the validity of the  
10 administration claim. The lawsuit pending in another  
11 jurisdiction stops, but the claim has to be resolved in the  
12 bankruptcy court.

13           The only conduct that the injunction really prohibits  
14 is them from proceeding with actions in other courts. It does  
15 not deny them a remedy. Accordingly, their argument that they  
16 cannot proceed with claims against the debtor because of the  
17 injunction provision just lacks any merit and can't form the  
18 basis for a stay.

19           Plaintiffs' next argument in their briefing is that  
20 if the Court refuses to stay the complaint, they will file a  
21 motion to withdraw the reference of this matter to the district  
22 court. Your Honor, this is the biggest head-scratcher of them  
23 all given how this complaint ended up before Your Honor. This  
24 exact issue and Plaintiffs' arguments as to why the reference  
25 should be withdrawn have already been fully briefed and decided

1 by the district court.

2 As Your Honor may recall, the Plaintiff filed this  
3 action in the district court, conveniently failing to include  
4 the bankruptcy case as a related case or mentioning that the  
5 bankruptcy courts have related jurisdiction in the filings.  
6 Your Honor may have had occasion to review the underlying  
7 complaint when the debtor brought a motion for contempt against  
8 counsel for Plaintiffs for pursuing a claim against Mr. Seery  
9 in violation of Your Honor's January 9th, 2020 and July 16th,  
10 2020 orders.

11 Your Honor issued an order finding counsel and  
12 various parties in contempt which order is, of course, subject  
13 to appeal. At the time we were litigating the contempt motion,  
14 we filed two motions in district court. The first was a motion  
15 to enforce the reference and have the district court send that  
16 complaint to Your Honor. And that motion to enforce the  
17 reference is now on Your Honor's docket at Number 22 and 23.

18 The second was the motion to dismiss which is before  
19 Your Honor today. Plaintiffs oppose the motion to enforce the  
20 reference arguing that mandatory withdrawal was required  
21 because the matter involved consideration of non-bankruptcy  
22 federal law, specifically federal securities laws and the  
23 Investment Advisors' Act.

24 Plaintiffs further argue to the district court why  
25 would you refer the case to the bankruptcy court if it's only

1 going to end up back in the district court upon mandatory  
2 withdrawal of the reference. They argue to the district court  
3 that would be a complete waste of time.

4 We filed our reply at Docket Number 42 explaining to  
5 the district court why mandatory withdrawal of the reference  
6 did not apply and why this case should be referred to Your  
7 Honor. And what did the district court subsequently do? It  
8 entered an order referring this action to Your Honor which is  
9 why we are here today.

10 Plaintiffs now flout the district court's order of  
11 reference by telling the Court that if the Court does not stay  
12 the matter, they will file a motion to withdraw the reference  
13 before Your Honor, and they attach virtually identical pleading  
14 that they filed in opposition to our motion to enforce the  
15 reference.

16 Plaintiffs did not disclose in their amended motion  
17 that there was a fully-briefed motion to enforce the reference  
18 before the district court. Plaintiffs' argument is  
19 disingenuous and designed to mislead the Court.

20 The district court has only agreed that mandatory  
21 withdrawal of the reference does not apply and this case  
22 belongs in Your Honor. And while we cannot stop the Plaintiffs  
23 from filing any motion before this Court, we want to put them  
24 on notice that if they do file a motion for withdrawal of the  
25 reference in light of the facts as I just stated them, we will

1 seek sanctions.

2 In any event, Your Honor, the fact that they may file  
3 a motion for withdrawal of the reference at some point in the  
4 future is not grounds to stay the matter.

5 Lastly, Your Honor, Plaintiffs argued in the opening  
6 that Highland's position today in opposing the motion to stay  
7 is inconsistent with positions Highland has taken in two other  
8 lawsuits commenced by the Sbaiti firm. Like all of their other  
9 arguments, they misrepresent the facts and are frivolous.

10 The Sbaiti firm filed a complaint on behalf of the  
11 DAF in the district court arguing that Highland mismanaged  
12 (audio drop). That complaint followed in the heels of an  
13 almost identical complaint filed by Dugaboy asserting the same  
14 claims.

15 And Your Honor may recall questioning Mr. Sbaiti at a  
16 hearing in June how Dugaboy could pursue such a claim in the  
17 district court if Dugaboy had a pending proof of administrative  
18 claim on file in the bankruptcy case. Well, soon after that  
19 hearing, Your Honor, the Dugaboy complaint was dismissed, and a  
20 few days later the DAF complaint was filed. That complaint has  
21 never been served on Highland.

22 The second lawsuit is also a lawsuit filed by the  
23 Sbaiti firm on behalf of an entity called PCMG in the district  
24 court. And PCMG previously held less than five one-hundredths  
25 of a percent interest in a certain fund managed by highland.

1 The lawsuit alleges that Highland acted improperly to sell  
2 certain assets of the fund, thereby damaging PCMG. That  
3 complaint has also never been served on Highland.

4 The Plaintiffs sought a stay of those matters before  
5 Highland could file a response, and the court -- the district  
6 court's entered stays in those matters. And Highland has filed  
7 motions for reconsideration and the motions to dismiss because  
8 they violate the injunction.

9 But, importantly, Your Honor, if you read the  
10 motions, Highland does not argue that Plaintiffs do not have a  
11 remedy for the alleged wrongs they say they suffer. Rather,  
12 Highland's argument is that any claims alleged in those  
13 lawsuits, just like any claims alleged in the lawsuit before  
14 Your Honor today, must proceed in bankruptcy court as part of  
15 the claims objection process. That's where they will have  
16 their day in court. The lawsuits don't go away. The  
17 injunction prevents them from continuing on in district court.

18 Accordingly, Highland is being totally consistent in  
19 all matters, and the litigations may not proceed there but must  
20 proceed before Your Honor. And, of course, none of these three  
21 matters are implicated by the Fifth Circuit appeal.

22 Your Honor, the amended motion was procedurally  
23 improper and is substantively without merit. And for all these  
24 reasons, we request that the Court deny the stay motion and  
25 proceed with the hearing on the motion to dismiss.

1 Thank you, Your Honor.

2 THE COURT: All right.

3 Mr. Sbaiti, you get the last word.

4 MR. SBAITI: Thank you, Your Honor.

5 Your Honor, the administrative claim process that was  
6 described as being the way that these claims were supposed to  
7 proceed, by the language of the order that we read, does not  
8 allow for these claims. Those claims are limited to a specific  
9 category of claims that don't include the claims that are  
10 alleged in this lawsuit.

11 And in any event, this lawsuit wasn't filed as an  
12 administrative claim. So if that's the case and it needs to be  
13 refiled or reasserted as an administrative claim, then I think  
14 that's a subject for another day. All I know is that we have  
15 this injunction right now that either should stay this case  
16 pending the appeal, which I'll address the issue on appeal in a  
17 moment, or it should be dismissed, perhaps without prejudice so  
18 that it can be refiled properly as an administrative claim if  
19 that's what's supposed to happen, because I guess this converts  
20 the matter.

21 The appeal, the subject of the appeal as to the  
22 injunction, Your Honor, the appeal actually encompasses many of  
23 the issues that we're talking about in this case. Now Mr.  
24 Pomerantz tries to narrow the scope of what's up on appeal, and  
25 that may indeed be the argument that they're going to present

1 to the Fifth Circuit or that they've presented to the Fifth  
2 Circuit.

3 But the actual issue up on appeal is the  
4 enforceability and validity of the order for a variety of  
5 reasons which includes the provision that we're talking about  
6 and the enforceability of the provision that we're talking  
7 about because it gets rid of particular claims. And I guess  
8 the argument back is, no, it doesn't because there's now an  
9 alternative means of going there.

10 Mr. Pomerantz says that we shouldn't have proffered a  
11 motion to enforce the reference. That proffer, however, was  
12 because Judge Boyle's reference to this Court didn't deal with  
13 our motion to -- our cross-motion to withdraw the reference.  
14 All it dealt with was their motion to enforce the reference as  
15 a -- to enforce the standing order in the district court. And  
16 that's all she ordered was she cited the standing order and the  
17 statutes, I think it's 157(a), and that's really all it did.

18 So it left open the question of whether she wanted  
19 Your Honor to deal with the withdrawal of the reference  
20 specifically as to the 12(b)(6) issue in the first instance.  
21 It didn't resolve the question. It doesn't purport to resolve  
22 that question. And it's not unheard of for the district court  
23 then to send the matter to the bankruptcy court and then to  
24 piecemeal which proceedings the withdrawal of the reference is  
25 applicable to and then all the other proceedings would stay



1 with Your Honor or with the bankruptcy court.

2           So we weren't flouting the district court's order,  
3 and we certainly weren't flouting any of the previous orders.  
4 And the threat of a sanction for simply exercising our rights  
5 in due course is not well taken.

6           Now Mr. Pomerantz says, well, the DAF and CLO Holdco  
7 are not parties to the appeal. I don't think that's relevant  
8 because if the provision is struck by the Fifth Circuit, it's  
9 not only struck for the appellants, it's struck as to all.  
10 It's either valid or it's invalid. And even if it's declared  
11 to be invalid only as to the appellants, it's not suddenly  
12 valid as to everyone else who didn't appeal. That's not  
13 generally how these appeals have worked.

14           If the Court doesn't stay this matter, Your Honor,  
15 and doesn't dismiss it, we still maintain, Your Honor, that as  
16 it stands today, the question on the merits have been mooted  
17 and we cannot proceed. I think what Mr. Pomerantz is hoping  
18 for or the debtor is hoping for is a provision where our hands  
19 are potentially tied to argue the motion.

20           And if the Court tells us they're not, then we'll  
21 certainly argue the 12(b)(6). But what I don't want to do is  
22 argue a 12(b)(6) motion that on its face appears to violate the  
23 permanent injunction and then be held in contempt for violating  
24 that injunction.

25           And so that's why we've asked for the Court to either

1 stay the matter under its inherent jurisdiction or to -- if  
2 you're going to -- if it's not going to be stayed, then we  
3 believe it has to be dismissed according to the permanent  
4 injunction as it stands right now.

5 THE COURT: All right.

6 The motion to stay is denied. The amended motion to  
7 stay is likewise denied. This is an odd argument. I guess one  
8 might say the traditional four-factor test for a stay of a  
9 proceeding has really not been the subject of the argument here  
10 for a stay.

11 So suffice it to say the four-prong test for a stay,  
12 you know, hasn't been met here. There hasn't been a showing of  
13 substantial likelihood of success on the merits or irreparable  
14 injury if the stay's not granted or a stay will not  
15 substantially harm others or the stay would serve a public  
16 interest.

17 But going on to the arguments that were focused on by  
18 movant, I just don't think that you have shown that, you know,  
19 either the exculpation clause or the injunction provisions of  
20 the plan somehow tie your hands in arguing the 12(b)(6) motion,  
21 defending against the 12(b)(6) motion today or I just think  
22 that your arguments reflect, frankly, a misunderstanding of how  
23 the injunction language and exculpation language applies here.

24 So the motion for stay is denied, and I will ask Mr.  
25 Pomerantz to submit an order reflecting the Court's ruling.

1           So it looks like we have another procedural matter,  
2 Mr. Sbaiti. You filed a motion to strike reply appendix of the  
3 Plaintiffs quite a while back. So did you want to present  
4 that?

5           MR. SBAITI: Yes, Your Honor. I think it's a very  
6 simple procedural issue.

7           Generally, a party that files a 12(b)(6) is limited  
8 to the four corners of the complaint. And if there's a  
9 contract incorporated or a document incorporated as an  
10 intrinsic part of the complaint, you know, that's usually  
11 considered under the 12(b)(6) motion.

12           What the Defendants did, what the debtor here did is  
13 they filed a bunch of evidence in their 12(b)(6), essentially  
14 attempting to argue it as a summary judgment. We raised that  
15 in our response. So as part of our response, we objected to  
16 all the evidence. But then on the reply, they filed a bunch  
17 more evidence both without leave and improperly, basically  
18 sandbagged us.

19           And so we raised two points for striking that  
20 evidence. One was akin to the first argument, which is it's  
21 not an evidentiary hearing. It's not an evidentiary process in  
22 the first instance. A 12(b)(6) motion has to assume that the  
23 facts pled are true, and then the question is whether they  
24 state a claim.

25           And, secondly, adding them to the reply is especially

1 egregious because the reply is the last word. And we didn't  
2 have an opportunity to respond, and we also don't think it's  
3 relevant nor should we have to respond to a whole bunch of  
4 extra evidence that was attached.

5 That's essentially the basis of our motion, Your  
6 Honor.

7 MR. POMERANTZ: Your Honor, the simple answer to the  
8 issue is we filed the reply of the appendix in connection with  
9 the motion to enforce the reference. We didn't file it in  
10 connection with the motion to dismiss. The motion to enforce  
11 the reference is moot. So what Mr. Sbaiti, his whole argument  
12 doesn't make any sense.

13 As a substantive matter, just there wasn't any  
14 evidence. It was pointing to court pleadings, orders, and  
15 stuff. So it's irrelevant. I don't know why it's still on the  
16 docket. It shouldn't be on the docket since it related to the  
17 motion to enforce the reference.

18 THE COURT: All right. Mr. Sbaiti, did you just  
19 simply --

20 MR. SBAITI: Your Honor, much of that evidence was --

21 THE COURT: -- misunderstand or what?

22 MR. SBAITI: I think we might have because it was  
23 filed as a separate item, and it may have been miscalendared or  
24 misapplied on our system. But the way it was presented to us  
25 when we got it was it appeared to be evidence in support of,

1 well, I guess both, but certainly evidence that was averted to  
2 in the reply.

3 But if they're saying that the Court's not going to  
4 consider it, then that moots the motion and I think we can move  
5 on.

6 MR. POMERANTZ: Yes, Your Honor. I had nothing to do  
7 with his motion. I guess there was another mistake on their  
8 end. I guess that stuff happens occasionally.

9 THE COURT: Okay. All right. So I'll deny it as  
10 based on a mistake that's been acknowledged here. And so with  
11 that, let's have an order cleaning that up, as well, Mr.  
12 Pomerantz, please.

13 With that, we'll move on to the Defendants' motion to  
14 dismiss complaint. I think, Mr. Pomerantz, you said Mr. Morris  
15 will be making this argument?

16 MR. POMERANTZ: That is correct, Your Honor.

17 THE COURT: All right.

18 Mr. Morris, I'll hear your argument.

19 MR. MORRIS: Good morning, Your Honor. John Morris  
20 for Pachulski Stang Ziehl & Jones for the reorganized debtor.  
21 Can you hear me okay?

22 THE COURT: I can. Thank you.

23 MR. MORRIS: Okay.

24 Your Honor, this is a bit like Groundhog's Day. I  
25 believe that we're going to spend the next half hour or an hour

1 discussing the very issues that were before the Court earlier  
2 this year on the HarbourVest 9019 motion.

3           As the Court will recall from the June 8 hearing,  
4 there is a complaint that's been filed ostensibly by the DAF  
5 and CLO Holdco. As Your Honor will recall, the testimony  
6 established that Mark Patrick had just been installed as the  
7 trustee, had no knowledge of the prior events, and Mr. Dondero  
8 and Mr. Sbaiti spent quite some time together formulating this  
9 particular complaint that is nothing less than a collateral  
10 attack on the Court's prior order.

11           I'd like to, if I can, just walk through a PowerPoint  
12 presentation to try to make the debtor's position quite clear,  
13 if I may.

14           THE COURT: You may.

15           MR. MORRIS: And I would ask my assistant, Ms. Canty  
16 (phonetic), to put up the first slide.

17           Your Honor, you'll recall that last December, the  
18 debtor filed its motion under Rule 9019 for court approval of a  
19 settlement. The debtor was completely and utterly transparent  
20 in what the terms of the settlement were.

21           Very briefly, as set forth in Appendix 2 or Exhibit 2  
22 which was the motion itself, in Paragraph 32, Your Honor, the  
23 debtor set forth the terms of the transaction for which it was  
24 seeking approval. Those terms included in the very first  
25 bullet point a statement that HarbourVest shall transfer its

1 entire interest in CLOF to an entity to be designated by the  
2 debtor.

3           And that's an important point that we'll talk about  
4 in a number of different contexts, Your Honor. The debtor made  
5 it very clear at the very first moment of this matter that it  
6 was not going to acquire the asset but the asset was going to  
7 be transferred to an entity to be designated by the debtor.  
8 The debtor's motion filed last December clearly stated the  
9 value of the interest that it would be acquiring in return.  
10 That was also set forth in Paragraph 32 in a footnote.

11           It didn't say that it was the fair market value. It  
12 said the method of valuation was the net asset value and gave a  
13 valuation date of December 1st so that all parties in interest  
14 who received the motion understood the economics of the deal.  
15 And the deal that the debtor was asking the Court to approve  
16 was one whereby HarbourVest would receive certain claims and in  
17 exchange for those claims, they were going to transfer their  
18 interest in CLO -- HCLOF.

19           The debtor also filed on the docket for all to see a  
20 copy of the settlement agreement. The settlement agreement  
21 sets forth the terms of the deal, including again the statement  
22 that HarbourVest "will transfer all of its rights, title, and  
23 interest in HCLOF." It actually says to an affiliate or an  
24 entity to be designated by the debtor. And the transfer  
25 agreement itself was also put on the docket.



1           So that's where things stood just before Christmas.  
2 I know that there's some due process and other type arguments  
3 that are in the Plaintiffs' opposition to the motion. But, of  
4 course, the undisputed facts are that the debtor timely filed  
5 the motion. The time period was consistent with all applicable  
6 rules. Nobody ever asked the debtor for an extension of time.  
7 Nobody ever filed a motion for an extension of time. And so  
8 those due process arguments I think carry no weight at all.

9           So the debtor filed the motion. And if we can go to  
10 the next slide, we see what the responses were, and there were  
11 several. All of the responses, the only responses were  
12 objections to the motion filed by Mr. Dondero and his certain  
13 of his affiliated entities.

14           Mr. Dondero's objection can be summarized as follows.  
15 He made the following observations and asserted the following  
16 objections to the proposed settlement. The first thing he said  
17 is that the settlement far exceeds the bounds of  
18 reasonableness. Now, of course, one cannot make a  
19 determination of reasonableness without having an understanding  
20 of value. The debtor was giving something and it was getting  
21 something.

22           And so Mr. Dondero understood that the issue of value  
23 was front and center. If there was any mistake about it, he  
24 also noted that he understood that as part of the settlement  
25 and, again, I've written this incorrectly, HarbourVest will

1 transfer its entire interest in HCLOF to the debtor. That is  
2 not what Mr. Dondero understood. In fact, Mr. Dondero  
3 understood that it would transfer its entire interest in HCLOF  
4 "to an entity to be designated by the debtor," again, making it  
5 clear that he knew exactly what the debtor was doing here. And  
6 that can be found at Appendix 4 in Footnote 3 on Page 1 if you  
7 want the exact quote from Mr. Dondero's pleading.

8           In the same footnote, he also specifically  
9 acknowledges that he understood the valuation. He understood  
10 the method valuation. He understood the valuation date of  
11 December 1st. And he urged the Court in his pleading to  
12 scrutinize the settlement to make clear that the available  
13 value of the investment should be realized by the debtor's  
14 estate.

15           And this is such a critical point, Your Honor. His  
16 concern was that by placing the value in an entity other than  
17 the debtor itself, that the Court wouldn't have jurisdiction  
18 over that asset. That was his concern. So not only did he  
19 understand that the asset was going to be transferred to an  
20 affiliate, he wanted to make sure that this Court had  
21 jurisdiction over the asset.

22           And, of course, Mr. Seery in his testimony and  
23 otherwise, we provided the Court with all the comfort it needed  
24 to know that even though it was being assigned to a special-  
25 purpose vehicle wholly-owned by the debtor, it would

1 nevertheless be subject to the Court's jurisdiction.

2 Mr. Dondero's trusts also filed an objection if we  
3 can go to the next slide.

4 Dugaboy and Get Good represented by Douglas Draper  
5 made the following observations and asserted the following  
6 objections to the HarbourVest Settlement. They, too, made  
7 clear that they understood that the asset was going to be  
8 transferred to an entity designated by the debtor. They, too,  
9 acknowledge that they understood that the debtor was valuing  
10 the asset at approximately \$22 million as of December 1st. And  
11 their objection was that the Court couldn't evaluate the  
12 settlement without knowing how the asset was valued, without  
13 knowing whether the debtor could acquire the asset, very  
14 critical point.

15 These are the points that are made in the complaint.  
16 These are the exact same points that are made in the complaint.  
17 And also the Court couldn't evaluate the settlement unless they  
18 understood that the value would be inure to the benefit of the  
19 debtor's estate, again, mimicking Mr. Dondero's concern that by  
20 placing the asset in an affiliate of the debtor, that it might  
21 not be subject to the Court's jurisdiction.

22 Finally, and most importantly, if we can go to the  
23 next slide. The Plaintiff, CLO Holdco, filed an objection to  
24 the 9019 motion. And this is just so critical. And this is  
25 the Groundhog Day aspect that I specifically speak of. CLO

1 Holdco's objection was based solely on its assertion that it  
2 had a superior right to the opportunity to acquire the asset  
3 that was being transferred by HarbourVest. It only made one  
4 argument in support of its contention that it had a superior  
5 right, but that argument was specifically premised on the  
6 membership agreement, Section 6.1 and 6.2 of the membership  
7 agreement.

8 CLO Holdco, the Plaintiff in the underlying action,  
9 argued to this Court that HarbourVest had no authority to  
10 transfer the asset without complying with the right of first  
11 refusal that would give CLO Holdco the opportunity to take the  
12 asset for itself. That's what this Court was told. CLO Holdco  
13 didn't make this argument fleetingly. They provided an  
14 extraordinarily detailed analysis of Sections 6.1 and 6.2 of  
15 the membership agreement and concluded "that HarbourVest must  
16 effectuate the right of first refusal before it can transfer  
17 its interest in HCLOF. That was the objection. Objections  
18 have consequences, as Your Honor knows.

19 If we can go to the next slide.

20 By filing an objection, CLO Holdco and the trusts and  
21 Mr. Dondero became participants in the litigation.  
22 Notwithstanding the Plaintiffs' arguments to the contrary, when  
23 they file the objections, they participate in what's called a  
24 contested matter. And in a contested matter, they had every  
25 right to take all discovery on any issue that was related to

1 the 9019 motion, including the transfer, the disposition of the  
2 asset to an affiliate of the debtor, the valuation of the asset  
3 that's being received, the merits of the settlement itself, the  
4 causes of action, whether, you know, what communications that  
5 were, the negotiations, what did Mr. Seery and Mr. Pugatch  
6 discuss? Right?

7           They could have taken any discovery they wanted. And  
8 they did avail themselves of discovery, in fact. They did -- I  
9 don't know why they did what they did, but they chose to take  
10 one deposition, and that was Mr. Pugatch, okay.

11           His deposition transcript, I think is at Exhibit 7,  
12 or Appendix Number 7, and it was a long deposition. It really  
13 was. And they asked Mr. Pugatch at the deposition if he knew  
14 what the value of the asset that was being transferred was.  
15 And he said \$22.5 million. So it wasn't just Mr. Seery or the  
16 debtor who was subscribing to this valuation. The party on the  
17 other side of an arm's length negotiation was subscribing to  
18 the exact same valuation.

19           The Plaintiffs could have taken whatever discovery  
20 they wanted. This is a full and fair opportunity to  
21 participate in the litigation. We proceeded to trial. Before  
22 we got there, actually, the debtor filed its response to CLO  
23 Holdco's objection and proffered its own very detailed and  
24 apparently very persuasive analysis that CLO Holdco's objection  
25 was without merit, that CLO Holdco had no right of first

1 refusal under the facts and circumstances as they existed, and  
2 with Grant Scott, Mr. Dondero's childhood friend at the helm,  
3 we got to Court for the contested hearing on the debtor's 9019  
4 motion, and CLO Holdco withdrew their objection.

5           And I've put up on the screen just an excerpt of the  
6 transcript because, you know, when we talk about whether or *res*  
7 *judicata* should apply, because was there a hearing on the  
8 merits? Was there a decision on the merits? Just look at the  
9 words of CLO Holdco's lawyer. "CLO Holdco has had an  
10 opportunity to review the reply briefing and after doing so has  
11 gone back and scrubbed the HCLOF corporate documents based on  
12 our analysis of Guernsey law."

13           And some of the arguments of counsel in those  
14 pleadings and our review of the appropriate documents, counsel  
15 obtained the authority from Mr. Scott to withdraw the CLO  
16 Holdco objection based on the interpretation of the member  
17 agreement. We were grateful for that and the Court  
18 specifically said in response, "That eliminates one of the  
19 major arguments that we had anticipated this morning."

20           Apparently, the Plaintiffs believe that those events  
21 have no meaning and that this Court's reliance on CLO Holdco's  
22 substantive withdrawal of its objection has no meaning. I  
23 think they're wrong, and we'll get to that in a moment.

24           We proceeded with the hearing. Mr. Seery and  
25 Mr. Pugatch testified at length. If you look at Footnote 3,

1 you'll see Mr. Seery testified for almost 70 pages of  
2 testimony. Mr. Pugatch testified for almost 45 pages of  
3 testimony. His testimony was exhaustive. And, again, any of  
4 the objecting parties had the right to ask whatever questions  
5 they want.

6 But I do want to just note a few things that aren't  
7 up on the screen right now. If you go to Appendix 9, Your  
8 Honor, which is the transcript of the hearing, at Page 13, you  
9 will see that the very first thing I discussed in my opening  
10 statement was the economics and how with a valuation of \$22.5  
11 million this deal made sense for the debtor.

12 You will see from Pages 30 to 42 there is extensive  
13 testimony from Mr. Seery about the amount and the value of the  
14 asset. But the most important part of Mr. Seery's testimony is  
15 that he explains how it came to be that HarbourVest agreed to  
16 transfer its interest in HCLOF to an affiliate of the debtor.  
17 And that came about, not because Mr. Seery or the debtor was  
18 initially at all interested in doing this. The whole idea  
19 originated with HarbourVest.

20 They wanted to extract themselves from the Highland  
21 platform. They wanted to give this piece up. So there's no  
22 conspiracy going on here. The unrebutted testimony that all of  
23 the objecting parties had an opportunity to challenge was that  
24 the whole idea originated with Mr. Pugatch and with  
25 HarbourVest. I think that's an important point to take into



1 account.

2           And finally, again, from the hearing, if you look at  
3 at Appendix 9, you'd also find that Mr. Pugatch, again,  
4 testified, as he had in his deposition, as to the value of the  
5 interest being transferred. So we completed the testimony. We  
6 rested our case having had a full and fair opportunity to  
7 contest the motion. The objecting parties rested as well. And  
8 we got to the point where we had to prepare the notice, and we  
9 were discussing that at the hearing, if we can go to the next  
10 slide.

11           And it's very important, because again, this was all  
12 done transparently, and it was all done on the record. And  
13 after the close of evidence, I addressed the order that was  
14 going to be prepared. I specifically said that I wanted to  
15 make clear that we were going to include a provision, "that  
16 specifically authorizes the debtor to engage in, to receive  
17 HarbourVest the asset, you know, the HCLOF interest," right. I  
18 wanted everybody to know that was what was going to happen, and  
19 then I said, "The objection has been withdrawn." I think the  
20 evidence is what it is and we want to make sure that nobody  
21 thinks they're going to go to a different court somehow to  
22 challenge the transfer. But yet, that is exactly what the  
23 complaint seeks to do.

24           Having put everybody on notice as to where we were  
25 going, as to what the evidence showed, the debtor drafted and

1 the Court adopted an order, and the order says, among other  
2 things, that HarbourVest was authorized to transfer its  
3 interest to the debtor. Actually, it says, "to a wholly owned  
4 and controlled subsidiary of the debtor," pursuant to the  
5 transfer agreement, "without the need to obtain the consent of  
6 any party or to offer such interest first to any other investor  
7 in HCLOF." So the Court heard the 9019 motion pursuant to a  
8 Bankruptcy Rule and entered an order that was unambiguous and  
9 that the Plaintiffs did not appeal from.

10 We can go to the next slide.

11 At a very high level, Your Honor, it is just crystal  
12 clear that the complaint is just inextricably intertwined with  
13 the 9019 proceedings and the order itself. I think Mr. Sbaiti  
14 would agree with me that but for the order that approved the  
15 transfer of the asset and the testimony about the value of that  
16 asset, they have no claims.

17 Every single claim is predicated on what happened in  
18 the 9019 hearing. Every single claim is predicated on the  
19 Court's order approving the transfer of the asset and the  
20 testimony and evidence that was adduced in relation to that  
21 asset.

22 There were really only two issues that the Court -- I  
23 mean, if you want to think about it at its most simplistic  
24 level, the Court was being asked to assess, is it fair, is it  
25 reasonable, is it legally permissible for the debtor to give

1 something. In this case, allowed claims and releases, and to  
2 get something in return. In this case, HarbourVest's interest  
3 in HCLOF and releases in return. And that is really the  
4 gravamen of the complaint.

5           The complaint is based whether it's breach of  
6 fiduciary duty or RICO or breach of contract or tortious  
7 interference, whatever the claim is, none of them exist if the  
8 debtor doesn't get this. They just don't exist. And that is  
9 why the complaint and the proceeding are inextricably  
10 intertwined. And if you just take a look at just one paragraph  
11 of the pleading, it says at the core of this lawsuit is the  
12 fact that HCM, that's the then debtor, purchased the  
13 HarbourVest interests in HCLOF for \$22.5 million knowing that  
14 they were worth far more than that. There's not a cause of  
15 action that exists in the complaint that isn't dependent on  
16 Paragraph 36.

17           So if we can go to the next slide with that  
18 background, I'd like to argue why under 12(b), the complaint  
19 should be dismissed because the claim should be barred under  
20 the doctrine of *res judicata*. Luckily, Your Honor, there is at  
21 least one area of agreement between the parties here, and that  
22 is the purpose of the doctrine and the elements that have to be  
23 satisfied in order to meet the burden of proof necessary to  
24 have the claims barred. And in Footnote 1, you can -- I've  
25 tried to just be helpful to the Court to show that we may not

1 cite to the exact same cases, but the parties agree that the  
2 doctrine is intended to foreclose the re-litigation of claims  
3 that were or could have been raised in a prior action and that  
4 there's four elements that have to be satisfied for the  
5 doctrine to apply.

6           The parties have to be either identical or at least  
7 in privity, the judgment in the prior action had to have been  
8 rendered by a court of competent jurisdiction. Number three,  
9 the prior action had to have been concluded by a judgment on  
10 the merits. And the last one is that the same claim or cause  
11 of action was involved in both suits. So I just want to spend  
12 a few minutes now, Your Honor, going through those four  
13 elements to show the Court how easily the reorganized debtor  
14 meets this standard.

15           If we can go to the next slide, I can take care of  
16 the first two elements very quickly.

17           The first element, the debtor asserted that the  
18 Plaintiffs were parties or in privity with parties to the prior  
19 proceeding. That's at Paragraph 17 of the motion to dismiss.  
20 The debtor relies on the deposition testimony of Grant Scott,  
21 who was then the trustee of the DAF.

22           CLO Holdco is a wholly-owned subsidiary of the DAF,  
23 or wholly controlled, in any event, and Mr. Scott's testimony  
24 was that he was the only director and there were no employees  
25 of either entity. So we, in our motion, put forth evidence to

1 establish the first element, and I don't believe, maybe I've  
2 missed it. I don't believe that the Plaintiffs have contested  
3 that element. If they have, I think Mr. Scott's testimony will  
4 carry the day, in any event.

5           The second element as to whether or not a court of  
6 competent jurisdiction is the entity or the court that rendered  
7 the ruling. Of course, that's been met, too. The Plaintiffs,  
8 in their opposition to the motion to dismiss, suggested that  
9 the bankruptcy court would have lacked jurisdiction if their  
10 cross motion to withdraw the reference was granted. They said  
11 if the district court decides that mandatory withdrawal  
12 applies, then it cannot find that the bankruptcy courts already  
13 entered final judgment was rendered on Plaintiffs' causes of  
14 action and had jurisdiction to do so. I think that's just a  
15 clear misstatement of the law.

16           But in any event, Your Honor, at this point, I  
17 believe it's irrelevant because the district court, in fact,  
18 sent the case back to Your Honor and back to this Court. And  
19 so, at the end of the day, Plaintiffs' argument doesn't hold  
20 water because of the district court's ruling, which can be  
21 found -- the order of reference can be found at Docket  
22 Number 64. And so I think that easily takes care of the second  
23 prong.

24           The third prong is whether -- if we can go to the  
25 next slide -- the prior proceeding resulted in a judgment on

1 the merits. And this is really the critical point, Your Honor.  
2 As the Court knows, the whole doctrine of *res judicata* is  
3 designed to prevent, as the parties agree, the re-litigation of  
4 claims. Stated another way, it's to bring finale. It's to  
5 make sure that the Court doesn't hear the same claims and the  
6 same issues that either were brought or that could have been  
7 brought in a prior proceeding. And so, we believe that we  
8 easily meet the standards set forth in the third prong. The  
9 9019 order necessarily determined that the *quid pro quo* that I  
10 described earlier was fair, reasonable, and legally  
11 permissible.

12           Notwithstanding their assertions to the contrary, the  
13 Plaintiffs are most definitely seeking to unwind at least one  
14 half of the Court's order by belatedly claiming that they are  
15 entitled to the benefit of the bargain while leaving Highland  
16 burdened, frankly, with the claims that HarbourVest got as part  
17 of the deal. I will tell you, Your Honor, and this is  
18 argument, the debtor would never have asked for, and I don't  
19 believe that the Court would ever have granted, the 9019 motion  
20 if they thought that there was a risk in the future that  
21 Highland wouldn't get the benefit of the bargain and it was  
22 incumbent upon CLO Holdco and the DAF, and frankly, any party  
23 in interest, to stand up and be counted and tell the Court and  
24 the debtor, why the debtor was not entitled to do this deal and  
25 CLO Holdco did that. They actually did.

1           They stood up and they filed an objection and they  
2 said we have a superior right to this asset in the form of a  
3 right of first refusal. They wound up folding in the face of  
4 persuasive argument, and I respect the lawyer who did that. I  
5 just do. But that was the time to speak up, and that's why it  
6 is on the merits because that is exactly what *res judicata* is  
7 intended to do. It's intended to have everybody put your cards  
8 on the table. You don't put one card on the table and say, I'm  
9 going to challenge this under 6.2 of the members agreement, but  
10 I'm not going to tell you that I also think you owe me a  
11 fiduciary duty under the Advisors Act or as the control party  
12 or under any other theory that they had. They can't do that.  
13 That's exactly what the problem is here.

14           If we can go to the next slide. Is it a judgment on  
15 the merits? The debtor and the Court relied on CLO Holdco's  
16 representation that it was withdrawing its argument, its claim,  
17 its contention, its assertion that it had a superior right to  
18 obtain the HarbourVest interest in HCLOF. Again, they did so  
19 not whimsically, not because Mr. Kane was going to be out of  
20 town and he couldn't make the hearing. He did it after, and I  
21 don't think this matters frankly, but I think it's worth noting  
22 that he did it after an extremely careful analysis. I would  
23 tell you, Your Honor, that -- well, I would argue, Your Honor,  
24 that even if Mr. Kane at CLO Holdco had never filed an  
25 objection, if they'd never filed -- if they'd gotten notice



1 that this was happening and they sat silently, that would have  
2 been enough for *res judicata* because the issue before the Court  
3 was whether it was legally permissible for the debtor to  
4 acquire this asset.

5           And if they had an obligation, if they owed a duty to  
6 another party, it wouldn't have been legally permissible. And  
7 if somebody believed that it wasn't legally permissible because  
8 a duty was owed to them, they had an obligation to speak up.  
9 And so I think it's very important, particularly for the  
10 collateral estoppel argument that I'll make in a moment, that  
11 CLO Holdco did in fact file an objection. It was based on the  
12 breach of contract claim that's in their complaint. It's the  
13 exact same claim. And they withdrew it. I think it's very,  
14 very important. I think it highlights why *res judicata*  
15 applies. I think it is the linchpin of the collateral estoppel  
16 argument.

17           But at the end of the day, I think if they say  
18 nothing, they should be estopped or precluded under *res*  
19 *judicata* from now asserting -- it would be like -- I was  
20 thinking about this earlier, Your Honor. If you'll remember  
21 earlier this year, Mr. Dondero and his entities have kind of a  
22 habit of withdrawing objections at the last minute. We had a  
23 couple of sale hearings earlier this year. And the issue was  
24 valuation, you know, and the process, and could the debtor meet  
25 its burden of proving that the sale outside of the ordinary

1 course of business was in the debtor's best interest. And they  
2 sold that restaurant. And Mr. Dondero objected. And at the  
3 last second, they withdrew the objection. Did they sue  
4 tomorrow? Does Your Honor really think that they could bring a  
5 lawsuit tomorrow and say they just found a document or theory  
6 on which the debtor had an obligation to give them a right of  
7 first refusal, even though we've already closed on the  
8 transaction, even though they were given notice of the  
9 transaction, even though they filed an objection to the  
10 transaction, even though they withdrew the objection? Would  
11 the Court tolerate for one second a new pleading tomorrow from  
12 Mr. Dondero that the debtor actually had a fiduciary duty to  
13 give him a right of first refusal to buy that asset under  
14 whatever theory, just because he pleads it and the Court has to  
15 accept as true the allegations in the complaint? I think not.  
16 And I think it's worth thinking about that to highlight just  
17 how -- just how wrong this is.

18           Continuing on. You know, the Plaintiffs in  
19 opposition say it can't be a trial on the merits because we  
20 weren't parties. Of course they were parties. Again, they  
21 filed an objection. They were the parties to the contested  
22 matter, full stop. They rely on a case called Applewood and  
23 they say, this is the very first point they make in their  
24 brief. Applewood, if it wasn't *res judicata* in Applewood, how  
25 could it possibly be *res judicata* here? But the facts are just

1 so inapposite, right?

2           In Applewood, you had a garden variety plan and  
3 release where the debtor and the officers and directors got a  
4 discharge. No objection to it. And a secured lender later on  
5 sought to sue guarantors who happened to be officers and  
6 directors. And the court, not surprisingly, said that the  
7 confirmation order wouldn't prevent the secured lender from  
8 going after the officers and directors, not in their  
9 capacities, as such, but in their capacity as guarantors, which  
10 were never part of the confirmation order. That just doesn't  
11 apply here because here, we have the debtor making a motion  
12 before the Court in which it sought permission and authority to  
13 acquire a particular asset. Anybody who had a claim to that  
14 asset should have stepped forward and put their cards on the  
15 table.

16           And again, CLO Holdco put their cards on the table  
17 and they lost, and they folded. To use the poker analogy, they  
18 folded. And to hear them come into Court today and say we're  
19 going to sue you because I reshuffled the deck, it's not right  
20 and Applewood has no relevance.

21           Finally, Your Honor, you know, it's not on the  
22 merits, they say, because you know, Mr. Seery and the debtor  
23 hid the true value of the asset, and had we only known the true  
24 value of the asset, we would have made all of these other  
25 claims. The fact of the matter is, you either have a fiduciary

1 duty or you don't. And if you had a fiduciary duty, they  
2 should have spoken up and they did only under 6.2, but they  
3 did.

4 But here's the important part, Your Honor. Take the  
5 allegations as true. You have to take all of the allegations  
6 as true, not just some of them. And if you look at  
7 Paragraph 127 of the complaint, and I would ask Ms. Canty to go  
8 to Appendix 11 and let's just put Paragraph 127 up on the  
9 board.

10 Here's the irony of the whole thing, right. The  
11 whole complaint is based on the fact that somehow Mr. Seery was  
12 engaged in insider trading. They accused him of insider  
13 trading, and they say he didn't disclose the full value of the  
14 asset. Just read Paragraph 127. James Dondero, who was on the  
15 board of MGM, is the tippee. You've got an insider trading  
16 case -- I mean, I don't represent MGM. I'm not with the SEC.  
17 I don't know why Mr. Dondero thought he should be telling  
18 Mr. Seery in December, 2020. It's not clear if it was before  
19 or after the 9019 motion was filed. But Mr. Dondero is the  
20 very source of information -- you can't make this up. He's the  
21 very source of the information that he now complains Mr. Seery  
22 didn't disclose.

23 Of course, Mr. Dondero, the trust, CLO Holdco could  
24 have asked Mr. Seery at any time, how did you come up with your  
25 valuation? Mr. Dondero, knowing that he had supplied to

1 Mr. Seery, according to Paragraph 27, please take it as true  
2 for purposes of this motion only. He's the source of the  
3 inside information. And now he has the audacity to come to  
4 this Court, notwithstanding the Court's approval, all of the  
5 time and money and effort spent in the 9019 process, and say,  
6 Mr. Seery was wrong because he didn't tell CLO Holdco and the  
7 DAF about the information that Mr. Dondero gave to Mr. Seery.  
8 It's not right.

9           It was a judgment on the merits. And if Mr. Dondero  
10 or the DAF or CLO Holdco or the trust wanted to challenge the  
11 valuation, they had every opportunity to do so. And based on  
12 Paragraph 127, if the Court accepts it as true, shame on them.  
13 Shame on them for not pursuing this issue before. The guy gave  
14 Mr. Seery, according to this allegation, and I'm just going to  
15 leave it there, inside information. And he sits there in  
16 silence, right? It says, look at the last sentence: "The news  
17 of the MGM purchase should have caused Seery to revalue HCLOF's  
18 investment." Seriously?

19           The third element is (indiscernible). The fourth  
20 element, if we can go to the next slide.

21           Are they the same claims? Did the claims arise from  
22 the same set of operative facts? I've addressed this pretty  
23 clearly already, so I don't want to belabor the point. But  
24 obviously, both the 9019 motion and the complaint arise solely  
25 from the debtor's settlement with HarbourVest. The debtor's

1 acquisition of HarbourVest's interest in HCLOF and the debtor's  
2 valuation of that interest. Without those three facts, there  
3 is no complaint. It's just not credible to argue that the  
4 fourth element is not met.

5           The case law is clear. It's quoted in the  
6 Plaintiffs' opposition. It's not just the test of whether the  
7 claims are the same. It's whether the claim is the same as  
8 that which was brought or could have been brought.

9           In their opposition, the Plaintiffs contend that the  
10 claims "did not write them until after the settlement was  
11 consummated," and that the first time the plaintiffs heard  
12 about the valuation of HarbourVest's interests was at the  
13 January 14, 2021, hearing. I think I quoted that. If you  
14 look, I don't know if it's Page 10 or Paragraph 10; the way I  
15 wrote it, it's probably Page 10. I think that's a quote right  
16 out of there. But of course, as we saw the debtor disclosed  
17 the valuation in its very initial motion, CLO Holdco's counsel  
18 elicited valuation testimony directly from Mr. Pugatch, so that  
19 was before the hearing.

20           And of course, Mr. Dondero and the trusts both cited  
21 in their objections the valuation. The notion that this was  
22 not right, just -- it's contradicted by their own conduct,  
23 their objections, their questions in deposition, the  
24 information that was contained in the motion that they objected  
25 to.

1 I do want to go off-script for just a minute, if we  
2 could just take that down because I know that this is probably  
3 something that Mr. Sbaiti may argue. And that is, well, gee,  
4 but you have to take the allegation as true that Mr. Seery  
5 wasn't honest, that Mr. Seery lied to the court. I don't  
6 understand why there's not a fraud cause of action in there,  
7 but there's not. But that's their theory.

8 And gee, how does he get to skate away Scott free if  
9 he's allowed to do that with impunity, right? I will tell you,  
10 Your Honor, of course you've seen Mr. Seery many times. You've  
11 made your own assessments of his credibility. I'm not here to  
12 argue the merits, but I will just say that the Defendants, if  
13 ever forced to, will contest the allegation.

14 But here's the thing, and here's the important point  
15 about, you know, whether or not he could lie with impunity and  
16 say, I suspect that's where Mr. Sbaiti is going to want to go.

17 Mr. Seery said what he said. And he had a reason to  
18 speak, and he spoke, and he said what he said and he told  
19 everybody who would listen exactly what he was doing and how he  
20 was doing it. For whatever reason, the objectors put the  
21 valuation front and center. It's right in their objections.  
22 They noted the objections. But for whatever reason, they did  
23 nothing.

24 Whether they were negligent or whether they were  
25 lying in wait is kind of irrelevant. They had a full and fair



1 opportunity to contest this issue. And if they had done so,  
2 and the evidence proved what they're now alleging, they can't  
3 tell you what would have happened. So, you know, HarbourVest  
4 may have taken a different position. The Court may have done  
5 something.

6 We're never going to know now because Mr. Seery and  
7 the debtor are getting away with something, but because they  
8 put in evidence that went unchallenged by Mr. Dondero and the  
9 Plaintiffs. It simply went unchallenged. And they say, oh,  
10 gee, that's because we didn't know. Well first of all, you  
11 didn't ask. And second of all, again, the source of the inside  
12 information, the reason that Mr. Seery should have known the  
13 asset was worth more. The reason that he should have refrained  
14 from trading and not engaged in insider information was  
15 Paragraph 127. It was Mr. Dondero.

16 Here's another thing. If -- if again Mr. Seery had  
17 not been honest with the Court and that was ever brought out,  
18 Maybe HarbourVest -- maybe HarbourVest would have had a right  
19 to complain. There's a lot in the complaint about oh,  
20 HarbourVest was misled. The actual evidence that's in the  
21 record, and this is part of res judicata, Mr. Seery testified  
22 very clearly to the arm's length negotiation that took place.  
23 He told the Court under oath that the negotiations were  
24 contentious.

25 He told the Court under oath that in order to try to

1 resolve the case, he and Mr. Pugatch went off and had their own  
2 private conversation without lawyers. They could have taken  
3 discovery on any of that, right. What did you guys talk about?  
4 It's certainly not privileged. They had every opportunity.  
5 But what we do know is that Mr. Pugatch under oath, in  
6 deposition, and at trial, said the value is \$22.5 million.

7           So I don't think Mr. Pugatch or HarbourVest is ever,  
8 ever, every going to complain about the transaction they did.  
9 Because of what the evidence simply shows. But again, you've  
10 got the Plaintiffs in their complaint saying that somehow the  
11 debtor and Mr. Seery in negotiating this transaction has now  
12 exposed the debtor to liability. It just makes no sense.

13           So there was a time and there was a place to  
14 challenge Mr. Seery. Somebody, you know, maybe HarbourVest  
15 could have done something, maybe they could still do something.  
16 I don't know. If they really think that there's a problem,  
17 maybe we'll hear from HarbourVest someday. But the Plaintiffs  
18 have no right to complain. They just don't. They knew  
19 everything. They were the source of the inside information.  
20 They sat on their hands, and they shouldn't be allowed to do  
21 what they're doing now.

22           If we can go to the next slide. I want to move to  
23 the next theory and try to finish this up. The next theory is  
24 that the Plaintiffs' claims are barred by judicial estoppel.  
25 The judicial estoppel argument is really, really very

1 straight-forward. And it's important because if the Court  
2 thinks about this the way I do, it's that the whole issue of  
3 valuation is completely irrelevant to the Plaintiffs unless  
4 they can show that they were owed some kind of duty, that they  
5 had some superior right to acquire the asset. But that's  
6 exactly the issue that CLO Holdco relied upon and withdrew and  
7 should now be estopped from pursuing. Right.

8           The legal standard, again the parties agree on, that  
9 in order to be estopped, the party must take an inconsistent  
10 position. And the party must have convinced the Court to  
11 accept that position. Again, both prongs are easily met here  
12 in just a few sentences from the January 14 hearing. You have  
13 Mr. Kane saying that he understands and acknowledges and admits  
14 that they have no superior right to the investment. And the  
15 Court relying on that very representation in declining to  
16 conduct a hearing and render a ruling on the merits of the  
17 claim that was withdrawn. The objection that was withdrawn.

18           And for the avoidance of doubt, after Mr. Draper  
19 spoke on behalf of the Trust, the Court, at Page 22 engaged in  
20 the following colloquy. The Court asked Mr. Draper:

21           "THE COURT: Were you saying that the Court still  
22 needs to drill down on the issue of whether the  
23 debtor can acquire HarbourVest's interest in HCLOF.

24           "MR. DRAPER: No.

25           "THE COURT: Okay. I was confused whether you were

1 saying I needed to take an independent look of that.

2 Now that the objection has been withdrawn of CLO

3 Holdco, you're not pressing the issue.

4 "MR. DRAPER: No. I am not."

5 Okay. You can call it *res judicata*, you can call it  
6 judicial estoppel, collateral estoppel, the two prongs are  
7 easily met. They're taking an inconsistent position today and  
8 through all kinds of different theories, including the one that  
9 they withdrew, the Plaintiffs assert that they had a superior  
10 right to acquire the interest from HarbourVest.

11 And they should have asserted those rights at the  
12 hearing. That was the time. And they should be estopped now  
13 from taking a completely inconsistent position from the one  
14 that was before the Court. And I just do want to point out,  
15 the statement from a case called Hall vs. G.E. Plastic. And  
16 it's interesting, Your Honor, because there's only a few cases  
17 that I focused on, because this is really more fact intensive.  
18 And there isn't a dispute as to the, you know, the elements of  
19 these matters.

20 But it is interesting that the Plaintiffs, you know,  
21 generally ignore all of the cases that we cite to. One which  
22 is Hall vs. G.E. Plastic, where the Court said that the focus  
23 on the prior success or judicial acceptance requirements is to  
24 minimize the degree of a party contradicting a Court's  
25 determination, based on a party's prior position. That's the

1 whole point of the exercise. You can't do this. You can't do  
2 this.

3 Just quickly, that leaves the individual arguments as to  
4 each of the five causes of action and I just want to go through  
5 some highlights. There's a negligence claim, Your Honor. And  
6 we did not file a pleading, but the Court can certainly take  
7 judicial notice of the fact that the effective date has  
8 occurred. Under the effective date, the plan is now effective.  
9 That includes the exculpation clause, as Mr. Pomerantz, I think  
10 accurately and without contradiction pointed out earlier, the  
11 exculpation clause applies specifically to the debtor and to  
12 negligence claims. And that's not a matter that's at all  
13 subject to appeal.

14 So I think just to add to the arguments that we have  
15 in our papers, which I adopt and do not abandon for any  
16 purpose, I would add to the argument on negligence, that it's  
17 now precluded, as a result of the plan becoming effective.

18 The fiduciary duty count suffers from numerous defects. I  
19 just want to point out a couple of them. They don't respond to  
20 the argument under Corwin, that under the Advisor's Act, there  
21 is no private right of action to sue for damages arising from a  
22 breach of fiduciary duty. This claim rears its head in  
23 virtually every single complaint. They've never addressed  
24 Corwin. Corwin is binding on this Court, and it is unambiguous  
25 that there is no private right of action to sue for damages for

1 breach of fiduciary duty under the Advisor's Act.

2           They ignore Goldstein. Goldstein is not from the  
3 Fifth Circuit, but it's very persuasive authority that advisors  
4 do not owe fiduciary duties to their individual investors.  
5 Instead, they owe fiduciary duty to their client. Their client  
6 is the entity with whom they're in contractual privity. And so  
7 in this case, there's no fiduciary duty there, either.

8           The breach of contract claim. Again I just -- I  
9 would just say quickly, Your Honor, it's barred under judicial  
10 estoppel. Even if it wasn't, it's clear based on Mr. James'  
11 analysis and admission that the debtor's, or the reorganized  
12 debtor's interpretation of 6.2 is accurate. And you know, I  
13 said this in the beginning. Now let me tie it in a bow because  
14 the breach of contract claim, and the tortuous interference  
15 claim are both tied to the same thing. And that is the  
16 assertion that the Plaintiffs had a right under the membership  
17 agreement, a right of first refusal.

18           And they basically say that the debtor was playing  
19 games. That they shouldn't be able to get through 6.2 by  
20 assigning it to an affiliate. And that's where I go back, Your  
21 Honor, and just remind the Court that the debtor told the whole  
22 world exactly what they were doing in their motion. And their  
23 objections, Mr. Dondero and the Trusts both acknowledge to the  
24 whole world that they understood exactly what was happening.

25           In fact, their concern was not that it was going to

1 the debtor, but that it might be going to an affiliate outside  
2 of the bankruptcy court's jurisdiction. And for them to now  
3 say, having taken all of those positions -- talk about  
4 inconsistent positions. They should be barred from saying  
5 today, that the use of an affiliate to effectuate the  
6 transaction was wrongful, because they actually told the Court  
7 that they needed to -- that the Court needed to make sure that  
8 it had jurisdiction over the very entity they now say somehow  
9 shouldn't have been allowed to get the asset.

10           It's a bit much. So that takes care of the tortuous  
11 interference.

12           The RICO claim, Your Honor, again is a motion.  
13 There's so many different aspects to it. But I don't think the  
14 Court needs to get past the Supreme Court holdings in HJ, Inc.  
15 Again, just simply ignored by the Plaintiffs in their  
16 opposition to the motion to dismiss. In HJ, Inc., the Court --  
17 the Supreme Court did an exhaustive analysis to try to  
18 determine and ultimately did determine, what a pattern of  
19 racketeering activity meant. And the Supreme Court came to the  
20 following formulation. That it had to have two or more  
21 predicate related offenses that amounted to a threat of  
22 continued criminal activities.

23           You know, the notion here is that the debtor and Mr.  
24 Seery engaged in insider trading. We've already -- I've  
25 already mentioned that according to the complaint, which the



1 Court can take as true. Mr. Dondero, himself, was the tippee.  
2 But be that as it may, they don't come close to meeting the  
3 very high standards set forth by the Supreme Court in HJ, Inc.  
4 to show that whatever conduct Mr. Seery and the debtor engaged  
5 in, and if you take the allegations as true, in not telling  
6 what the fair value of the asset was, that that doesn't amount  
7 to a hill of beans for purposes of RICO. That you don't have  
8 any, I think predicate acts. I think here's the Court,  
9 predicate acts extending over a few weeks or months,  
10 threatening no future criminal conduct, do not meet RICO  
11 pleading grounds. Right.

12 Security fraud claims cannot be predicate acts for  
13 purposes of RICO. That is also clear. And that is really, I  
14 mean they say mail, wire and fraud. But what's really at heart  
15 is the 10(b)(5). Okay, it's the 10(b)(5) claim. Again, Mr.  
16 Seery being -- I mean Mr. Dondero being the tippee. But those  
17 are just some of the reasons.

18 None of, you know, that the RICO claim fails. You  
19 know, I'll otherwise rely on the papers, unless the Court has  
20 specific questions as to any of the other pieces of the motion  
21 to dismiss the RICO claim, or any other aspect of the  
22 Defendants' motion. I think this is clear. I think we win, no  
23 matter how you slice it. It's just wrong. It's just wrong.

24 This Court will never, ever have a final order if Mr.  
25 Dondero is able to engineer complaints such as this, which seek

1 to assert claims that absolutely positively could have and  
2 should have been brought at the time the debtor made its  
3 motion.

4 Unless the Court has any questions, I have nothing  
5 further.

6 THE COURT: I do not. All right.

7 Mr. Sbaiti, I'm going to let you have as much time as  
8 Mr. Morris. He took 55 minutes. As I mentioned, I have a hard  
9 stop at 12:00 to do a swearing in ceremony. So if you're not  
10 finished in 40 minutes, then I'm going to have to take a break  
11 and come back and let you finish. All right?

12 MR. SBAITI: Thank you, Your Honor. Although I don't  
13 think I'm going to be much longer than 35-ish minutes.

14 THE COURT: Okay.

15 MR. SBAITI: if not less.

16 THE COURT: Okay.

17 MR. SBAITI: I think you'll be able to be done by --  
18 we'll be able to be done by noon.

19 THE COURT: All right. Thank you.

20 MR. SBAITI: Thank you, Your Honor. Your Honor, may I  
21 share my screen?

22 THE COURT: You may.

23 MR. SBAITI: Thank you, Your Honor. Do you see my  
24 Power Point, Your Honor?

25 THE COURT: I do.

1 MR. SBAITI: Thank you, Your Honor. I don't know  
2 what which one you see. Is it the --

3 THE COURT: I see presentation.

4 MR. SBAITI: With the full page?

5 THE COURT: Yes, uh-huh.

6 MR. SBAITI: Okay, yeah, great. I just want to make  
7 sure we're on the right page. Thank you, Your Honor. So Your  
8 Honor, the defendant debtor is a registered investment advisor.  
9 And it all begins with that. And this where the distinctions  
10 between what happened in the 9019 and I'll get to the elements  
11 of res judicata through argument.

12 But the first thing that has to be identified is that  
13 the Defendant is a registered investment advisor. The  
14 objection filed by Holdco back during the 9019 was an objection  
15 against HarbourVest selling its interest by filing the right of  
16 first refusal. It did not deal with the investment advisor  
17 feature of Highland's relationship. And I'll get to why the  
18 9019 doesn't preclude these arguments today.

19 This is essentially the structure. Highland was the  
20 investment advisor of HCLOF, and Holdco is an investor in  
21 HCLOF. And so Highland would owe a fiduciary duty under the  
22 Advisor's Act against -- to CLO Holdco.

23 Highland also had a direct advisor relationship with  
24 the DAF. And so under the Investment Advisor's Act, it owed  
25 fiduciary duties to both of those entities. The law governing

1 registered investment advisors is that it's a federally  
2 recognized and defined fiduciary duties. The fiduciary duty to  
3 there's a fiduciary duty to affirmatively keep the advisee  
4 informed and the fiduciary duty not to self-deal, i.e., not to  
5 trade ahead of an advisee and opportunity that an advisee would  
6 want or expect and without the advisee's expressed informed  
7 consent.

8 This is a federally recognized and defined fiduciary  
9 duty and it's actionable under state fiduciary duty laws.  
10 While Mr. Morris ended his argument by saying we didn't deal  
11 with their case law saying that there's no private right of  
12 action under the Advisor's Act, the fact of the matter is that  
13 Judge Boyle, about ten years ago, found that a state -- the  
14 breach of fiduciary duty claim can be predicated on breaches of  
15 federally imposed fiduciary duties under the Advisor's Act.  
16 And that's what Douglass v. Beakley held. And that's actually  
17 what we cited in our response. So I'm not sure why he would  
18 argue that we haven't addressed the issue of where does this  
19 private right of action come from.

20 Federal Law supplies the rules of the relationship  
21 and State Law provides the cause of action for those breaches.  
22 Now the scope of that has been expounded upon by many cases.  
23 The Fifth Circuit held in Laird, as a fiduciary, the standard  
24 of care to which an investment advisor must adhere imposes an  
25 affirmative duty of utmost good faith and full and fair

1 disclosure to all material facts, as well as an affirmative  
2 obligation to employ reasonable care to avoid misleading his  
3 clients.

4           The word "affirmative" there is important because it  
5 means the investment advisor is not supposed to wait to be  
6 asked. The investment advisor as an affirmative duty to  
7 proactively provide the information to the client.

8           The next standard comes from the SEC. We call it the  
9 SEC interpretation letter. It's a release that came out in  
10 2019. And to meet it's duty of loyalty, an advisor must make  
11 full and fair disclosure to its clients of all material facts  
12 relating to the advisor relationship. Material facts relating  
13 to the advisor relationship include the capacity at which the  
14 firm is acting with respect to the advice provided.

15           The SEC had another release in 2000 -- or excuse me,  
16 in that same release, the SEC said the duty of loyalty requires  
17 that an advisor not subordinate its clients interests to its  
18 own. In other word, an investment advisor must not place its  
19 own interest ahead of its clients' interests. An advisor has a  
20 duty to act in the client's best interest, not its own.

21           The SEC general instruction three to part 2 of Form  
22 ADV, that every investment advisor has to pull out. And this  
23 is cited in our papers. As a fiduciary, you must also seek to  
24 avoid conflicts of interest with your clients, and at a  
25 minimum, make full disclosure of all material conflicts of

1 interest between you and your clients that could affect the  
2 advisor relationship. This obligation requires that you provide  
3 the client with sufficiently specific facts, so that the client  
4 is able to understand the conflicts of interest you have, and  
5 the business practices in which you engage, and can give  
6 informed consent to such conflicts or practices or reject them.

7 And, finally, the Third Circuit in Belmont said:

8 "Under the best interest test, an advisor may benefit  
9 from a transaction recommended to a client if, and  
10 only if, that benefit, and all related details of the  
11 transaction are fully disclosed."

12 These fiduciary duties are unwaivable by the advisor.  
13 Any condition, stipulation or provision binding any person to  
14 waive compliance with any provision of this subchapter, or with  
15 any rule, regulation or order thereunder shall be void.

16 So the lawsuit does not allege that the HarbourVest  
17 settlement should be undone or unwound. I'd like to move to  
18 that point. Mr. Morris says well, you have to unwind half of  
19 the settlement. Maybe HarbourVest doesn't have to give back  
20 what it got, but Highland would still be saddled with the cost  
21 of the settlement, but not with the benefit of the settlement.

22 Well, actually that's not true. There's two points  
23 that we would make on that. Number one, our suit is a suit for  
24 damages. In other words, the suit would be a suit for money  
25 damages, based on the difference between the value of the asset

1 and what HarbourVest or what the actual value of the asset that  
2 was represented, \$22.5 million. So the second point, though,  
3 is that even under a situation where CLO or Holdco or the DAF,  
4 or even HCLOF were to purchase the HarbourVest suit, the  
5 expectation would obviously be that they'd pay the \$22.5  
6 million that Highland paid for it.

7           So Highland is -- so it's not unwinding, and there's  
8 no saddling Highland with a burden that they didn't otherwise  
9 have, I think that's a misrepresentation. But we're not  
10 seeking to unwind the lawsuit -- or excuse me, unwind the  
11 settlement.

12           Now Mr. Morris is correct, the representation of  
13 value by Mr. Seery is -- is one of the main points here. And  
14 the representation was that the value of the entire asset. Not  
15 just the shares of MGM, but the value of the entire asset was  
16 \$22.5 million. So in other word, nearly half of HCLOF was  
17 represented to be worth \$22.5 million. It was argued by  
18 counsel on Page 14 of the January 14th transcript, and then on  
19 Page 112 of that transcript, Mr. Seery specifically says the  
20 current value is right around \$22.5 million.

21           Now that was also in some of the filing papers and  
22 Mr. Morris put up the evidence to Your Honor that Mr. Pugatch,  
23 on behalf of HarbourVest also parroted that number. But  
24 there's not any evidence today about where that number came  
25 from, or whether he was simply relying on Highland's



1 representation of that value.

2 Now as a general rule, in these 12(B)(6) motions, as  
3 I said before, we don't look at the evidence because the whole  
4 point of discovery is to find out what's behind a lot of the  
5 evidence. That's been quoted. The amount of evidence that  
6 went into the 9019 motion as not necessarily full-blown  
7 discovery.

8 I understand Mr. Morris saying well, they could have  
9 asked the question. But as I just showed you, they shouldn't  
10 have to ask the question. There should be fair and full  
11 disclosure of all the material facts. And if it turns out,  
12 which we believe it is true, that by January, the value of  
13 HCLOF was twice what it was represented, or the HarbourVest  
14 portion of HCLOF was twice as to what it was represented,  
15 that's a material omission that Highland had an affirmative  
16 duty to not misrepresent. Irrespective of the questions being  
17 asked.

18 The DAF found out later on that the representation of  
19 the value wasn't true. Now Mr. Morris talked for a very long  
20 time about all the opportunities that somebody, Mr. Dondero,  
21 somebody other than CLO Holdco. In addition to CLO Holdco,  
22 could have asked the magic question to find out whether or not  
23 they were telling the truth. But that runs right in the face  
24 of the standards set forth by the SEC and by the Courts as to  
25 the affirmative obligation of an advisor to disclose all the

1 material benefits that they're going to get as part of a trade.  
2 The idea being that when you're a registered investment advisor  
3 and you want to engage in a transaction, you make a full  
4 disclosure and say this is the transaction. It's worth 41, but  
5 I'm paying 22-1/2. But here's why I'd like to be able to do  
6 it. And then that's the discussion that happens.

7           That clearly didn't happen here. And when it turned  
8 out that there was this entirely huge upside that they were  
9 gaining the benefit of, and maybe HarbourVest didn't care, that  
10 that was a false statement. Now the reason we don't have a  
11 common law fraud claim, or that we don't necessarily hang our  
12 hat on a fraud claim is we don't have enough evidence as it  
13 stands today, to specifically say that Mr. Seery intentionally  
14 misrepresented that. Although we believe that it was grossly  
15 reckless of him to do so. But we don't really need a fraud  
16 claim with a gross recklessness standard. We have a breach of  
17 fiduciary duty, which basically gets us to the same place.

18           So the timeline we have is September 30th was the  
19 last valuation of HCLOF assets provided by HCMLP. And the  
20 value of HCLOF, at that time, or the HarbourVest of that value,  
21 would have been about 22.5 million. So what it appears to be  
22 is that in January or in late December, the valuation that was  
23 being done -- what was being reported, wasn't the current  
24 valuation. It was the valuation as of the end of the third  
25 quarter of 2020.

1           On December 22nd, the motion to approve the  
2 settlement with HarbourVest was filed. HCMLP should have had  
3 or would have had up-to-date valuations of the HCLOF assets,  
4 but didn't necessarily disclose them as being different than  
5 the 22.5 million. On January the 14th, Your Honor, held the  
6 9019 hearing. And then that same day, Your Honor entered the  
7 approval order.

8           And finally, in March, the DAF learns the true value  
9 of HLOF assets as of January 2021 and starts to look into it.  
10 Now Mr. Morris makes much of the fact that well, Mr. Dondero at  
11 least knew that he had tipped them off, Mr. Seery. And if you  
12 actually read Paragraph 127, you'll see specifically what it's  
13 purported that he said. He said stop trading in the MGM  
14 assets, because MGM might be in play. So you can't trade  
15 because I'm an advisor, Mr. Dondero's an insider, he's the  
16 tipper, not the tippee. Mr. Seery becomes the tippee under  
17 that theory of the case, and he has to, and is required to,  
18 because of their affiliation at the time, he's required to  
19 cease trading. And that was the purpose of saying that.

20           The collateral issue that we point is that he at the  
21 very least knew about that, and that should have caused him to  
22 revalue, if he hadn't done so at the time. Not that, knowing  
23 that alone is sufficient to know what the value of HCLOF  
24 actually was on that date. That's a complete misrepresentation  
25 of the point and purpose of that allegation.

1           And as Your Honor knows, under 12(B)(6)  
2 jurisprudence, the way this is supposed to go is we get the  
3 benefit of every inference based upon the allegations, not the  
4 movant. So the first violation is that the debtor as an IRA  
5 failed to affirmatively disclose the true current valuation of  
6 HCLOF and failed to keep the DAF and CLO Holdco reasonably  
7 informed of the value of the assets.

8           And the debtor as an IRA, failed to obtain CLO  
9 Holdco's with the DAF's informed consent before it traded in  
10 the asset, because it didn't have all of the information. The  
11 typical remedy for breach of fiduciary duty is typically  
12 damages for any loss suffered by the Plaintiff as a result of  
13 the breach. I don't think there's a debate there.

14           So now we get to Mr. Morris' key argument. His key  
15 argument is that we should be talking about res judicata. The  
16 elements of res judicata and I think we agree is you have to  
17 have identical parties in the action; the prior judgment was  
18 rendered by a Court of competent jurisdiction; the final  
19 judgment was final on the merits, and the cases involved the  
20 same causes of action or the same transaction and nexus of  
21 facts.

22           Now I'm going to skip to three, because I think  
23 that's one of the key points that we disagree with them on.  
24 There is no case, Your Honor, that we could find, and no case  
25 that I read them citing that says an order on an 9019 has

1 preclusive effect under res judicata under an objector to the  
2 settlement. We looked. We looked in the Fifth Circuit. We  
3 looked outside of the Fifth Circuit. No District Court, no  
4 Fifth Circuit Court of Appeals' opinion we could find held that  
5 a 9019 order has res judicata effect on an objector's  
6 objection. And I think the reason is pretty simple. Is it  
7 doesn't.

8           Because the Plaintiff's claims, here our claims  
9 hadn't even accrued. We have a four year statute of  
10 limitations, but I think more importantly is that, as the Fifth  
11 Circuit said, the 9019 motion grants the Court discretion.  
12 It's not supposed to be a mini trial. The Court can approve a  
13 settlement over even the valid objection of an objector. It's  
14 not a trial on the merits. It's not supposed to be a trial on  
15 the merits. It's not supposed to be a disposition on the  
16 merits.

17           So the fact that Your Honor could have approved the  
18 9019 settlement with HarbourVest, even if we had a valid  
19 objection, means this isn't a disposition on the merits, as res  
20 judicata would envision. It wasn't a trial on the merits, even  
21 though it was withdrawn.

22           The other elements that we would point out to is that  
23 neither the DAV nor Holdco were parties to the dispute between  
24 HarbourVest and Highland. And this keys off of the issue that  
25 I just raised. The cases that are cited by the debtor to Your

1 Honor all have to do with where one of the settling parties is  
2 trying to undo the settlement for some collateral reason. And  
3 the Courts have held, no, that's res judicata, because you were  
4 a party to the action. HarbourVest brought the claims against  
5 Highland. Highland settled those claims.

6 CLO Holdco was collateral to that settlement, it's  
7 not a -- excuse me, collateral to that dispute. It's not a  
8 party to that dispute. Its claims weren't being resolved by  
9 the settlement. And while you have a notice to all creditors  
10 and those objections can be raised, there was not inherently  
11 any manner for resolving those objections on their own merits.  
12 Only -- it was only resolved in so far as deciding whether or  
13 not the settlement was in the best interest of the debtor,  
14 which Your Honor decided, and we don't challenge that. But we  
15 do argue that it caused damages and the debtor shouldn't get  
16 off for those damages.

17 The fourth element is that the --

18 THE COURT: Just for the record, the standard in a  
19 9019 context is not best interest of the debtor, right?

20 MR. SBAITI: Your Honor, I mean that's what the rule  
21 says and Your Honor's order --

22 THE COURT: That is not what the rule says. The rule  
23 is actually very sparsely worded and then we have Fifth Circuit  
24 case law and U.S. Supreme Court law that talk about what the  
25 standard is.

1 MR. SBAITI: Yes, Your Honor. And there are five --

2 THE COURT: And it's -- is it fair?

3 MR. SBAITI: There are five elements.

4 THE COURT: Is it fair and equitable and in the best  
5 interest of the estate given a long list --

6 MR. SBAITI: Correct, Your Honor. And I didn't mean  
7 to --

8 THE COURT: -- of considerations that the Court is  
9 supposed to consider that "bear on the wisdom of the  
10 settlement." Okay. So it's actually much more involved, is my  
11 point, than is it in the best interest of the estate. Is it in  
12 the best interest of the estate and fair and equitable given  
13 all factors bearing on the wisdom of the compromise? And then  
14 we have a long laundry list of things the Court should consider  
15 as part of that analysis.

16 MR. SBAITI: That's a --

17 THE COURT: I just bring that up because if I'm still  
18 -- my brain is still stuck five minutes ago on your comment  
19 that you can't find any case saying that an order approving a  
20 9019 compromise has res judicata effect on creditors. And it's  
21 -- let me just say it's shocking to me that someone would argue  
22 otherwise. Bankruptcy is a collective proceeding --

23 MR. SBAITI: Your Honor --

24 THE COURT: -- where creditors can weigh in and  
25 object and raise whatever arguments they think the Court should



1 consider that bear on the wisdom of the compromise. And the  
2 Fifth Circuit in Foster Mortgage has said the Court should give  
3 great deference to the views of the creditors, the paramount  
4 interest of creditors.

5           So it's a really sort of shocking proposition that  
6 the order approving a 9019 compromise wouldn't have res  
7 judicata effect on all parties and interests who got notice of  
8 that. So if you have any elaboration on that, I'd like to hear  
9 it.

10           MR. SBAITI: Your Honor, we looked at the Fifth  
11 Circuit cases that they cited, which I believe included that  
12 case. And even in that case, the point that we made in our  
13 papers and the point I was trying to arrive at is that among  
14 the factors, yes, the Court should give great deference to the  
15 creditors. But among the factors is not that the objections  
16 lack merit or are meritless or that they wouldn't be winnable  
17 if they were simply standalone claims.

18           And that was really the only point I was trying to  
19 make is that Your Honor has discretion. Granted it's -- as you  
20 mentioned, it's not unfettered discretion. It's bounded by  
21 standards and there are -- there is, I know, about five  
22 standards Your Honor has to consider or the Court has to  
23 consider. But among those, that laundry list of standards, is  
24 not that the Court finds that any objection lacks merit. And  
25 that was really the only point I was making.

1           And in terms of the case law, we looked at the Fifth  
2 Circuit. We looked, frankly, outside the Fifth Circuit as much  
3 as we could, and because this is actually not an easy one to  
4 research, as it turned out, despite the language. And we also  
5 looked for district court opinions in the Fifth Circuit to see  
6 did any district court or did any court of appeals give this  
7 type of approval to the standard that a 9019 order has res  
8 judicata effect on a claim raised in an objection by a  
9 creditor.

10           And we couldn't find any and I read all the cases  
11 that Mr. Morris cited in his papers, and they didn't cite one  
12 that explicitly said that. They tried to drive at it through  
13 insinuation that, well, if the Court has to give great  
14 deference or if the Court has to take into account the  
15 underlying facts and the fact that there is discovery, surely  
16 that must mean this is akin to the trial on the merits. And I  
17 think that's where we simply disagree in good faith. I'm not  
18 ascribing any bad intention. But we disagree that that's where  
19 the law goes.

20           Res judicata is not -- while it's supposed to stop  
21 the relitigation of issues, it is predicated on there having  
22 been actual litigation of those issues. And when HarbourVest  
23 and Highland settle a case and my clients show up with an  
24 objection, even though they withdraw an objection, that, in our  
25 opinion -- and we're asking the Court to see it our way -- is

1 not trial on the merits. It's not a disposition on the merits  
2 of the objection in and of itself. Some objections we can --

3 THE COURT: But the context matters. In the context  
4 of a 9019 compromise, the hearing is about look at the bonafide  
5 ease of the settlement. And it's either fair and equitable and  
6 in the best interest of the estate or not. And an objector can  
7 say this is a terrible settlement and here's why it's a  
8 terrible settlement and let me cross-examine the movant and let  
9 me put on my own witness that will enlighten the Court as to  
10 why this is a terrible settlement, why I say terrible, why it's  
11 not fair and equitable.

12 That's your chance to convince the Court, don't  
13 approve this settlement because there are, you know, 14  
14 problems with it. And if you convince the Court, then you  
15 convince the Court and it's not approved. If you don't, you  
16 appeal, and we do have an appeal of the settlement order.

17 So, again, I'm not understanding the "res judicata  
18 doesn't apply" argument.

19 MR. SBAITI: Your Honor, if I could riff on two  
20 points based upon what you just said, if I could address those.

21 The first is there are clearly two kinds of  
22 objections that get -- at least two kinds of objections that  
23 get raised in these 9019 approval hearings. The two that you  
24 heard recounted, some were this is bad for the estate. There's  
25 reasons why we don't think the estate will benefit from it and

1 it will be harmed from it.

2 And those types of objections, which I believe mostly  
3 comprise the objections that Mr. Morris was talking about  
4 because they are concerns for the estate. And so creditors who  
5 want to get money from the estate are concerned that the  
6 settlement will not enter (phonetic) to the benefit of the  
7 estate, and therefore, not enter to their benefit as creditors.  
8 That's number one.

9 But those don't adhere in a lawsuit. Those aren't  
10 claims for damages that the settlement is going to create for  
11 the person objection or for the party objecting. There's a  
12 whole separate set of objections similar to the ones HCLCO  
13 Holdco raised where that what inheres in the objection is this  
14 is actually going to cause us some kind of damage.

15 And so, the factors though, don't require the Court  
16 in those second set of instances to say, well, you know what?  
17 Not only do I think you're wrong, but I think that your  
18 lawsuit, the underlying causes of action that give rise to this  
19 objection, have no merit on their own face, that the discovery  
20 is not there to support them, that a jury is not going to find  
21 there. I am now the trier or the Court is now the trier of  
22 fact on the merits of the underlying causes of action that  
23 animate the objection.

24 And that's where I believe we're diverging with the  
25 debtor on the law. It goes too far to say that a 9019 hearing

1 where the Court in the end has discretion to approve it, even  
2 over a meritorious objection by any party, regardless of what  
3 bucket of objections the objection falls into. It goes -- our  
4 argument today, Your Honor, and we're asking the Court to see  
5 it our way, is that that would go too far. That an actual  
6 cause of action shouldn't be eradicated simply because of the  
7 9019 process because, as you pointed out, the Court does have  
8 to go through a litany of factors.

9           And if the Court determines that it's fair and it's  
10 more equitable to overrule the objection, the Court has that  
11 discretion. And we're not here to unwind that discretion.

12           But the settlement process did violate certain  
13 obligations and did cause my client damages. And that's what  
14 we're saying isn't precluded.

15           THE COURT: Okay.

16           MR. SBAITI: The fourth element, Your Honor, which I  
17 guess in many ways maps on to the argument I just made to Your  
18 Honor is that the cases, the underlying cases, do not involve  
19 the same claims. Plaintiffs' claims arise from the settlement  
20 process itself and not from the underlying issues being settled  
21 between HarbourVest and Highland. So that's why we think at  
22 least three of the four elements aren't met here. And we'll  
23 reserve on the papers, you know, whether jurisdiction was  
24 applicable because I think that's probably water under the  
25 bridge at this point in the oral argument.

1 Now, Mr. Morris attacks the case that we cite,  
2 Applewood Chair vs. Three Rivers Planning. And he argues that,  
3 well, this is not applicable. And the argument he made however  
4 was he put it in the context of, well, the parties there, the  
5 issue was you had guarantors who were not parties in their  
6 capacity as guarantors. But that's not actually what the Court  
7 held.

8 The Court didn't say that the release wasn't  
9 applicable to them because they didn't appear as parties in  
10 their guarantee capacities. They -- the Court held that, well,  
11 the specific discharge language doesn't enumerate those  
12 specific guarantees, and so therefore it's not released.

13 And where this dovetails, we believe, as closely as  
14 we can, this isn't a 9019 case. This is a final confirmed  
15 plan. But where it dovetails with what our argument is, is  
16 that the Court there as well was essentially saying the  
17 underlying causes of action weren't really presented to us, so  
18 we're not -- we -- and the confirmation of the plan didn't  
19 involve disposing of them, so we're not going to say that they  
20 are precluded. And we think that that's as close an analogy as  
21 we've found in the Fifth Circuit to the issues here today.

22 So I would say, Your Honor, that we believe that  
23 dispenses with the res judicata argument. The judicial  
24 estoppel argument, they conflate the language. I'll go back to  
25 this for a second. They conflate the language of judicial

1 estoppel on the success of the claim. None of the cases they  
2 cite on judicial estoppel involved where a party took a  
3 position, withdrew their argument, and then the Court moved on.

4           Mr. Morris tries to convert a judicial estoppel claim  
5 into a judicial reliance claim, which is not the purpose of the  
6 doctrine and is not the doctrine at all. The doctrine is that  
7 if you take a successful position in one court, you can't take  
8 the opposite position in another court. CLO Holdco didn't take  
9 a successful position in one court and then change its position  
10 later on. In fact, its positions, as Mr. Morris stated, are  
11 remarkably similar. They're not inconsistent, which is the  
12 problem with their judicial estoppel argument. And we -- I  
13 think we fairly briefed that in our papers and we'll otherwise  
14 rest on the papers.

15           To deal -- to address the actual claims, again, I  
16 come back to the idea of a fiduciary duty claim, which is our  
17 lead claim. And to be clear, it's a state claim predicated on  
18 the violation of federally imposed fiduciary duties.

19           And I'm looking for a clock to make sure I'm not  
20 abusing Your Honor's time, and I don't have one right in front  
21 of me because my screen -- my screen is up.

22           Your Honor, the Douglass v. Beakley case is, like I  
23 said, is Judge Boyle's case. It specifically provides a cause  
24 of action based upon violations of the Advisers Act. We also  
25 cite about four or five other cases in footnote 8 of our



1 response from other circuits, including the Third Circuit, the  
2 Belton case that I referred to earlier, all of which held that,  
3 yes, a state fiduciary duty claim can be predicated on breaches  
4 of a federal Advisers Act violation.

5           The other point that they make on the fiduciary duty  
6 claim is they argue HCMLP doesn't owe fiduciary duties to CLO  
7 Holdco. And the cases they cite, Your Honor, we dealt with in  
8 the papers why they were distinguishable, because in those  
9 cases they were dealing with the fact that there wasn't any  
10 harm or any direct relationship. But what they ignore is the  
11 actual language of the Advisers Act, which is important.

12           Well, first of all, Mr. Seery admitted in his own  
13 testimony during the approval hearing in July of 2019 that he  
14 says, "We owe." He says, "There are third party investors in  
15 the fund -- in these funds who have no relation whatsoever to  
16 Highland, and we owe them a fiduciary duty both to manage their  
17 assets prudently, but also to seek to maximize value." I think  
18 Mr. Seery was absolutely correct when he said that. Highland  
19 owes fiduciary duties to the investors in the funds that  
20 Highland manages. The core of our case is that Highland is  
21 using or abusing the assets of the funds it managed in HCLOF  
22 for its own enrichment, which is a classic breach of fiduciary  
23 duty case under the Advisers Act.

24           Now -- excuse me. The other point that I would say,  
25 Your Honor, is that there is a statutory basis for us to argue

1 a breach of fiduciary duty. Excuse me. I didn't mean to stop  
2 sharing. I apologize.

3 Are you back with me, Your Honor, on my --

4 THE COURT: Yes.

5 MR. SBAITI: -- PowerPoint?

6 THE COURT: Yes.

7 MR. SBAITI: Sorry about that, Your Honor. I just  
8 hit the wrong thing. I'm not very technologically savvy. Here  
9 we go.

10 So Holdco is an investor in HCLOF, which is a pooled  
11 investment vehicle. A pooled investment vehicle under the case  
12 law we cite is simply defined as an investment vehicle that  
13 doesn't publicly solicit investors and has few than 100  
14 investors. Highland advises it. That's the same holding in  
15 TransAmerica Mortgage, by the way, which we also cite.

16 15 U.S. C. Section 80(b)(6) establishes the federal  
17 fiduciary standards to govern the conduct of registered  
18 investment advisers. That's also the TransAmerica case. 15  
19 U.S.C. Section 80(b)(6)(D) delegated to the SEC the power to  
20 decide the scope of those duties that are imposed under the  
21 statute. And so the SEC enacted 17 C.F.R. Section 275.206(4)-  
22 8.

23 And it expressly states, and we cite the statute or  
24 the regular in full in our papers, that the fiduciary duties  
25 are owed to investors in the pooled investment vehicles. It

1 specifically says that. It talks about two different duties  
2 owed and they're owed to the investors in the vehicles, which  
3 means they're owed to Holdco as an investor in HCLOF, which is  
4 the vehicle that Highland manages.

5 It's black and white in the regulation. And we  
6 haven't seen any response. There was no response of that in  
7 the reply that was filed, Your Honor. And so the argument that  
8 there's not a fiduciary duty owed to Holdco because it's merely  
9 an investor in HCLOF simply doesn't comport with the law.

10 And finally, the petition lays out the basis for our  
11 claims including the applicable federal and state law.  
12 Plaintiffs' response lays out why the legal arguments aren't  
13 opposite at the 12(b)(6) stage and Rule 9(b) is met where  
14 necessary under the federal claim. And I'm trying to unshare  
15 so that I can get back to regular argument.

16 I'd like to briefly address Mr. Morris' argument,  
17 Your Honor. Your Honor, I re-raise my argument that I made  
18 before, which is that a 12(b)(6) motion and hearing is not the  
19 appropriate time for all the evidence that was poured in here.  
20 And I understand Mr. Morris' contention, well, it's really hard  
21 to ignore all the history of this case. But a lot of that  
22 history really boils down to things that were actually admitted  
23 in the complaint. The complaint recognized there was a 9019.  
24 But what Mr. Morris wants to do is go beyond that and to go to  
25 what people said and what they must have meant. What Mr.

1 Dondero must have meant in his objection, what Dugaboy must  
2 have meant by their objection, what Mr. Pugatch must have meant  
3 by his testimony.

4 All of that is highly improper at this stage of the  
5 proceeding, Your Honor. It's outside of the 12(b)(6) confines.  
6 It's outside the four corners of the complaint. And we object  
7 to all of that evidence being considered.

8 THE COURT: Let me --

9 MR. SBAITI: The question we --

10 THE COURT: Let me ask you about that procedural  
11 point.

12 MR. SBAITI: Yes, Your Honor.

13 THE COURT: As we know, 12(d) provides that if  
14 matters outside the pleadings are presented to and not excluded  
15 by the Court in a 12(b)(6) motion, the motion must be treated  
16 as one for a summary judgment under Rule 56 and all parties  
17 must be given a reasonable opportunity to present all the  
18 material that is pertinent to the motion.

19 Are you -- what are you arguing? That I should treat  
20 it as a motion for summary judgment and give you more time to  
21 present other materials? I mean, you both presented an  
22 appendix, okay. And I'm telling you we're seeing this more and  
23 more, I've noticed. People are going beyond the four corners  
24 of a motion to dismiss and attaching things. And there's some,  
25 you know, Fifth Circuit authority that says, well, if what is

1 attached is integral to understanding, you know, an allegation  
2 or whatever in the pleading, you know, there is some discretion  
3 to go outside the four corners.

4           So I'm trying to understand the point you're making  
5 with this. Are you saying I should treat it as a motion for  
6 summary judgment or do these attachments really -- you know, do  
7 I have authority under the Fifth Circuit to consider them as  
8 part of the 12(b)(6) motion or not?

9           MR. SBAITI: Typically, in our experience, Your  
10 Honor, is when a summary or when a 12(b)(6) is going to be  
11 treated as summary judgment under 12(d), the Court says that  
12 and then the parties are given an opportunity, as you said, to  
13 go do some discovery in order to put together the evidence and  
14 materials to then come back and respond as a summary judgment.  
15 We responded to a 12(b)(6) and objected to the evidence. If  
16 the Court wants to treat it as a summary judgment, then we  
17 would ask for an opportunity for -- to conduct discovery in  
18 order to be able to respond as a summary judgment motion, but  
19 we didn't -- because we responded to a 12(b)(6) --

20           THE COURT: You did the same thing though. You did  
21 the same thing in your response. You submitted an appendix of  
22 evidence, if you want to call it evidence. As someone pointed  
23 out, it's stuff from the bankruptcy court record. I don't  
24 think it went beyond what was already in the bankruptcy court.

25           MR. MORRIS: And if I -- can I be heard on this, Your

1 Honor?

2 THE COURT: You can. You can.

3 MR. MORRIS: Just to respond. This is really quite  
4 simple. The motion to dismiss is based on res judicata. Res  
5 judicata necessarily requires a review of what happened in  
6 connection with the prior hearing. There's nothing that we  
7 have identified or put forth in the appendix or on our exhibit  
8 list except for the pleadings in the 9019, the transcripts, the  
9 one deposition transcript, the one trial transcript, the  
10 settlement agreement, the transfer agreement. I'd love to know  
11 what the Court couldn't or shouldn't take judicial notice of.  
12 There is no emails. There is no -- there is no -- there is no  
13 extrinsic evidence, if you will. All of this is either on the  
14 docket or was presented as part of the hearing.

15 THE COURT: Yeah. I'm just trying to ferret --

16 MR. MORRIS: And it's necessary. And it's necessary  
17 for the motion.

18 THE COURT: Yeah. I'm just trying to ferret out the  
19 procedural position that's being asserted here. And I don't  
20 have the case cites off the top of my brain, but there is  
21 authority from at least the Northern District judges, if not  
22 the Fifth Circuit, saying in a 12(b)(6) motion I can take  
23 judicial notice of items in the record. And then, you know,  
24 there -- I know there's Fifth Circuit authority saying I can go  
25 beyond the four corners in a 12(b) context if it's just basic,

1 you know, explaining things that are in allegations. You know,  
2 such as --

3 MR. SBAITI: May I address that, Your Honor?

4 THE COURT: -- such as if a contract is in dispute,  
5 okay. Like there's no way you can have a cause of action under  
6 the contract and here's the contract. So I'm just trying to  
7 nail down your procedural position here.

8 MR. SBAITI: Your Honor, the distinction I was trying  
9 to make that I don't think I put as artfully as I might be able  
10 to put now is in a 12(b)(6) if there's a contract, as you said,  
11 if there's a legal document, a contract and order that's  
12 integral to the case, Your Honor can take judicial notice of  
13 that. Generally, a court can take judicial notice of filings  
14 in a bankruptcy, the fact that they were filed.

15 So the transcripts, which Your Honor can't take  
16 judicial notice of, is the truth of those. And that was what I  
17 was objecting to is it's one thing for him to say an objection  
18 was filed and therefore, because an objection was filed, that  
19 should be it. That was your only chance. I'm not saying Mr.  
20 Morris can't make that argument.

21 But when he goes beyond the fact of the filing or the  
22 fact that there was a transcript or the fact that there was a  
23 deposition and starts to read from the depositions or read from  
24 the filings and say this is what those mean, that goes against  
25 the 12(b)(6) parameters because, number one, now it's



1 substantive evidence and not simply a judicial notice of  
2 something that's right there in front of the Court, i.e.,  
3 something on its own docket. Because those statements and the  
4 interpretation of those statements are subject to credibility  
5 findings. They're subject to clarification. They're subject  
6 to rebuttal. That's the purpose of discovery.

7           And so if Your Honor -- and Mr. Morris is right.  
8 Usually, res judicata involves knowing what happened in the  
9 prior proceedings. So if all he wants to do is rest on the  
10 fact that an objection was filed by CLO Holdco and maybe even  
11 other people, and that should be it and he thinks that's enough  
12 for Your Honor to say res judicata applies, then I don't think  
13 we have a problem. It's when he goes beyond that and says,  
14 Your Honor, these people must have known and this is what they  
15 meant by their argument, that's what I'm asking Your Honor not  
16 to consider. And if Mr. Morris wants you to consider that,  
17 that's a summary judgment motion and we should have the  
18 opportunity to do discovery at the very least into the issues  
19 he has now raised as supporting his res judicata defense which  
20 he has the burden of proof on.

21           MR. MORRIS: Your Honor, this is one of the strangest  
22 arguments I have ever heard. I'm allowed to offer the Court  
23 and the Court is allowed to accept the documents, but I'm not  
24 allowed to read them. I'm not allowed to make arguments. I  
25 don't understand what that even means. If it were a contract,

1 I would be allowed to put the contract in front of Your Honor,  
2 but I wouldn't be able to argue why the contract doesn't say  
3 what the Plaintiff says. I don't get it.

4 THE COURT: Okay.

5 MR. MORRIS: That's --

6 THE COURT: Just I've heard enough on this. I don't  
7 think we have moved into Rule 12(e), that realm of me needing  
8 to treat this as a motion for summary judgment. I think the  
9 so-called evidence, the appendix that was attached to the  
10 motion as well as the appendix that was attached to Plaintiffs'  
11 response, it's stuff that I can take judicial notice of that's  
12 in the record of this Court and I can look at it. You know, it  
13 is what it is, the record of this Court.

14 All right. So I have nine people waiting in  
15 chambers. I'm trying to figure out should I take a break now  
16 or are you fairly close to wrapping up. Either answer is fine,  
17 Mr. Sbaiti. I just need to figure out who I make wait here.

18 MR. SBAITI: I have -- oh, I'm sorry. I didn't mean  
19 to interrupt you, Your Honor. I was just going to say I have  
20 five minutes left, but I know Mr. Morris probably wants to come  
21 back. So if you want to break now and we can come back at  
22 whenever the Court wants us to, we can do so.

23 THE COURT: All right. Why don't you make your final  
24 five minutes and then we'll take a break?

25 MR. SBAITI: Okay. Thank you, Your Honor.

1 I just wanted to address some of the arguments that  
2 Mr. Morris raised in his argument. The first thing is -- and I  
3 addressed this in part -- but Mr. Morris makes a big deal about  
4 paragraph 127 of the complaint and essentially suggests that  
5 we're the -- or that Mr. Dondero is the perpetrator of a  
6 nefarious scheme. Whereas, what the pleading actually says,  
7 and I again encourage Your Honor to re-read -- to read it  
8 specifically, is that Mr. Dondero warned Mr. Seery not to trade  
9 in the stock and not to make any transactions because the stock  
10 was going to appreciate in value.

11 That has two implications for us, Your Honor. Number  
12 one, it means Mr. Seery was a tippee of insider information,  
13 and number two, it means that Mr. Seery, if he did trade on  
14 that information or if he did pass that information on to  
15 someone else, that is a problem from the Advisers Act  
16 standpoint, which is really the only purpose of saying that.

17 While paragraph 127 also says that that should have  
18 caused Mr. Seery to revalue the NAV of HCLOF, it does not state  
19 and we did not plead that the entire value of HCLOF is tied to  
20 the MGM stock. So the insinuation that that somehow gave us  
21 inside information about what the true value of HCLOF was and  
22 we should have known or that Mr. Dondero should have known is  
23 simply untrue.

24 The other argument Mr. -- that Mr. Morris likes to  
25 harp on is that CLO Holdco withdrew its argument, but he

1 characterizes Mr. Kane's withdrawal testimony -- as he says,  
2 Mr. Kane admitted that CLO Holdco lacked the superior right to  
3 obtain the HarbourVest. If you read the very language that was  
4 highlighted on Mr. Morris' slide, that's not what Mr. Kane  
5 says. Mr. Kane says, "We've gone back to the drawing board.  
6 We've read your reply. And my client has given me permission  
7 to withdraw the argument or withdraw the objection." That's  
8 all he said. There was not an admission that he was wrong.  
9 There was not an admission that they had made a mistake. There  
10 was simply an admission that they decided to withdraw the  
11 objection for whatever reason.

12 Lastly, on the specific claims --

13 THE COURT: That's not an accurate description of the  
14 record. He said he looked at --

15 MR. SBAITI: Your Honor, I was reading it along with  
16 him.

17 THE COURT: -- Guernsey Law. And I don't know if his  
18 words were deep dive.

19 MR. SBAITI: Yeah.

20 THE COURT: But he had looked at the agreements  
21 extensively. That's just not what he said.

22 MR. SBAITI: And he said he was with -- Your Honor,  
23 he said he was withdrawing. He didn't say we were wrong. He  
24 didn't say we don't have a claim. What he said was, "We're  
25 withdrawing the objection."

1 THE COURT: After doing an extensive look at the  
2 agreements in Guernsey Law, okay, so.

3 MR. SBAITI: Sure. But, Your Honor, he might have --  
4 he could just as easily thought we have a chance, but it's not  
5 a good one. And frankly, we'll be here for 20 days and we're  
6 withdrawing it for that reason because we'll live to fight  
7 another day. Your Honor, there's an innumerable number. To  
8 simply say that he admitted that they didn't have a correct  
9 claim, it's just he didn't say that. That's all. That's the  
10 only point I'm making.

11 Your Honor, I don't disagree with the debtor that the  
12 Court's exculpation clause gets rid of the negligence claim  
13 which was obviously filed before the effective date, so that  
14 claim is gone.

15 And I think the last argument that Mr. Morris makes  
16 on the RICO claim is the federal court, the Supreme Court  
17 standard for pleading a RICO claim, that acts that only  
18 continue for a few weeks are not -- don't set out a RICO claim.  
19 Your Honor, in our response to that, we actually submitted an  
20 amended complaint that shows that the type of acts we're  
21 talking about, the pattern of the debtor using its investor  
22 vehicles assets to liquidate is a long pattern and practice  
23 than simply the HarbourVest suit. And so, we move to amend on  
24 that basis to satisfy that pleading defect, which is the main  
25 one that they focused on.

1 That's all I have, Your Honor.

2 THE COURT: All right. Thank you.

3 We're going to take a 15 minute break and come back.

4 I'll ask Mr. Jordan and Mr. Bessette did they have anything  
5 they wanted to say today. I know they joined in the debtor's  
6 motion. And then we'll let Mr. Morris have rebuttal.

7 All right. So we'll be back in 15 minutes.

8 THE CLERK: All rise.

9 MR. MORRIS: Thank you, Your Honor.

10 (Recess at 12:05 p.m./Reconvened at 12:23 p.m.)

11 THE CLERK: All rise.

12 THE COURT: All right. Please be seated.

13 We're back on the record in Charitable DAF v.  
14 Highland Capital. All right. So I promised I was going to go  
15 back to counsel for Highland CLO Funding, Ltd. So Mr. Jordan,  
16 Mr. Bessette, is there anything you wanted to say for oral  
17 argument?

18 MR. JORDAN: Thank you, Your Honor. John Jordan on  
19 behalf of HCLOF.

20 Our points are two procedural points. The first is  
21 as the Court anticipated, in our motion to dismiss filed back  
22 in August, we joined in the motion to dismiss of Highland. And  
23 so to the extent that the Court after deliberation is inclined  
24 to grant that motion, we would ask that as a joining party,  
25 HCLOF be pulled along with that.

1           The second procedural point is that back in our  
2 motion to dismiss, we pointed out that the complaint does not  
3 actually allege anything against HCLOF. In the story, we're  
4 essentially the football and neither Oklahoma nor UT. And we  
5 pointed that out as an additional argument to what you've heard  
6 today. That motion was never responded to. The deadline by  
7 agreement was extended to October 11th. And the lack of  
8 response was, we believe, not inadvertent but simply an  
9 acknowledgment that HCLOF is not a party that anything is being  
10 claimed against.

11           It particularly makes sense since effectively and in  
12 rough numbers, they're half owned by both sides. So for every  
13 dollar that HCLOF spends hanging around the case, the parties  
14 are paying essentially 100 cents collectively. So for that  
15 reason, we would ask, and subject to Mr. Sbaiti's input,  
16 whether the Court would ask us or direct us to upload an order  
17 granting our motion as unopposed. We just feel like we don't  
18 have any role in this case.

19           THE COURT: All right.

20           Mr. Sbaiti, what about that?

21           MR. SBAITI: Your Honor, they were originally added  
22 as a nominal party. And as a nominal party, because of the  
23 potential need to have a derivative action, I think that based  
24 upon Highland's arguments and the arguments that we had, I  
25 don't think the derivative action is necessary for us to



1 maintain on a go-forward basis. And so we don't oppose them  
2 being dismissed.

3 THE COURT: All right. Then I assume, Mr. Morris,  
4 you don't have any problem with this, correct?

5 MR. MORRIS: No, Your Honor.

6 THE COURT: Okay. So I'll look for the parties to  
7 submit an agreed order of dismissal of HCLOF after the hearing.  
8 All right?

9 MR. JORDAN: Thank you, Your Honor.

10 THE COURT: All right. Mr. Morris, you get the last  
11 word.

12 MR. MORRIS: Thank you, Your Honor. I hope to be  
13 relatively brief. I really just want to focus on the arguments  
14 concerning whether or not the order that was entered by this  
15 Court was an order that was entered on the merits.

16 As the Court is well aware, a 9019 motion filed by a  
17 debtor is done so on notice. It is to give all parties in  
18 interest an opportunity to be heard, not just as to whether or  
19 not the debtor meets its burden of proof under Rule 9019 but  
20 whether or not the Court can find, as it must, that the  
21 proposed settlement is in the best interest of the estate.

22 The purpose of -- I mean that is the purpose of the  
23 giving notice so that everybody has a chance to be heard. The  
24 questions that the Court asked, the questions that every  
25 bankruptcy court asks in a 9019 is can the debtor do this deal,

1 should the debtor do this deal, is it in the best interest of  
2 the estate to do this deal.

3           And, you know, the idea that a 9019 order is somehow  
4 res judicata only to the parties to a settlement is just  
5 something that doesn't make any sense to me because it  
6 abrogates so many rules that exist that allows and encourages  
7 and requires parties who have objections to be heard.

8           Mr. Sbaiti's clients filed an objection. They  
9 initiated a contested matter. They obtained rights. They were  
10 litigants. They are litigants in a contested matter where  
11 they're required to tell the Court what objections they have to  
12 the settlement, and they did that.

13           Mr. Sbaiti, you know, told me that I wasn't allowed  
14 to characterize the words that are used in the documents that  
15 have now been admitted by the Court. And, yet, I heard him say  
16 that maybe Mr. Kane (phonetic) really meant to tell Your Honor  
17 that he was withdrawing the claim because he was going to save  
18 it for another day.

19           I'd just ask the Court to look at the transcript. I  
20 don't have to interpret it at all. And I'd ask the Court to  
21 read the words. I can put them back up on the screen, but  
22 they're pretty short. It's at Pages 7 and 8 of the transcript  
23 of what Mr. Kane told you and what you said in response. It's  
24 on the page, not my interpretation, and what the import of that  
25 was.

1 Mr. Sbaiti believes, I guess, if one is allowed to  
2 engage in such conduct without consequence, that one is allowed  
3 to allow to file objections, cause the Court and the litigants  
4 to participate, to give discovery, to write briefs, to do  
5 analyses, withdraw it on the basis of their own good faith  
6 analysis of Guernsey law of the documents and somehow say it's  
7 irrelevant. Not what the law is, not what res judicata is  
8 intended to do.

9 He should have put all of his cards on the table. In  
10 fact, I think that Mr. Kane believed he was putting all of his  
11 cards on the table because that's what he did. He filed a very  
12 comprehensive objection. He asserted a right to the  
13 opportunity that the debtor was proposing to take in the 9019  
14 motion. That's what he was doing. He was objecting on the  
15 basis that he claimed his client had a superior right to this  
16 asset.

17 And he didn't -- like I said earlier, Your Honor, I  
18 don't think he would be permitted, I don't think these claims  
19 would fly today if no objection was filed. But the fact that  
20 there was renders, I think, indisputable that there was a  
21 finding on the merits, right. And the only reason that the  
22 Court didn't rule on Mr. Kane's motion, the only reason the  
23 Court didn't rule on it is because Mr. Kane withdrew it.

24 Is that really the way this process is supposed to  
25 work, that one can tell the Court that after a review of the

1 documents, I'm going to withdraw the objection and then file a  
2 claim for damages three months later with a different client,  
3 with a different control person, with a different lawyer?

4 That's okay under doctrine of res judicata? I don't think so.

5           They had a full and fair opportunity. The fact that  
6 this was somehow -- you know, they're denigrating the fact that  
7 this was a 9019 motion. There's not supposed to be a mini-  
8 trial. Your Honor had discretion as to what to do. Every  
9 court in every bench trial has discretion as to what to do and  
10 whether or not to overrule objections and whether or not to  
11 sustain [sic] objections. That's what judges to.

12           And there's nothing offensive about the fact that it  
13 happened in the context of a 9019 motion. They don't get to  
14 sit on their hands and wait to fight another day. If they  
15 believed that the debtor was exposing itself to liability, and  
16 that's what they actually say in the opposition, that's what I  
17 actually think they say in the complaint, accept it as true,  
18 they believe that the debtor created liability for itself by  
19 rendering -- by entering into this transaction.

20           Shouldn't they have raised their hand and said you  
21 can't do this deal, right? And the only response to that --  
22 they have to that is they had no idea about value. Paragraph  
23 127, Your Honor, Mr. Dondero, the architect of this complaint,  
24 as was proven on June 8th, knew very well about value. And it  
25 doesn't matter that it was only MGM. Your Honor commented on

1 that at the June 8th hearing in a different context. But  
2 everybody knows, right, it is. He sits on the board of MGM.

3 And I'm sorry if I called him a tippee instead of a  
4 tipper. But if this complaint goes forward, we'll dig into  
5 that real deep. But there's no reason it ought to, Your Honor.  
6 This case ought to be dismissed on res judicata grounds. It  
7 should be dismissed on judicial estoppel grounds. And it  
8 should be dismissed for all the reasons that I said in my  
9 argument in my brief.

10 But I do just want to close with one point, and that  
11 is to read from a case called Goldstein, which I think I  
12 alluded to earlier on this issue of whether there's a fiduciary  
13 duty that's owed by an advisor to an investor and a fund:

14 "At best, it is counterintuitive to characterize the  
15 investors in a hedge fund as the clients of the  
16 advisors. The advisor owes fiduciary duties only to  
17 the fund, not to the fund's investors."

18 There's a lot of discussion about fiduciary duties,  
19 Your Honor. But to the extent that they have any basis to  
20 defeat the motion to dismiss on res judicata or collateral  
21 estoppel grounds, we hope and we trust and we know the Court  
22 will review the case law vigorously to test some of the  
23 assertions to that.

24 I have nothing further, Your Honor.

25 THE COURT: All right. Well, thank you to all of

1 you.

2           As a reminder, I don't think you need it, but as a  
3 reminder, I am essentially acting as a magistrate for Judge  
4 Boyle in this action. And whichever way I go on whichever  
5 theories, I think she would expect a thorough write-up. It  
6 would, of course, be in the form of a report and recommendation  
7 for her to either adopt or not if I dispose of some or all of  
8 the counts in the lawsuit.

9           Even to the extent I deny dismissal, even though the  
10 rule typically does not require a court to make detailed  
11 findings and conclusions in connection with a denial of a  
12 motion to dismiss, again, since I'm sitting as a magistrate, I  
13 think Judge Boyle would expect some thorough explanations and  
14 reasoning from me.

15           So that's my way of saying I'm taking this under  
16 advisement. I am going to drill down on some of the cases that  
17 have been argued. I think some important issues are raised  
18 here that need some thorough reasoning.

19           So I will do the best to get this out without too  
20 much delay. I think there's probably zero chance, zero chance  
21 I'm going to get it done by the end of the year. We're just  
22 too behind with some of our under-advisements. But I will try  
23 earnestly to get it out fairly soon after the first of the  
24 year. All right?

25           Thank you. You all have a good holiday.

1 THE CLERK: All rise.  
2 (Proceedings concluded at 12:37 p.m.)

3 \* \* \* \* \*

4  
5 C E R T I F I C A T I O N

6 We, DIPTI PATEL, KAREN WATSON, CRYSTAL THOMAS, AND  
7 PATTIE MITCHELL, court approved transcribers, certify that the  
8 foregoing is a correct transcript from the official electronic  
9 sound recording of the proceedings in the above-entitled  
10 matter, and to the best of my ability.

11  
12 /s/ Dipti Patel

13 DIPTI PATEL, CET-997

14  
15 /s/ Karen Watson

16 KAREN WATSON, CET-1039

17  
18 /s/ Crystal Thomas

19 CRYSTAL THOMAS, CET-

20  
21 /s/ Pattie Mitchell

22 PATTIE MITCHELL

23 LIBERTY TRANSCRIPTS

DATE: November 23, 2021

24



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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 15**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1*  
*000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>				<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>				<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Vol. 8

001349

001352

001359

001361

001369

001381

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				



001. 22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>37</u> Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

/s/ Mazin A. Sbaiti  
**Mazin A. Sbaiti**  
 Texas Bar No. 24058096  
**Jonathan Bridges**  
 Texas Bar No. 24028835  
 JPMorgan Chase Tower  
 2200 Ross Avenue – Suite 4900W  
 Dallas, TX 75201  
 T: (214) 432-2899  
 F: (214) 853-4367  
 E: mas@sbaitilaw.com  
 jeb@sbaitilaw.com

**Counsel for Appellant**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

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

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

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

In re:	§ Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§ Case No. 19-34054-sgj11
Reorganized Debtor.	§
THE CHARITABLE DAF FUND, L.P.,	§ Adversary Proceeding No.
Plaintiffs,	§ 22-03052-sgj
vs.	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§
Defendant.	§
	§

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

**REORGANIZED DEBTOR’S WITNESS AND EXHIBIT LIST WITH RESPECT TO EVIDENTIARY HEARING TO BE HELD ON AUGUST 3, 2022**

Highland Capital Management, L.P. (the “Reorganized Debtor”) submits the following witness and exhibit list with respect to *Highland Capital Management, L.P.’s Amended Motion to Dismiss* [Docket No. 19], which the Court has set for evidentiary hearing at 2:30 p.m. (Central Time) on August 3, 2022 (the “Hearing”) in the above-styled adversary proceeding (the “Adversary Proceeding”).

**A. Witnesses:**

1. James P. Seery, Jr.;
2. Any witness identified by or called by any other party; and
3. Any witness necessary for rebuttal.

**Exhibits:**

<b>Number</b>	<b>Exhibit</b>	<b>Offered</b>	<b>Admitted</b>
1.	<i>Proof of Claim 177</i> , filed in Case No. 19-34054-sgj by The Dugaboy Investment Trust		
2.	<i>Original Complaint</i> , Case No. 21-cv-01479-S, D.I. 1 (N.D. Tex. June 23, 2021)		
3.	<i>Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief</i> , Case No. 19-34054-sgj, D.I. 1943 (Bankr. N.D. Tex. Feb. 22, 2021)		
4.	<i>Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> , Case No. 19-34054-sgj, D.I. 1808 (Bankr. N.D. Tex. Jan. 22, 2021)		
5.	<i>Original Complaint</i> , Adv. Proceeding No. 22-03052, D.I. 1-1 (Bankr. N.D. Tex. May 25, 2022)		
6.	<i>Schedule of Contracts and Leases to Be Assumed</i> , Case No. 19-34054-sgj, D.I. 1875-5 (Bankr. N.D. Tex. Feb. 1, 2021)		
7.	<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> , Case No. 19-34054-sgj, D.I. 2700 (Bankr. N.D. Tex. Aug. 11, 2021)		

Number	Exhibit	Offered	Admitted
8.	<i>Certificate of Service of Vincent Trang re: Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> , Case No. 19-34054-sgj, D.I. 2747 (Bankr. N.D. Tex. Aug. 19, 2021)		
9.	<i>Plaintiff's Motion to Stay All Proceedings</i> , Adv. Proceeding No. 22-03052, D.I. 6 (Bankr. N.D. Tex. May. 25, 2022)		
10.	<i>Electronic Order</i> , Adv. Proceeding No. 22-03052, D.I. 7 (Bankr. N.D. Tex. May. 25, 2022)		
11.	<i>Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order</i> , Adv. Proceeding No. 22-03052, D.I. 8 (Bankr. N.D. Tex. May. 25, 2022)		
12.	<i>Plaintiff's Motion to Dismiss</i> , Adv. Proceeding No. 22-03052, D.I. 11 (Bankr. N.D. Tex. May. 25, 2022)		
13.	<i>Order</i> , Adv. Proceeding No. 22-03052, D.I. 18 (Bankr. N.D. Tex. May. 25, 2022)		
14.	<i>Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P.</i> , dated November 1, 2014		
15.	<i>Amended and Restated Memorandum and Articles of Association of Highland Multi Strategy Credit Fund, Ltd.</i> , as adopted on 1 November 2014		
16.	<i>Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P.</i> , dated November 1, 2013		
17.	<i>Declaration of James. P. Seery, Jr., in Support of Amended Motion to Dismiss</i>		
18.	<i>Cayman Hotel and Golf Incorporated v. Resort Gems Limited Grand Court</i>		
19.	The Contracts (Rights of Third Parties) Law, 2014		
20.	<i>Ebbw Vale Urban DC v. South Wales Traffic Area</i>		
21.	June 25, 2021, Hearing Transcript		
22.	November 23, 2021, Hearing Transcript		
23.	Any document entered or filed in the Adversary Proceeding, including any exhibits thereto		

Number	Exhibit	Offered	Admitted
24.	Any document entered or filed in the Reorganized Debtor's Bankruptcy Case, including any exhibits thereto		
25.	All exhibits necessary for impeachment and/or rebuttal purposes		
26.	All exhibits identified by or offered by any other party at the Hearing		

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: August 1, 2022.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

# **EXHIBIT 1**



**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** The Dugaboy Investment Trust  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
The Dugaboy Investment Trust 300 Crescent Court, Ste. 700 Dallas, TX 75201  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)  Contact phone _____ Contact email <u>gscott@myersbigel.com</u>	Contact phone _____ Contact email _____  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _
7. How much is the claim?	\$ <u>See attached Exhibit "A"</u> . Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>See attached Exhibit "A"</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. <b>Amount necessary to cure any default as of the date of the petition.</b> \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/23/2020  
MM / DD / YYYY

/s/Grant Scott  
 Signature

Print the name of the person who is completing and signing this claim:

Name Grant Scott  
First name Middle name Last name

Title Trustee

Company The Dugaboy Investment Trust  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 4140 Park Lake Ave., Suite 600, Raleigh, NC, 27612

Contact phone 919-854-1407 Email gscott@myersbigel.com



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> The Dugaboy Investment Trust 300 Crescent Court, Ste. 700  Dallas, TX, 75201 <b>Phone:</b> <b>Phone 2:</b> <b>Fax:</b> <b>Email:</b> gscott@myersbigel.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See attached Exhibit "A"	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See attached Exhibit "A"	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Grant Scott on 23-Apr-2020 5:01:59 p.m. Eastern Time <b>Title:</b> Trustee <b>Company:</b> The Dugaboy Investment Trust		
<b>Optional Signature Address:</b> Grant Scott 4140 Park Lake Ave., Suite 600  Raleigh, NC, 27612 <b>Telephone Number:</b> 919-854-1407 <b>Email:</b> gscott@myersbigel.com		

**Exhibit A**

The Dugaboy Investment Trust (“Claimant”), an investor in certain funds managed by the Debtor, including Highland Multi-Strategy Credit Fund, L.P. and Highland Multi-Strategy Credit Fund, Ltd., may have claims against the Debtor relating to the post-petition actions or inactions of the fund investment manager in managing these funds pursuant to Debtor’s Fourth Amended and Restated Limited Partnership Agreement and that certain Third Amended and Restated Investment Management Agreement by and between Highland Multi-Strategy Credit Fund, L.P., Highland Multi-Strategy Credit Fund, Ltd., and the Debtor, as amended from time to time. While the potential claims relate to the post-petition actions or inactions of the fund investment manager, Claimant is filing this claim to preserve all potential rights, claims, and causes of action it may have against the Debtor under these prepetition agreements relating to the investment manager’s actions or inactions in managing these funds.

**EXHIBIT 2**

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

**THE DUGABOY INVESTMENT TRUST,**

*Plaintiff,*

v.

**HIGHLAND CAPITAL MANAGEMENT,  
LP,**

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Cause No. \_\_\_\_\_

**ORIGINAL COMPLAINT**

This matter concerns grave accounts of self-dealing and deception and seeks redress for violation of federal law including, but not limited to, violations of the Advisers Act of 1940, and other state causes of action.

**I.**

**PARTIES**

1. Plaintiff, The Dugaboy Investment Trust (“Plaintiff”), is a Delaware perpetual non-revocable trust with its principal place of business in Dallas County, Texas.

2. Defendant Highland Capital Management LP (“Highland” or “HCMLP”) is a Delaware limited partnership, whose principal place of business is in Dallas, Texas.

**II.**

**JURISDICTION AND VENUE**

3. Subject matter jurisdiction is proper in this court under 28 U.S.C. § 1331, and under 28 U.S.C. § 1334 because the suit arises out of post-petition acts or omissions of the debtor and certain of its principals.



4. This Court has general personal jurisdiction over Defendant Highland Capital Management, LP, because it has continuously done business in this state, and the causes of action arise from the acts or omissions committed in this state.

5. Venue is proper in this Court because a substantial number of the acts or omissions giving rise to this lawsuit and the causes of action asserted herein occurred in Dallas County.

### III.

#### **FACTUAL BACKGROUND**

6. HCMLP is a registered investment advisor (“RIA”) subject to the regulations of the Securities Exchange Commission.

7. HCMLP is both the advisor of and investor in Highland Multi Strategy Credit Fund, LP (“Multistrat”), a Delaware limited partnership. Highland Multi Strategy Credit Fund GP, L.P., itself a Delaware limited partnership, is the general partner of Multistrat, and HCMLP is the sole member of the general partner of Highland Multi Strategy Credit Fund GP, L.P.

8. HCMLP’s advisory capacity is governed, or at all relevant times was governed, by the Third Amended and Restated Investment Management Agreement, effective November 1, 2013 (the “IMA”).

9. The purpose of Multistrat as a vehicle was stated as such: “The Fund's investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.”

10. The Confidential Private Placement Memorandum for Multistrat disclosed that “[t]he Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the ‘Advisers Act’).

Each prospective investor will be required to make a representation to indicate that it is a 'qualified client' as defined in the Advisers Act.”

**11.** Because of these agreements and roles as the General Partner and RIA, Highland owed contractual and fiduciary duties to Plaintiff, as an investor in Multistrat.

**12.** James Seery, the principal, CEO, and CRO of HCMLP in its capacity as a debtor, admitted under oath that HCMLP owes fiduciary duties to the investors of the funds HCMLP manages—which would include Multistrat—and therefore, has admitted under oath that HCMLP and its governed persons owe fiduciary duties to the investors in Multistrat, which includes Plaintiff, the Charitable DAF Fund, Ltd., and Highland Capital Management Services, Inc., among others.

**13.** As an investment vehicle advised at all times and controlled at all times by HCMLP, Multistrat purchased and owned a pool of viaticals—investments in life insurance policies keyed to the lives of other persons. When a person passes away, the life insurance money is paid to the owner of the policy—in this case, Multistrat.

**14.** The notional value of the viatical pool was approximately \$145 million.

**15.** In or around August 2020, HCMLP sold the entire viatical pool for approximately \$35,000,000 – less than one quarter of the insured value.

**16.** The policies insured people aged 90 on average, suggesting that the policies were highly likely to pay off in the ensuing few years given the age and life expectancies of the insureds, as well as considering the actuarial impact of the COVID pandemic.

**17.** In the spring of 2020, Multistrat raised funds specifically for the purpose of paying the premiums on the viatical pool—amounts raised, borrowing availability, and liquid securities provided enough cash to pay the premiums. But HCMLP did not pursue this path as promised.

Instead, it sold the assets. To this day it is unclear why the policies were sold, and why, just prior to a planned mediation.

18. Furthermore, the process of selling was severely flawed. For example, the health assessments used to determine the likelihood and timeline for the payout were two years old. HCMLP did not cause new, up-to-date health assessments to be performed, and instead was content to rely on stale information or worse, no information at all.

19. Furthermore, HCMLP made no effort to adjust the projected life expectancies due to the increasing age of the insureds during a process that stretched over seven months, nor for the potential impact of COVID on people over the age of 90, which would have impacted the price..

20. Equally troubling is that Multistrat obtained the funds to pay the premiums from another investor—yet, it apparently did not use the funds for that purpose.

21. HCMLP apparently used the proceeds of the sale to pay itself, notwithstanding the fact that there were redeemed interests waiting to be paid—interests to whom HCMLP also owed fiduciary duties.

22. In short, HCMLP caused Multistrat to sell the viatical pool at a substantially discounted amount to curry favor with the brokers and buyers in the marketplace for no apparent benefit to Multistrat’s investors or the debtor’s estate.

### III.

#### **CAUSES OF ACTION**

##### **First Cause of Action** **Breach of Fiduciary Duty**

23. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

24. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.

25. The contracts set forth above—the subscription agreement and the IMA—impose and incorporate the duties and obligations of the Investment Advisers Act of 1940.

26. Under this federal law, an investment adviser is a fiduciary.<sup>1</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.

27. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules, but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”

28. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>2</sup> In order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

---

<sup>1</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. IA2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”).

<sup>2</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

29. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>3</sup>

30. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

31. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

32. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

33. HCMLP’s CEO testified under oath that he and HCMLP were aware of these duties and had to comply with them.

34. Section 204 of the Advisers Act requires HCMLP to carry written policies and procedures that must be followed in order to adhere to its federal obligations.

35. Section 206 of the Advisers Act prohibits transactions by an adviser that were accomplished via a “deceit” on a client or prospective client, e.g., by concealing the role and

---

<sup>3</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *SEC v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

interest the adviser has in the transaction, or via engaging in a course of conduct that has a tendency to mislead a client or which is manipulative.

**36.** These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

**37.** The Advisors Act declares any contract that was made in violation of its provisions or regulations, or any contract that has been performed in violation of the Advisors Act, **void**.

**38.** The Advisors Act created a private right of action to void unlawful agreements and acts and to seek such equitable relief as accompanies such claims.

**39.** Texas law allows a fiduciary plaintiff to seek damages for breaches of fiduciary duty and to seek disgorgement of all ill-gotten gains obtained by a fiduciary.

**40.** Plaintiff has been damaged due to the breaches of fiduciary duty outlined herein, and it is entitled to recover damages, punitive damages, and attorneys' fees.

**41.** To the extent this claim must be brought as a derivative action, it is plain that the demand requirement under Delaware law could not be met because serving a demand on Highland or to sue Highland would have been futile.

**Second Cause of Action**  
**Breach of Contract**

42. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

43. The contracts set forth above—the subscription agreement and the IMA—impose a duty of prudent investment management for the benefit of the investors in Multistrat and incorporate the duties and obligations of the Investment Advisers Act of 1940.

44. The violations set forth above constitute a breach of each or both of these agreements.

45. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the ,viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

46. Plaintiff has been damaged by the breaches of contract outlined herein.

47. Plaintiff is entitled to recover damages and attorneys' fees.

**JURY DEMAND AND PRAYER**

48. Plaintiff demands trial by jury.

49. Plaintiff respectfully requests judgment and an order:

- Disgorging all ill-gotten gains in an amount to be determined at trial;



- Voiding the IMA agreements herein with HCMLP pursuant to the Advisers Act;
- Awarding damages in an amount to be determined at trial;
- Awarding punitive damages in an amount to be determined at trial;
- Awarding attorneys' fees and costs in an amount to be determined at trial;
- Awarding all interim and final relief to which Plaintiff is legally or equitably entitled under the facts and circumstances raised herein.

Dated: June 23, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Plaintiff**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>The Dugaboy Investment Trust</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Dallas County</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p> <p>Sbaiti &amp; Company PLLC, 2200 Ross Avenue, Suite 4900W, Dallas, TX 75201 (T: 214-432-2899)</p>	<p><b>DEFENDANTS</b></p> <p>Highland Capital Management, LP</p> <p>County of Residence of First Listed Defendant <u>Dallas County</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
--	---

<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
15 U.S.C. § 80b-1  
 Brief description of cause:  
Adviser's Act

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*

JUDGE Stacey G. Jernigan    DOCKET NUMBER 19-34054-sgj11 NDTXBK

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

002937

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

002938

## **EXHIBIT 3**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

United States Bankruptcy Judge

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

_____	)	
In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	
_____	)	

**ORDER (I) CONFIRMING THE FIFTH AMENDED  
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court<sup>2</sup> having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.



*Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*



*Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the



*Certificate of Service* dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed<sup>3</sup> pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;<sup>4</sup> (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

---

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

<sup>4</sup> The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor’s Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an “asset monetization plan” because it involves the orderly wind-down of the Debtor’s estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor’s economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor’s Operational History.** The Debtor’s primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor’s current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was “run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits.” The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor’s Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended



proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty’s claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as “HarbourVest” invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest’s claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee’s relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.<sup>5</sup> As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,<sup>6</sup> and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

---

<sup>5</sup> This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

<sup>6</sup> See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.<sup>7</sup> The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

---

<sup>7</sup> See *Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

**17. Questionability of Good Faith as to Outstanding Confirmation**

**Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court



questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor’s 2008 return, which the Debtor believes arise from Get Good’s equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor’s alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the “Highland Advisors and Funds.” See Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post’s credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors’ request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.’s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States’ (IRS) Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty’s Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty’s claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor’s Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC (“KCC”), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the “Plan Modifications”). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of



section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the

Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust’s role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor’s rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
  
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust’s rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.



- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trust Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

**46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

**47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure Statement Order.**

Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm’s-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential “grand bargain” plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the “Initial Plan”) and related disclosure statement (the “Initial Disclosure Statement”) which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the “grand bargain” plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court’s approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court’s approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential “pot plan” as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).



49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).**

Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).**

The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.



61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.<sup>8</sup> Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

**69. Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

**70. Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

---

<sup>8</sup> See Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor’s release of the Debtor’s and Estate’s claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a “disguised” release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor’s conditional release of claims against employees, as identified in the Plan, and the Plan’s conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, *Collier on Bankruptcy*, ¶ 1103.05[4][b] (15<sup>th</sup> Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not



part of the Debtor’s enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors’ committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber’s* policy of exculpating creditors’ committees and their members from “being sued by persons unhappy with the committee’s performance during the case or unhappy with the outcome of the case” is applicable to the Independent Directors in this Chapter 11 Case.<sup>9</sup>

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that “costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization.” *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero’s pot plan does not get approved, that Mr. Dondero will “burn the place down.” The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

---

<sup>9</sup> The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan’s release, discharge and release provisions (the “Injunction Provision”). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor’s assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor’s assets and those assets could be monetized for less money to the detriment of the Debtor’s creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a “third-party release.” The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms “implementation” and “consummation” are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the “Gatekeeper Provision”). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is



as frivolous and a waste of the Bankruptcy Court’s time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor’s settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court’s order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero’s affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the “Dondero Post-Petition Litigation”).

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery’s credible testimony, that if Mr. Dondero’s plan proposal was not accepted, he would “burn down the place.” The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery’s testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor’s insurance broker (“AON”), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor’s assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5<sup>th</sup> Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5<sup>th</sup> Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5<sup>th</sup> Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots<sup>10</sup> – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

---

<sup>10</sup> As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.



Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**A. Confirmation of the Plan.** The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.<sup>11</sup>

**B. Findings of Fact and Conclusions of Law.** The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

**C. Objections.** Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

**D. Plan Supplements and Plan Modifications.** The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

---

<sup>11</sup> The Plan is attached hereto as Exhibit A.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**E. Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

**F. Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

**G. Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

**H. Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

**I. Preservation of Causes of Action.** Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**J. Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

**K. Cancellation of Equity Interests and Issuance of New Partnership**

**Interests.** On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited



Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

**L. Transfer of Assets to Claimant Trust.** On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

**M. Transfer of Estate Claims to Litigation Sub-Trust.** On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

**N. Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

**O. Objections to Claims.** The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

**P. Assumption of Contracts and Leases.** Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

**Q. Rejection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

**R. Assumption of Issuer Executory Contracts.** On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers<sup>12</sup> a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples” and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

**S. Release of Issuer Claims.** Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

---

<sup>12</sup> The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

**T. Release of Debtor Claims against Issuer Released Parties.** Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Feronia Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

**U. Authorization to Consummate.** The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

**V. Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

**W. Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

**X. Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,



discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**Y. Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

*provided, however,* the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

**Z. Releases by the Debtor.** On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

**AA. Injunction.** Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

**in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in**

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**BB. Duration of Injunction and Stays.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

**CC. Continuance of January 9 Order and July 16 Order.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

**DD. No Governmental Releases.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

**EE. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**FF. Cancellation of Notes, Certificates and Instruments.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the



Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

**GG. Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

**HH. Post-Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

**II. Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**JJ. Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

**KK. Notice of Effective Date.** As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

**LL. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

**MM. Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

**NN. References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

**OO. Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

**PP. Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

**QQ. Resolution of Objection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

**RR. Resolution of Objections of Scott Ellington and Isaac Leventon.**

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

**SS. No Release of Claims Against Senior Employee Claimants.** For the

avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

**TT. Resolution of Objection of Internal Revenue Service.** Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

**UU. IRS Proof of Claim.** Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.



**VV. CLO Holdco, Ltd. Settlement** Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

**WW. Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

**XX. Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**YY. Dissolution of the Committee.** On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

**ZZ. Miscellaneous.** After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

**###END OF ORDER###**

**Exhibit A**

**Fifth Amended Plan (as Modified)**

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

---

In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	

---

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

---

**PACHULSKI STANG ZIEHL & JONES LLP**

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

**HAYWARD & ASSOCIATES PLLC**

Melissa S. Hayward (TX Bar No. 24044908)  
Zachery Z. Annable (TX Bar No. 24053075)  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Telephone: (972) 755-7100  
Facsimile: (972) 755-7110  
Email: [MHayward@HaywardFirm.com](mailto:MHayward@HaywardFirm.com)  
[ZAnnable@HaywardFirm.com](mailto:ZAnnable@HaywardFirm.com)

Counsel for the Debtor and Debtor-in-Possession

---

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

ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law ..... 1

    B. Defined Terms ..... 2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS ..... 16

    A. Administrative Expense Claims ..... 16

    B. Professional Fee Claims ..... 17

    C. Priority Tax Claims ..... 17

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
Equity Interests ..... 18

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes ..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes ..... 19

    G. Cramdown ..... 19

    H. Classification and Treatment of Claims and Equity Interests ..... 19

    I. Special Provision Governing Unimpaired Claims ..... 24

    J. Subordinated Claims ..... 24

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN ..... 24

    A. Summary ..... 24

    B. The Claimant Trust ..... 25

        1. Creation and Governance of the Claimant Trust and Litigation  
Sub-Trust ..... 25

        2. Claimant Trust Oversight Committee ..... 26

	<u>Page</u>
3. Purpose of the Claimant Trust. ....	27
4. Purpose of the Litigation Sub-Trust.....	27
5. Claimant Trust Agreement and Litigation Sub-Trust Agreement. ....	27
6. Compensation and Duties of Trustees. ....	29
7. Cooperation of Debtor and Reorganized Debtor. ....	29
8. United States Federal Income Tax Treatment of the Claimant Trust. ....	29
9. Tax Reporting. ....	30
10. Claimant Trust Assets. ....	30
11. Claimant Trust Expenses. ....	31
12. Trust Distributions to Claimant Trust Beneficiaries. ....	31
13. Cash Investments. ....	31
14. Dissolution of the Claimant Trust and Litigation Sub-Trust. ....	31
C. The Reorganized Debtor .....	32
1. Corporate Existence .....	32
2. Cancellation of Equity Interests and Release.....	32
3. Issuance of New Partnership Interests .....	32
4. Management of the Reorganized Debtor .....	33
5. Vesting of Assets in the Reorganized Debtor .....	33
6. Purpose of the Reorganized Debtor .....	33
7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets .....	33
D. Company Action .....	34
E. Release of Liens, Claims and Equity Interests.....	35
F. Cancellation of Notes, Certificates and Instruments.....	35



	<u>Page</u>
G. Cancellation of Existing Instruments Governing Security Interests.....	35
H. Control Provisions .....	35
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	36
<b>ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....</b>	<b>37</b>
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	38
<b>ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....</b>	<b>39</b>
A. Dates of Distributions .....	39
B. Distribution Agent .....	39
C. Cash Distributions.....	40
D. Disputed Claims Reserve.....	40
E. Distributions from the Disputed Claims Reserve .....	40
F. Rounding of Payments.....	40
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	41
I. General Distribution Procedures.....	41
J. Address for Delivery of Distributions.....	41
K. Undeliverable Distributions and Unclaimed Property.....	41
L. Withholding Taxes.....	42

	<u>Page</u>
M. Setoffs .....	42
N. Surrender of Cancelled Instruments or Securities .....	42
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	43
A. Filing of Proofs of Claim .....	43
B. Disputed Claims.....	43
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	43
D. Allowance of Claims and Equity Interests.....	44
1. Allowance of Claims.....	44
2. Estimation .....	44
3. Disallowance of Claims .....	44
ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	45
A. Conditions Precedent to the Effective Date .....	45
B. Waiver of Conditions.....	46
C. Dissolution of the Committee .....	46
ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	47
A. General.....	47
B. Discharge of Claims.....	47
C. Exculpation .....	47
D. Releases by the Debtor.....	48
E. Preservation of Rights of Action.....	49
1. Maintenance of Causes of Action.....	49
2. Preservation of All Causes of Action Not Expressly Settled or Released .....	49

	<u>Page</u>
F. Injunction .....	50
G. Duration of Injunctions and Stays.....	51
H. Continuance of January 9 Order .....	51
ARTICLE X. BINDING NATURE OF PLAN .....	51
ARTICLE XI. RETENTION OF JURISDICTION.....	52
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	54
A. Payment of Statutory Fees and Filing of Reports .....	54
B. Modification of Plan .....	54
C. Revocation of Plan.....	54
D. Obligations Not Changed.....	55
E. Entire Agreement .....	55
F. Closing of Chapter 11 Case .....	55
G. Successors and Assigns.....	55
H. Reservation of Rights.....	55
I. Further Assurances.....	56
J. Severability .....	56
K. Service of Documents.....	56
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	57
M. Governing Law .....	58
N. Tax Reporting and Compliance .....	58
O. Exhibits and Schedules .....	58
P. Controlling Document .....	58

---

**DEBTOR’S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

**ARTICLE I.**  
**RULES OF INTERPRETATION, COMPUTATION OF TIME,**  
**GOVERNING LAW AND DEFINED TERMS**

**A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "\$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.



24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.



69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,



and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on



or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote



**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

**I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor’s rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited



partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### **1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.**

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.



such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.



11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.



4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),



as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.



The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however,* that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

#### **D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

##### 1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

##### 2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trust, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

##### 3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**



**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

## **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

## **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on



the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

#### **D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee’s release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor’s Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

**E. Preservation of Rights of Action**

1. Maintenance of Causes of Action

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

#### **F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court**

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).



**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;



- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.** **MISCELLANEOUS PROVISIONS**

### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

### **B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

### **C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

#### **I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

#### **J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

#### **K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

##### **If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700

Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**



### **Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jasper CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

## **EXHIBIT 4**

003101

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

\_\_\_\_\_  
In re: )  
 ) Chapter 11  
 )  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> ) Case No. 19-34054-sgj11  
 )  
 )  
Debtor. )  
\_\_\_\_\_ )

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

**PACHULSKI STANG ZIEHL & JONES LLP**

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

**HAYWARD & ASSOCIATES PLLC**

Melissa S. Hayward (TX Bar No. 24044908)  
Zachery Z. Annable (TX Bar No. 24053075)  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Telephone: (972) 755-7100  
Facsimile: (972) 755-7110  
Email: [MHayward@HaywardFirm.com](mailto:MHayward@HaywardFirm.com)  
[ZAnnable@HaywardFirm.com](mailto:ZAnnable@HaywardFirm.com)

Counsel for the Debtor and Debtor-in-Possession

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



ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law..... 1

    B. Defined Terms .....2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 18

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
AND EQUITY INTERESTS ..... 18

    A. Summary..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
Equity Interests ..... 19

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests..... 20

    I. Special Provision Governing Unimpaired Claims..... 24

    J. Subordinated Claims..... 25

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN ..... 25

    A. Summary..... 25

    B. The Claimant Trust ..... 26

        1. *Creation and Governance of the Claimant Trust and Litigation Sub-  
Trust.* ..... 26

        2. *Claimant Trust Oversight Committee* ..... 27



	<u>Page</u>
3. Purpose of the Claimant Trust.....	27
4. Purpose of the Litigation Sub-Trust.....	28
5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.....	28
6. Compensation and Duties of Trustees.....	29
7. Cooperation of Debtor and Reorganized Debtor.....	30
8. United States Federal Income Tax Treatment of the Claimant Trust.....	30
9. Tax Reporting.....	30
10. Claimant Trust Assets.....	31
11. Claimant Trust Expenses.....	31
12. Trust Distributions to Claimant Trust Beneficiaries.....	31
13. Cash Investments.....	31
14. Dissolution of the Claimant Trust and Litigation Sub-Trust.....	32
C. The Reorganized Debtor.....	32
1. Corporate Existence.....	32
2. Cancellation of Equity Interests and Release.....	33
3. Issuance of New Partnership Interests.....	33
4. Management of the Reorganized Debtor.....	33
5. Vesting of Assets in the Reorganized Debtor.....	34
6. Purpose of the Reorganized Debtor.....	34
7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets.....	34
D. Company Action.....	34
E. Release of Liens, Claims and Equity Interests.....	35
F. Cancellation of Notes, Certificates and Instruments.....	36
G. Cancellation of Existing Instruments Governing Security Interests.....	36

	<u>Page</u>
H. Control Provisions .....	36
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	37
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	39
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	40
C. Cash Distributions.....	41
D. Disputed Claims Reserve.....	41
E. Distributions from the Disputed Claims Reserve .....	41
F. Rounding of Payments.....	41
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	42
I. General Distribution Procedures.....	42
J. Address for Delivery of Distributions.....	42
K. Undeliverable Distributions and Unclaimed Property .....	42
L. Withholding Taxes.....	43
M. Setoffs .....	43

	<u>Page</u>
N. Surrender of Cancelled Instruments or Securities .....	43
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	44
A. Filing of Proofs of Claim .....	44
B. Disputed Claims.....	44
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	44
D. Allowance of Claims and Equity Interests.....	44
1. <i>Allowance of Claims</i> .....	45
2. <i>Estimation</i> .....	45
3. <i>Disallowance of Claims</i> .....	45
ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	46
A. Conditions Precedent to the Effective Date .....	46
B. Waiver of Conditions.....	47
C. Effect of Non-Occurrence of Conditions to Effectiveness.....	<b>Error! Bookmark not defined.</b>
D. Dissolution of the Committee .....	47
ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	48
A. General.....	48
B. Discharge of Claims.....	48
C. Exculpation .....	48
D. Releases by the Debtor.....	49
E. Preservation of Rights of Action.....	50
1. <i>Maintenance of Causes of Action</i> .....	50
2. <i>Preservation of All Causes of Action Not Expressly Settled or Released</i> .....	50
F. Injunction .....	51

**Page**

G. Term of Injunctions or Stays..... 52

H. Continuance of January 9 Order ..... 52

ARTICLE X. BINDING NATURE OF PLAN ..... 52

ARTICLE XI. RETENTION OF JURISDICTION..... 53

ARTICLE XII. MISCELLANEOUS PROVISIONS ..... 55

    A. Payment of Statutory Fees and Filing of Reports ..... 55

    B. Modification of Plan ..... 55

    C. Revocation of Plan ..... 55

    D. Obligations Not Changed..... 56

    E. Entire Agreement ..... 56

    F. Closing of Chapter 11 Case ..... 56

    G. Successors and Assigns..... 56

    H. Reservation of Rights..... 56

    I. Further Assurances..... 57

    J. Severability ..... 57

    K. Service of Documents ..... 57

    L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of  
    the Bankruptcy Code..... 58

    M. Governing Law ..... 59

    N. Tax Reporting and Compliance ..... 59

    O. Exhibits and Schedules ..... 59

    P. Controlling Document ..... 59

---

**DEBTOR’S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

**ARTICLE I.**  
**RULES OF INTERPRETATION, COMPUTATION OF TIME,**  
**GOVERNING LAW AND DEFINED TERMS**

**A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "\$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

**B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.



15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].



62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.





81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any

damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized

Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.



128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized

Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

## **B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee



Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF  
CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the

Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

## **H. Classification and Treatment of Claims and Equity Interests**

### *1. Class 1 – Jefferies Secured Claim*

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

### *2. Class 2 – Frontier Secured Claim*

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

#### 11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.



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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 16**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1*  
*000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>				<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>				<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

Vol. 8			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001349	8 5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001352	9 5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001359	10 5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
001361	11 5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
001369	12 5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
001381	13 5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				



001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

## J. **Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

## **ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN**

### A. **Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor’s limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor’s current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be

cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust<sup>2</sup>**

*1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and

monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust



Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.



(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are

investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in

the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

#### **E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of



doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a



contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

## **B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed

and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity

Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

## **B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the

Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

#### **H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

#### **I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

#### **J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

#### **K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.



**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any





1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH**

**LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding

upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

**B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

**C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's

Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby excused from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross

negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation



Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### *1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### *2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final

Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or**



arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state,

Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

## **ARTICLE XI. RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or

expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such



executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this

Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:



**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego



the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

**EXHIBIT 5**

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

THE CHARITABLE DAF FUND, LP.,

*Plaintiff,*

v.

HIGHLAND CAPITAL MANAGEMENT,

L.P.,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Cause No. \_\_\_\_\_

**ORIGINAL COMPLAINT**

This matter concerns self-dealing and seeks redress for violation of state and federal law, including, but not limited to, violations of the Advisers Act of 1940, and other state causes of action.

**I.**

**PARTIES**

1. Plaintiff The Charitable DAF Fund, L.P. (“Plaintiff” or “DAF”) is a limited partnership formed under the laws of the Cayman Islands.

2. Defendant Highland Capital Management L.P. (“Highland” or “HCMLP”) is a Delaware limited partnership, whose principal place of business is in Dallas, Texas, at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

**II.**

**JURISDICTION AND VENUE**

3. Subject matter jurisdiction is proper in this Court under 28 U.S.C. § 1331 and under 28 U.S.C. § 1334 because the suit arises out of post-petition acts or omissions of the debtor and certain of its principals.

4. This Court has personal jurisdiction over Defendant Highland Capital Management, L.P. because it has continuously done business in this state, and the causes of action arise from the acts or omissions committed in this state.

5. Venue is proper in this Court because a substantial number of the acts or omissions giving rise to this lawsuit and the causes of action asserted herein occurred in Dallas County.

### III.

#### **FACTUAL BACKGROUND**

6. HCMLP is a registered investment advisor (“RIA”) subject to the regulations of the Securities Exchange Commission.

7. HCMLP is both the advisor of and investor in Highland Multi Strategy Credit Fund, L.P. (“Multistrat”), a Delaware limited partnership. Highland Multi Strategy Credit Fund GP, L.P., itself a Delaware limited partnership, is the general partner of Multistrat, and HCMLP is the sole member of the general partner of Highland Multi Strategy Credit Fund GP, L.P.

8. HCMLP’s advisory capacity is governed, or at all relevant times was governed, by the Third Amended and Restated Investment Management Agreement, effective November 1, 2013 (the “IMA”).

9. The purpose of Multistrat as a vehicle was stated as such: “The Fund’s investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.”

10. The Confidential Private Placement Memorandum for Multistrat disclosed that “[t]he Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the ‘Advisers Act’).

Each prospective investor will be required to make a representation to indicate that it is a ‘qualified client’ as defined in the Advisers Act.”

11. Because of these agreements and roles as the General Partner and RIA, Highland owed contractual and fiduciary duties to Plaintiff as an investor in Multistrat.

12. James Seery, the principal, CEO, and CRO of HCMLP, in its capacity as a debtor, admitted under oath that HCMLP owes fiduciary duties to the investors of the funds HCMLP manages—which would include Multistrat—and therefore, has admitted under oath that HCMLP and its governed persons owe fiduciary duties to the investors in Multistrat, which include Plaintiff, The Charitable DAF Fund, and Highland Capital Management Services, Inc., among others.

13. As an investment vehicle advised at all times and controlled at all times by HCMLP, Multistrat purchased and owned a pool of viaticals—investments in life insurance policies keyed to the lives of other persons. When a person passes away, the life insurance money is paid to the owner of the policy—in this case, Multistrat.

14. The notional value of the viatical pool was approximately \$145 million.

15. In or around August 2020, HCMLP sold the entire viatical pool for approximately \$35,000,000—less than one quarter of the insured value.

16. The policies insured people aged 90 on average, suggesting that the policies were highly likely to pay off in the ensuing few years given the age and life expectancies of the insureds, as well as considering the actuarial impact of the COVID pandemic.

17. In the spring of 2020, Multistrat raised funds specifically for the purpose of paying the premiums on the viatical pool—amounts raised, borrowing availability, and liquid securities provided enough cash to pay the premiums. But HCMLP did not pursue this path as promised.

Instead, it sold the assets. To this day, it is unclear why the policies were sold, and why, just prior to a planned mediation.

18. Furthermore, the process of selling was severely flawed. For example, the health assessments used to determine the likelihood and timeline for the payout were two years old. HCMLP did not cause new, up-to-date health assessments to be performed, and instead was content to rely on stale information or worse, no information at all.

19. Furthermore, HCMLP made no effort to adjust the projected life expectancies due to the increasing age of the insureds during a process that stretched over seven months, nor for the potential impact of COVID on people over the age of 90, which would have impacted the price..

20. Equally troubling is that Multistrat obtained the funds to pay the premiums from another investor—yet, it apparently did not use the funds for that purpose.

21. HCMLP apparently used the proceeds of the sale to pay itself, notwithstanding the fact that there were redeemed interests waiting to be paid—interests to whom HCMLP also owed fiduciary duties.

22. In short, HCMLP caused Multistrat to sell the viatical pool at a substantially discounted amount to curry favor with the brokers and buyers in the marketplace for no apparent benefit to Multistrat’s investors or the debtor’s estate.

### III.

#### **CAUSES OF ACTION**

##### **First Cause of Action** **Breach of the Advisers Act**

23. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
24. Highland’s actions violate the Advisers Act.
25. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.



26. The IMA imposes and incorporates the duties and obligations of the Investment Advisers Act of 1940.

27. Under this federal law, an investment adviser is a fiduciary.<sup>1</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.

28. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”

29. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>2</sup> In order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

---

<sup>1</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s “references to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. 2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”).

<sup>2</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

30. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>3</sup>

31. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

32. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

33. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

34. Therefore, Plaintiff seeks to declare the sale of the viaticals void because they were accomplished in violation of the Advisers Act.

35. Plaintiff further seeks to declare the agreement(s) between Highland and Multistrat void because they were continued in violation of the Advisers Act.

### **Second Cause of Action** **Breach of Fiduciary Duty**

36. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

---

<sup>3</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *Sec. & Exch. Commission v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

37. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.
38. The IMA imposes and incorporates the duties and obligations of the Investment Advisers Act of 1940.
39. Under this federal law, an investment adviser is a fiduciary.<sup>4</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.
40. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules, but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”
41. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>5</sup> In order for disclosure to be full and fair, it should be

---

<sup>4</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. IA2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”)).

<sup>5</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

42. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>6</sup>

43. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

44. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

45. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

46. HCMLP’s CEO testified under oath that he and HCMLP were aware of these duties and had to comply with them.

47. Section 204 of the Advisers Act requires HCMLP to carry written policies and procedures that must be followed in order to adhere to its federal obligations.

---

<sup>6</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *SEC v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

48. Section 206 of the Advisers Act prohibits transactions by an adviser that were accomplished via a “deceit” on a client or prospective client, e.g., by concealing the role and interest the adviser has in the transaction, or via engaging in a course of conduct that has a tendency to mislead a client or which is manipulative.

49. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

50. The Advisers Act declares any contract that was made in violation of its provisions or regulations, or any contract that has been performed in violation of the Advisers Act, **void**.

51. The Advisers Act created a private right of action to void unlawful agreements and acts and to seek such equitable relief as accompanies such claims.

52. Texas law allows a fiduciary plaintiff to seek damages for breaches of fiduciary duty and to seek disgorgement of all ill-gotten gains obtained by a fiduciary.

53. Plaintiff has been damaged due to the breaches of fiduciary duty outlined herein, and it is entitled to recover damages, punitive damages, and attorneys’ fees.

54. To the extent this claim must be brought as a derivative action, it is plain that the demand requirement under Delaware law could not be met because serving a demand on Highland or to sue Highland would have been futile.

**Third Cause of Action**  
**Breach of Contract**

55. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

56. The IMA imposes a duty of prudent investment management for the benefit of the investors in Multistrat and incorporate the duties and obligations of the Investment Advisers Act of 1940.

57. The violations set forth above constitute a breach of each or both of these agreements.

58. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

59. Plaintiff has been damaged by the breaches of contract outlined herein.

60. Plaintiff is entitled to recover damages and attorneys' fees.

**JURY DEMAND AND PRAYER**

61. Plaintiff demands trial by jury.
62. Plaintiff respectfully requests judgment and an order:
- Disgorging all ill-gotten gains in an amount to be determined at trial;
  - Voiding the sale and other relevant agreements herein with HCMLP pursuant to the Advisers Act;
  - Awarding damages in an amount to be determined at trial;
  - Awarding punitive damages in an amount to be determined at trial;
  - Awarding attorneys’ fees and costs in an amount to be determined at trial;
  - Awarding all interim and final relief to which Plaintiff is legally or equitably entitled under the facts and circumstances raised herein.

Dated: July 22, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

/s/ Mazin A. Sbaiti

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Plaintiff**



## **EXHIBIT 6**

### Schedule of Contracts and Leases to Be Assumed

1. Advisory Services Agreement, dated November 21, 2011, effective June 20, 2011, by and between Carey International, Inc., and Highland Capital Management, L.P.
2. Amended and Restated Advisory Services Agreement, dated March 4, 2013, by and between Trussway Holdings, Inc., and Highland Capital Management, L.P.
3. Reference Portfolio Management Agreement, dated March 4, 2004, by and between Highland Capital Management, L.P., and Citibank N.A.
4. Advisory Services Agreement, dated May 25, 2011, by and between CCS Medical, Inc., and Highland Capital Management, L.P.
5. Amended and Restated Advisory Services Agreement, dated February 28, 2013, by and between Cornerstone Healthcare Group Holding, Inc., and Highland Capital Management, L.P.
6. Prime Brokerage Agreement by and between Jefferies LLC and Highland Capital Management, L.P., dated May 24, 2013.
7. Amended and Restated Shared Services Agreement, dated August 21, 2015, by and between Highland Capital Management, L.P., and Falcon E&P Opportunities GP, LLC.
8. Amended and Restated Administrative Services Agreement, effective as of August 21, 2015, by and between Highland Capital Management, L.P., and Petrocap Partners II GP, LLC.
9. Office Lease, between Crescent Investors, L.P., and Highland Capital Management, L.P.
10. Paylocity Corporation Services Agreement, between Highland Capital Management, L.P., and Paylocity Corporation, dated November 19, 2012.
11. Electronic Trading Services Agreement, between SunTrust Robinson Humphrey Inc., and Highland Capital Management, L.P., dated February 6, 2019.
12. Letter Agreement, between FTI Consulting, Inc., and Highland Capital Management, L.P., dated November 19, 2018.
13. Administrative Services Agreement, dated January 1, 2018, between Highland Capital Management, L.P., and Liberty Life Assurance Company of Boston.
14. Electronic Communications: Customer Authorization & Indemnification, between Highland Capital Management, L.P., and The Bank of New York Mellon Corporation, dated August 9, 2016.
15. Letter Agreement, dated August 9, 2016, Electronic Access Terms and Conditions, by and between The Bank of New York Mellon Trust Company, N.A., and Highland Capital Management, L.P.
16. Shared Services Agreement by and between Highland HCF Advisor, Ltd., and Highland Capital Management, L.P., dated effective October 27, 2017.

17. Sub-Advisory Agreement, by and between Highland HCF Advisors, Ltd., and Highland Capital Management, dated effective October 27, 2017.
18. Collateral Management Agreement, dated November 2, 2006, by and between Highland Credit Opportunities CDO Ltd. and Highland Capital Management, L.P.
19. Management Agreement, dated November 15, 2007, between Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Partners Master L.P., Highland Restoration Capital Partners GP, LLC, and Highland Capital Management, L.P.
20. Investment Management Agreement, between Highland Capital Multi-Strategy Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
21. Investment Management Agreement, between Highland Capital Multi-Strategy Master Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
22. Management Agreement, dated August 22, 2007, between and among Highland Capital Management, L.P., and Walkers Fund Services Limited, as trustee of Highland Credit Opportunities Japanese Unit Trust.
23. Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013.
24. Investment Management Agreement, dated March 31, 2015, by and among Highland Select Equity Master Fund, L.P., Highland Select Equity Fund GP, L.P., and Highland Capital Management, L.P.
25. Amended and Restated Investment Management Agreement, dated February 27, 2017, by and among Highland Prometheus Master Fund L.P., Highland Prometheus Feeder Fund I, L.P., Highland Prometheus Feeder Fund II, L.P., Highland SunBridge GP, LLC, and Highland Capital Management, L.P.
26. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
27. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
28. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
29. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
30. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
31. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
32. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.

33. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
34. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
35. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
36. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
37. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
38. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
39. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
40. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
41. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
42. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
43. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.
44. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
45. AT&T Managed Internet Service, between Highland Capital Management, L.P. and AT&T Corp., dated February 24, 2015.
46. ViaWest, Master Service Agreement, dated October 3, 2011, between Highland Capital Management, L.P. and ViaWest
47. Stockholders' Agreement, dated April 15, 2005, by and between American Banknote Corporation and Highland Capital Management, L.P.
48. Stockholders' Agreement and Amendment No. 1, dated January 25, 2011, by and between Carey Holdings, Inc. and Highland Capital Management, L.P.
49. Stockholders' Agreement and Amendment, dated March 24, 2010, by and between Cornerstone Healthcare Group Holding, Inc. and Highland Capital Management, L.P.
50. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
51. Stock Purchase and Sale Agreement and Amendment, dated January 16, 2013, by and between Progenics Pharmaceuticals, Inc. and Highland Capital Management, L.P.

52. Stockholders' Agreement and Amendments, dated October 24, 2008, by and between JHT Holdings, Inc. and Highland Capital Management, L.P.
53. Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P., dated February 25, 2013, by and between Highland Dynamic Income Fund GP, LLC and Highland Capital Management, L.P.
54. Highland Multi-Strategy Fund, L.P. Limited Partnership Agreement, dated July 6, 2006, by and between Highland Multi-Strategy Fund GP, L.P. and Highland Capital Management, L.P.
55. Operating Agreement of HE Capital, LLC (as amended), dated September 27, 2007, by and between ENA Capital, LLC Ellman Management Group, Inc. and Highland Capital Management, L.P.
56. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund II, LLC, dated February 27, 2007, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
57. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund, LLC, dated July 19, 2006, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
58. Highland Capital Management, L.P., Limited Liability Company Agreement of Highland Receivables Finance 1, LLC, by and between Highland Capital Management, L.P. and Highland Capital Management, L.P.
59. Agreement of Limited Partnership of Highland Restoration Capital Partners, L.P. and Amendments, dated November 6, 2007, by and between Highland Restoration Capital Partners GP, LLC and Highland Capital Management, L.P.
60. Agreement of Limited Partnership of Highland Select Equity Fund GP, L.P., dated October 2005, by and between Highland Select Equity Fund GP, LLC and Highland Capital Management, L.P.
61. Agreement of Limited Partnership of Penant Management LP, dated December 12, 2012, by and between Penant Management GP, LLC and Highland Capital Management, L.P.
62. Agreement of Limited Partnership of Petrocap Incentive Partners III, LP, dated April 12, 2018, by and between Petrocap Incentive Partners III GP, LLC, Petrocap Incentive Holdings III, LP and Highland Capital Management, L.P.
63. Amended and Restated Agreement of Limited Partnership of Petrocap Partners II, LP, dated October 30, 2014, by and between Petrocap Partners II GP, LLC, Petrocap Incentive Partners II, LP and Highland Capital Management, L.P.
64. Agreement of Limited Partnership of Highland Credit Opportunities CDO GP, L.P., dated December 29, 2005, by and between Highland Credit Opportunities CDO GP, LLC and Highland Capital Management, L.P.
65. Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P., dated November 1, 2014, by and between Highland Multi Strategy Credit Fund GP, L.P. and Highland Capital Management, L.P.

66. DUO Security, 2 factor authentication, by and between DUO Security and Highland Capital Management, L.P.
67. GoDaddy Domain Registrations, by and between GoDaddy and Highland Capital Management, L.P.
68. Highland Loan Fund, Ltd. et al, Investment Management Agreement, dated July 31, 2001, by and between Highland Loan Fund, Ltd. et al and Highland Capital Management, L.P.
69. E Mailflow Monitoring, by and between Mxtoolbox and Highland Capital Management, L.P.
70. Cloud single sign on for HR related employee login, by and between Onelogin and Highland Capital Management, L.P.
71. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
72. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
73. Order Addenda, dated January 28, 2020, by and between CenturyLink Communications, LLC and Highland Capital Management, L.P.
74. Service Agreement (as amended), dated April 1, 2005, by and between Intex Solutions, Inc. and Highland Capital Management, L.P.
75. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
76. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
77. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
78. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
79. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
80. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
81. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
82. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd



83. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
84. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
85. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
86. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
87. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.
88. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
89. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
90. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
91. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
92. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
93. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
94. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
95. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
96. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
97. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust



98. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
99. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
100. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
101. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
102. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
103. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
104. Securities Account Control Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Highland CDO Opportunity Fund, Ltd.; JPMorgan Chase Bank, National Association
105. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
106. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
107. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
108. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
109. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
110. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
111. Extension/Buy-Out Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Citigroup Financial Products Inc.; Citigroup Global Markets Inc.
112. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
113. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
114. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

115. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery
116. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel
117. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms
118. Colocation Service Order dated October 14, 2019 between Highland Capital Management and Dawn US Holdings, LLC d/b/a Evoque Date Center Solutions
119. Tradesuite Web Module Services/Agreement between Highland Capital Management and DTCC ITP LLC
120. Bloomberg (Terminal) Agreement No. 306371 between Highland Capital Management and Bloomberg Finance, L.P.<sup>1</sup>
121. Master Service Agreement between Highland Capital Management and Via West
122. Amendment to Bloomberg Order Management System Addendum and Bloomberg Order Management System Schedule of Services Account No. 167969 between Highland Capital Management and Bloomberg Finance, L.P.
123. Fourth Amendment to Software License and Services Agreement between Highland Capital Management and Markit WSO Corporation
124. Master Services Agreement, First Amendment to Master Services Agreement, Second Amendment and Restatement of Master Services Agreement between Highland Capital Management and Siepe Services, LLC
125. Internet Agreement Account No. 831-000-7888-651 between Highland Capital Management and AT&T
126. Landline Fax Agreement Account No. 831-000-2532-176 between Highland Capital Management and AT&T
127. Amazon Web Services Account No. 353534426569 between Highland Capital Management and Amazon Web Service, Inc.
128. Website Hosting Agreement Account No. 325667 between Highland Capital Management and WP Engine

---

<sup>1</sup> The Debtor is currently in discussions with Bloomberg regarding the assumption of this agreement.

**EXHIBIT 7**

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

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

*Counsel for the Debtor*

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

---

In re: )  
 ) Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> )  
 ) Case No. 19-34054-sgj11  
 )  
Debtor. )  
 )  
 )  
 )

---

**NOTICE OF OCCURRENCE OF EFFECTIVE DATE OF  
CONFIRMED FIFTH AMENDED PLAN OF REORGANIZATION  
OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

---

**PLEASE TAKE NOTICE** that on February 22, 2021, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1943] (the “Confirmation Order”) confirming the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as

---

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





are available for inspection. If you would like to obtain copies you may: (a) access the Debtor's restructuring website at <http://www.kccllc.net/hcmlp>; (b) call toll free: (877) 573-3984 or international: (310) 751-1829; or (c) email HighlandInfo@kccllc.com and reference "Highland" in the subject line. You may also obtain copies of any pleadings filed in this case for a fee via PACER at: [pacer.uscourts.gov](http://pacer.uscourts.gov).

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: August 11, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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

-and-

**HAYWARD PLLC**

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

*Counsel for the Debtor*



**EXHIBIT 8**

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

\_\_\_\_\_  
In re: )  
 ) Chapter 11  
 )  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> ) Case No. 19-34054 (SGJ)  
 )  
Debtor. )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I, Vincent Trang, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On August 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit A**; and via First Class Mail upon the service lists attached hereto as **Exhibit B** and **Exhibit C**:

- **Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.** [Docket No. 2700]

Furthermore, on August 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via First Class Mail upon “Highland Capital Management LP, For Further Delivery to Addressed Parties, 300 Crescent Ct, Ste 700, Dallas, TX 75201,” for distribution in individually addressed envelopes to each party on the service list attached hereto as **Exhibit D**; and via First Class Mail upon “Highland Capital Management LP, For Further Delivery to Addressed Parties, 13455 Noel Rd, Ste 800, Dallas, TX 75240,” for distribution in individually addressed envelopes to each party on the service list attached hereto as **Exhibit E**:

- **Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.** [Docket No. 2700]

Dated: August 19, 2021

/s/ Vincent Trang  
Vincent Trang  
KCC  
222 N Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

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

# EXHIBIT A

Description	CreditorName	CreditorNoticeName	Email
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	ctimmons@abernathy-law.com; bankruptcy@abernathy-law.com; ehahn@abernathy-law.com
Counsel for NexBank	Alston & Bird LLP	Jared Slade	jared.slade@alston.com
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	jonathan.edwards@alston.com
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandeneau	debra.dandeneau@bakermckenzie.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	michelle.hartmann@bakermckenzie.com
Counsel for NWCC, LLC	Barnes & Thornburg LLP	Thomas G. Haskins, Jr.	thomas.haskins@btlaw.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	mintz@blankrome.com; jbibiloni@blankrome.com
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	John Y. Bonds, III, Bryan C. Assink	john@bondsellis.com; bryan.assink@bondsellis.com
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	schristianson@buchalter.com
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	c Carlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel for BH Equities, L.L.C.	Dentons US LLP	Casey Doherty	Casey.doherty@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Counsel to Acis Capital Management, LP and Acis Capital Management GP, LLC ("Creditors") and Joshua N. Terry and Jennifer G. Terry	Forshey & Prostok LLP	Jeff P. Prostok, J. Robert Forshey, Suzanne K. Rosen	jprostok@forsheyprostok.com; bforshey@forsheyprostok.com; srosen@forsheyprostok.com
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	selliot@frontier-ok.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	ddraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	Jhonis@RandAdvisors.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
IRS	Internal Revenue Service	Centralized Insolvency Operation	Mimi.M.Wong@irsconsent.treas.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Secured Creditor	Jefferies LLC	Director of Compliance	cbianchi@jefferies.com
Secured Creditor	Jefferies LLC	Office of the General Counsel	cbianchi@jefferies.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	asrush@jonesday.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	jbain@joneswalker.com; aanderson@joneswalker.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	artoush.varshosaz@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	james.wright@klgates.com

Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	stephen.topetzes@klgates.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	pbessette@kslaw.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	Andrew.Clubok@lw.com; Sarah.Tomkowiak@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala, Kathryn K. George	asif.attarwala@lw.com; Kathryn.George@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	jeff.bjork@lw.com; kim.posin@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Zachary F. Proulx	Zachary.Proulx@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Counsel for Jack Yang and Brad Borud	Loewinsohn Flegle Deary Simon LLP	Daniel P. Winikka	danw@fldslaw.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Equity Holders	Mark K. Okada		mokadadallas@gmail.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arshat & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Bank	NexBank	John Danilowicz	john.holt@nexbankcapital.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikhharasch@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikhharasch@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD, Plano ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslough@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	judith.ross@judithwross.com; frances.smith@judithwross.com; eric.soderlund@judithwross.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	david.karp@srz.com; jay.williams@srz.com
SEC Regional Office	Securities & Exchange Commission	Richard Best, Regional Director	bankruptcynoticeshr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
Counsel to Patrick Daugherty	Spencer Fane LLP	Jason P. Kathman	jkathman@spencerfane.com

Description	CreditorName	CreditorNoticeName	Email
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel for NexPoint Real Estate Partners, LLC F/K/A HCRE Partners, LLC	Wick Phillips Gould & Martin, LLP	Brant C. Martin, Jason M. Rudd, Lauren K. Drawhorn	brant.martin@wickphillips.com; jason.rudd@wickphillips.com; lauren.drawhorn@wickphillips.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com





**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	Creditor/NoticesName	Address1	Address2	Address3	City	State	Zip
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	1700 Redbud Blvd, Ste. 300			McKinney	TX	75069
Counsel for NexBank	Alston & Bird LLP	Jared Slade	Chase Tower	2200 Ross Avenue		Dallas	TX	75201
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	One Atlantic Center	1201 West Peachtree Street		Atlanta	GA	30309
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	500 Delaware Avenue, 8th Floor	PO Box 1150		Wilmington	DE	19899-1150
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Ave			New York	NY	10018
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500		Dallas	TX	75201
Counsel for NWCC, LLC	Barnes & Thornburg LLP	Thomas G. Haskins, Jr.	2121 North Pearl Street, Suite 700			Dallas	TX	75201
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800			Wilmington	DE	19801
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	John Y. Bonds, III, Bryan C. Assink	420 Throckmorton Street, Suite 1000			Fort Worth	TX	76102
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	55 Second Street, 17th Floor			San Francisco	CA	94105-3493
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	2911 Turtle Creek Blvd.	Suite 1400		Dallas	TX	75219
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	265 E. Warm Springs Road, Suite 107			Las Vegas	NV	89119
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrossilliers	Hercules Plaza	1313 North Market Street, Suite 5400		Wilmington	DE	19801
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.		301 Commerce Street, Suite 1700			Fort Worth	TX	76102
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	8080 Park Lane, Suite 700			Dallas	TX	75231
Counsel to Patrick Daugherty ("Mr. Daugherty")	Gross & Simon LLC	Michael L. Vild, Esquire	1105 N. Market Street, Suite 901			Wilmington	DE	19801
Counsel for BH Equities, L.L.C.	Dentons US LLP	Casey Doherty	1221 McKinney Street, Suite 1900			Houston	TX	77010
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	1221 Avenue of the Americas			New York	NY	10020-1089
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	233 South Wacker Drive	Suite 5900		Chicago	IL	60606-6361
Counsel to Acis Capital Management, LP and Acis Capital Management GP, LLC ("Creditors") and Joshua N. Terry and Jennifer G. Terry	Forshey & Prostok LLP	Jeff P. Prostok, J. Robert Forshey, Suzanne K. Rosen	777 Main Street, Suite 1550			Fort Worth	TX	76102
Secured Creditor	Frontier State Bank	Attr: Steve Elliot	5100 South I-35 Service Road			Oklahoma City	OK	73129

003201

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	100 Crescent Court, Suite 350			Dallas	TX	75201
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	200 Park Avenue			New York	NY	10066
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	3161 Michelson Drive			Irvine	CA	92612
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Broughy	650 Poydras Street, Suite 2500			New Orleans	LA	70130
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	87 Railroad Place Ste 403			Saratoga Springs	NY	12866
IRS	Internal Revenue Service	Attn Susanne Larson	31 Hopkins Plz Rm 1150			Baltimore	MD	21201
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	2323 Ross Avenue, Suite 600			Dallas	TX	75201
Secured Creditor	Jefferies LLC	Director of Compliance	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Secured Creditor	Jefferies LLC	Office of the General Counsel	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	919 Third Avenue			New York	NY	10022-3908
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	2727 N. Harwood Street			Dallas	TX	75201
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	811 Main Street, Suite 2900			Houston	TX	77002
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artouh Varshosaz	1717 Main Street, Suite 2800			Dallas	TX	75201
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	1 Lincoln Street			Boston	MA	02110
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetztes	1601 K Street, NW			Washington	DC	20006-1600
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	901 Main Street, Suite 5200			Dallas	TX	75242-1699
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	500 West 2nd St., Suite 1800			Austin	TX	78701-4684
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	401 S. 2nd Street, Suite 200			Philadelphia	PA	19147
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000			Washington	DC	20004

003202

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala, Kathryn K. George	330 N. Wabash Avenue, Ste. 2800			Chicago	IL	60611
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100			Los Angeles	CA	90071
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Zachary F. Proulx	1271 Avenue of the Americas			New York	NY	10020
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207
Counsel for Jack Yang and Brad Borud	Loewinsohn Flegle Deary Simon LLP	Daniel P. Winikka	12377 Merit Drive, Suite 900			Dallas	TX	75251
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	2100 Ross Avenue, Ste 2700			Dallas	TX	75201
Equity Holders	Mark K. Okada		300 Crescent Court	Suite 700		Dallas	TX	75201
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arshnt & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	1201 North Market Street, Suite 1600			Wilmington	DE	19801
Counsel to Meta-e Discovery, LLC Bank	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	909 Third Avenue			New York	NY	10022
Counsel to California Public Employees' Retirement System ("CalPERS")	NexBank	John Danilowicz	2515 McKinney Ave	Ste 1100		Dallas	TX	75201
SEC Headquarters	Office of General Counsel	Louis J. Cisz, III, Esq. Securities & Exchange Commission	One Embarcadero Center, 32nd Floor			San Francisco	CA	94111
Texas Attorney General	Office of the Attorney General	Ken Paxton	100 F St NE			Washington	DC	20554
Attorney General of the United States	Office of the Attorney General		300 W. 15th Street			Austin	TX	78701
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq	Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Trustee for District of DE	Office of the United States Trustee	Linda Casey	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	844 King St Ste 2207	Lockbox 35		Wilmington	DE	19801
US Trustee for District of DE	Office of the United States Trustee	Jane M. Leamy	1100 Commerce Street, Room 976	Earle Cabell Federal Building		Dallas	TX	75242
Pension Benefit Guaranty Corporation ("PBGC")	Corporation	Michael I. Baird	J. Caleb Boggs Federal Building	844 King St Ste 2207	Lockbox 35	Wilmington	DE	19801
Counsel to City of Garland, Plano ISD, Wylie ISD, Plano ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	Office of the General Counsel	1200 K Street, N.W.		Washington	DC	20005-4026
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	1919 S. Shiloh Rd., Suite 310			Garland	TX	75042
Secured Creditor	Prime Brokerage Services	Jefferies LLC	1313 North Market Street, 6th Floor			Wilmington	DE	19801
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	520 Madison Avenue			New York	NY	10022
			One Rodney Square	920 North King Street		Wilmington	DE	19801

003203

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	325 North St. Paul Street, Suite 4500			Dallas	TX	75201
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCMC, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610			Dallas	TX	75201
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	919 Third Avenue			New York	NY	10022
SEC Regional Office	Securities & Exchange Commission	Richard Best, Regional Director	New York Regional Office	Brookfield Place, Suite 400	200 Vesey Street	New York	NY	10281
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	Philadelphia Regional Office	One Penn Center, Suite 520	1617 JFK Boulevard	Philadelphia	PA	19103
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	One South Dearborn Street			Chicago	IL	60603
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	2021 McKinney Avenue Suite 2000			Dallas	TX	75201
Counsel to Patrick Daugherty	Spencer Fane LLP	Jason P. Kathman	5700 Granite Parkway, Suite 650			Plano	TX	75024
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division- Bankruptcy Section	PO Box 13258			Austin	TX	78711
DE Secretary of State Equity Holders	State of Delaware	Division of Corporations - Franchise Tax	401 Federal Street	PO Box 898		Dover	DE	19903
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	300 Crescent Court	Suite 700		Dallas	TX	75201
TX AG Office	Texas Attorney Generals Office	Bankruptcy-Collections Division	919 North Market Street, Suite 420			Wilmington	DE	19801
Equity Holders	The Dugaboy Investment Trust		PO Box 12548			Austin	TX	78711-2548
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		300 Crescent Court	Suite 700		Dallas	TX	75201
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	300 Crescent Court	Suite 700		Dallas	TX	75201
United States Attorney General	United States Attorney General	U.S. Department of Justice	717 N. Harwood St., Suite 400	950 Pennsylvania Avenue, NW	Room 4400	Washington	DC	20530-0001
United States Bankruptcy Court	United States Bankruptcy Court	Honorable Stacey G. Jernigan	Northern District of Texas - Dallas Division	Earle Cabell Federal Building	1100 Commerce St., Rm. 1254	Dallas	TX	75242-1496
U.S. Department of the Treasury Counsel for NexPoint Real Estate Partners, LLC F/K/A HCRE Partners, LLC	US Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
	Wick Phillips Gould & Martin, LLP	Brant C. Martin, Jason M. Rudd, Lauren K. Drawhorn	3131 McKinney Avenue, Suite 500			Dallas	TX	75204

003204

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Harwood Street, Suite 500			Dallas	TX	75201
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: David Neier	200 Park Avenue			New York	NY	10166-4193
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	800 Capitol Street, Suite 2400			Houston	TX	77002
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	2121 N. Pearl Street, Suite 900			Dallas	TX	75201
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

003205

# EXHIBIT C

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
13D Global Strategy and Research		491 N Main Street			Ketchum	ID	83340-0000	
13D RESEARCH, INC		PO BOX 2087	109 BOULDER VIEW LANE		Ketchum	ID	83340	
13D RESEARCH, INC		6115 Estate Smith Bay	Box 2/Suite 333		St. Thomas	VI	00802-1304	
1564 Entertainment, LLC		391 E. Las Colinas Blvd.	#130-428		Irving	TX	75039	
1st AMERICAN FIRE PROTECTION, INC		PO BOX 2123			Mansfield	TX	76063-2123	
1st Partners & Co		PO Box 141629			Dallas	TX	75222	
2011 PCDC Teachers Cup		25 Highland Park Village	#100-188		Dallas	TX	75205	
2-10 HOME BUYERS		10375 E HARVARD AVE			Denver	CO	80231	
2905 Maple LLC		2905 Maple Avenue			Dallas	TX	75201	
299 Credit Finance Holdings LLC		875 Third Avenue	10th Floor		New York	NY	10022	
300 Inc.		3805 Bellline Rd			Addison	TX	75001	
4CAST Inc		420 Lexington Avenue, Suite 2147			New York	NY	10170	
4th Bin, Inc.		703 3rd Avenue	6th Floor		New York	NY	10017	
A. Dean Jenkins		Address on File						
A.S.A.P. Advisor Services		5000 Olde Towne Parkway	Suite 100		Marietta	GA	30068	
AA GMT		4700 AMERICAN BLVD			Ft. Worth	TX	76155	
Aaron, Phillip B.		Address on File						
ABALON BUSINESS MACHINES & SERVICES		60 E 42ND ST			New York	NY	10167	
Abayarathna, Sahana		Address on File						
Abbit Stonecypher		Address on File						
Aberdeen Loan Funding, Ltd.	c/o Walkers SPV Limited	Walker House 87 Mary Street	George Town		Grand Cayman	Cayman Islands	KY1-9002	
Aberdeen Loan Funding, Ltd.		190 Elgin Avenue	George Town		Grand Cayman	Cayman Islands	KY1-9005	
Aberdeen Loan Funding, Ltd. and State Street Bank and Trust Company	Aberdeen Loan Funding, Ltd. c/o Walkers SPV Limited, Walker House	87 Mary Street	George Town		Grand Cayman	Cayman Islands	1-9902	
Aberdeen Loan Funding, Ltd. and State Street Bank and Trust Company	State Street Bank and Trust Company	200 Clarendon St	Mail Code EUC 108		Boston	MA	02116	
Ableco, LLC		299 Park Avenue	Floor 21-23		New York	NY	10171	
Ablon and Co., PLLC		10000 N. Central Expy #1400			Dallas	TX	75231	
ABM		PO Box 419860			Boston	MA	02241-9860	
ABM Janitorial Services		P.O. Box 951864			Dallas	TX	75395	
ABM Texas General Services, Inc.		2020 Westridge Drive			Irving	TX	75038-0000	
About Faces Entertainment, LLC		5092 Dorsey Hall Drive	Suite 202		Ellicott City	MD	21042	
AboveNet Communications Inc.		PO Box 79006			City of Industry	CA	91716-9006	
Abraham Rondina		Address on File						

003207



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Abrams & Bayliss LLP	John M. Seaman	20 Montchanin Road, Suite 200			Wilmington	DE	19807	
Abrams Mediation		7616 Burns Run Suite 180			Dallas	TX	75248	
Abrams Mediation		4901 LBJ Fwy	#150		Dallas	TX	75244-6179	
Absolute Entertainment		1517 Prudential Drive			Dallas	TX	75235	
ACA Compliance Group		8403 Colesville Road	Suite 870		Silver Spring	MD	20910	
Academy Engraving Inc		271 Madison Avenue	Suite 207		New York	NY	10016	
Accessibility Today		PO Box 1757			Roanoke	TX	76262	
Accountant General	Appleby Services (Bermuda) Ltd.	PO Box HM 1179			Hamilton		HM EX	BERMUDA
Accountant General	ATTN Lorna Phillips	M Q Services Limited Victoria Place			Hamilton		HM 10	BERMUDA
ACQUINTEMS		PO Box 743295			Los Angeles	CA	90074-3295	
ACQUINTEMS		FILE 73484	PO BOX 60000		San Francisco	CA	94160-3484	
Acuity Inc. dba NRS		PO Box 7247-8077			Philadelphia	PA	19170-8077	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al		3110 Webb Ave., Suite 203			Dallas	TX	75205	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Attn Annmarie Chiarello, Rakhee V. Patel	c/o Winstead PC	500 Winstead Building	2728 N. Hanwood Street	Dallas	TX	75201	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Brian P. Shaw	Rogge Dunn Group PC	500 N. Akard St. Suite 1900		Dallas	TX	75201	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	James T. Bently	Schulte Roth & Zabel LLP	919 Third Avenue		New York	NY	10022	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Joseph E. Bain	Jones Walker LLP	811 Main St. Suite 2900		Houston	TX	77002	
Ackerman McQueen Inc.		1601 Northwest Expressway	Suite 1100		Oklahoma City	OK	73118	
ACMLP Claim, LLC		4514 Cole Ave., Suite 600			Dallas	TX	75205	
Action Fire Pros		3709 S IH 35			Waxahachie	TX	75165	
Action Shred of Texas		2835 Congressman Lane			Dallas	TX	75220	
Action Shred of Texas		1420 S. Barry Ave			Dallas	TX	75223	
Act-On Software, Inc.		121 SW Morrison Street, Ste 1600			Portland	OR	97204	
Ada Hsieh		Address on File						
ADAM DYBALA		Address on File						
Adam Energy Forum		PO Box 802511			Dallas	TX	75380-2511	
ADAM FALCON		Address on File						
Adam Hanson		Address on File						
Adam Kneller		Address on File						
Adam Ostermiller		Address on File						
ADAM PETERSON		Address on File						
Adam-Permian Energy Network		1439 Wakefield Dr.			Houston	TX	77018	
ADAM-Tulsa	Attn Melissa Turgeon	3500 One Williams Center, MD 2600			Tulsa	OK	74172-0135	

003208

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Adleshaw Goddard LLP		Sovereign House, PO Box 8	Sovereign Street Leeds		West Yorkshire		LS1 1HQ	United Kingdom
Adeo Internet Marketing Inc.		2501 East Charleston Rd			Island Pond	VT	05846	
Adeoso Process Service		PO BOX 12621			Albany	NY	12212	
Adeyemi Ogunkoya		Address on File						
ADISA		10401 North Meridian Street	Suite 202		Indianapolis	IN	46290	
AdMaster Compliance		1101 Arrow Point Drive	Suite 301		Cedar Park	TX	78613	
ADMIN .U.C.	State of Connecticut	Department of Labor	Employment Security Division		Hartford	CT	06104-2940	
Admiral Communications		4505 Excel Pkwy, Ste 300			Addison	TX	75001	
ADP		2735 Stemmons Fwy			Dallas	TX	75207	
ADP		PO BOX 78415			Phoenix	AZ	85062-8415	
ADP		PO Box 31001-1568			Pasadena	CA	91110-1568	
ADSUAR MUNIZ GOYCO SEDA & PEREZ-OCHOA		PO BOX 70294			San Juan	PR	00936-8294	
ADT SECURITY SERVICES, INC.	ATTN M MALDONADO	335 W 16th ST			New York	NY	10011	
ADT SECURITY SERVICES, INC		PO BOX 371956			Pittsburgh	PA	15250-7956	
Advanced Business Group, Inc.		520 Eighth Ave, 15th Flr			New York	NY	10018	
Advanced Discovery, Inc.		13915 N Mopac Expy	Suite 400		Austin	TX	78728	
Advanced Discovery, Inc.		PO Box 102242			Atlanta	GA	30368-2242	
Advanced Discovery, Inc.		PO Box 3173			Wichita	KS	67201-3173	
Advantage Data Inc.		PO Box 961210			Boston	MA	02196-1210	
Advent Software Inc	Attn Bill Hall	600 Townsend St., Suite 4000			San Francisco	CA	94103	
Advent Software, Inc.		PO BOX 823374			Philadelphia	PA	19182-3374	
Advent Software, Inc.		Three Lincoln Centre	5430 LBJ Freeway Ste 800		Dallas	TX	75240-0000	
Advent Software, Inc.		Dept 33096 PO Box 39000			San Francisco	CA	94139-3096	
ADVENTURE PHOTO TOURS, INC.		3111 S VALLEY VIEW BLVD	X-106		Las Vegas	NV	89102	
ADVISOR CONSULTANT NETWORK INC		600 SUPERIOR AVE	SUITE 1300		Cleveland	OH	44114	
Advisor Group, Inc.		PO Box 978516			Dallas	TX	75397-8516	
Advisory Group Equity Services, Ltd.		444 Washington Street	Suite 407		Woburn	MA	01801	
Advocates Professional Services, Inc		119 North Park Ave, Suite 303			Rockville Centre	NY	11570	
AERIAL FOCUS		4885 ALPHA RD	STE 155		Dallas	TX	75244-4633	
Aerolndustry Jobs, Inc		PO Box 215			Oxford	ME	04270	
Aetna	AETNA-MIDDLETOWN	PO BOX 88863			Chicago	IL	60695-1863	
Aetna	Attn Lockbox No 804735	350 East Devon Avenue			Itasca	IL	60143	
Aetna		10275 W. Higgins Rd	Suite 500		Rosemont	IL	60018	
Aetna		PO Box 804735			Chicago	IL	60680-4108	
Aetna		PO Box 88860			Chicago	IL	60695-1860	
Aetna-COBRA		COBRA/Special Plans	PO Box 13050		Secaucus	NJ	07188-0050	
Aetna-FSA Payment Remittance	Aetna-Middletown	PO Box 13504			Newark	NJ	07188-0504	

003209

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Afshan Mohammed		Address on File						
Agio, LLC		201 David L Boren Blvd	Ste 250		Norman	OK	73072	
Agren Blando Court Reporting Video Inc.		216 16th Street	Suite 650		Denver	CO	80202	
Aguliar Movers, Inc.		1206 Edwards Circle			Dallas	TX	75224	
AHLUWALIA, SANJIV		Address on File						
AI Insight		P.O. Box 639250			Cincinnati	OH	45263-9250	
AICPA		PO BOX 10069			Newark	NJ	07101-3069	
AICPA		Multiple Member Payment	PO Box 2219		Jersey City	NJ	07303-2219	
AIG Advisor Group, Inc.		PO Box 978516			Dallas	TX	75397-8516	
AIMSE		12100 Sunset Hills Road	Suite 130		Reston	VA	20190	
Aimware, Inc	ATTN Joyce Welsh	16 Olde Taveme Lane			Amesbury	MA	01913	
AIQ, Inc.		270 Rutherford Blvd			Clifton	NJ	07014	
AIQ, Inc.		1500 Broadway	Suite 2900		New York	NY	10036	
Air Graffiti Dallas		4901 Harbor Ct			Flower Mound	TX	75022	
AIRBAND								
COMMUNICATIONS, INC		75 Remittance Drive	Suite 6566		Chicago	IL	60675-6566	
Aire Dynamics		2305 E BELTLINE RD	STE 190		Carrollton	TX	75006	
Aire Dynamics		305 E Beltline Rd Ste 190			Carrollton	TX	75006	
Aire Dynamics		3250 WEST STORY RD #102			Irving	TX	75038	
AirWatch, LLC		931 Monroe Drive NE	Ste 102-303		Atlanta	GA	30308	
AirWatch, LLC		PO Box 742332			Atlanta	GA	30374-2332	
Akerman Senterfitt & Edison, PA		P.O. Box 4906			Orlando	FL	32802	
AKF Reporters, Inc.		436 Blvd of the Allies			Pittsburgh	PA	15219-1314	
Akin, Gump, Strauss, Hauer & Feld LLP		1333 New Hampshire Ave, NW			Washington	DC	20036	
Akin, Gump, Strauss, Hauer & Feld LLP		DEPT. 7247-6827			Philadelphia	PA	19170-6827	
Akin, Gump, Strauss, Hauer & Feld LLP		Dept 7247-6838			Philadelphia	DE	19170-6838	
Akin, Gump, Strauss, Hauer & Feld LLP		Dept. 2909			Carol Stream	IL	60132-2909	
Akin, Gump, Strauss, Hauer & Feld LLP		2300 N Field St Ste 1800			Dallas	TX	75201-2481	
Alabama Department of Revenue	Individual and Corporate Tax Division	Corporate Income Tax Section	PO Box 327435		Montgomery	AL	36132-7435	
Alabama Power Service Organization		PO Box 1209			Eufaula	AL	36072	
Alabama Sheriffs Youth Ranches		200 Crescent Ct Ste 1900			Dallas	TX	75201	
Alan Adams		Address on File						
ALAN WELCH		Address on File						
Albion Computer Services		49 Berkely Square			London			United Kingdom
A-Legal		1201 Elm Street	Suite 2560		Dallas	TX	75270	
Alejandro Vargas		Address on File						
Alex Kanji		Address on File						
ALEX SOMERS		Address on File						

003210

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Alexanders Mobility Services		2750 Miller Park N Ste 300			Garland	TX	75042-7751	
ALEXIS ZHOU		Address on File						
ALFERMANN, NICHOLAS		Address on File						
ALICE WANG		Address on File						
All American Entertainment		5790 Fayetteville Rd.	Ste. 200		Durham	NC	27713	
All Star Group, Inc		3835 E. Thousand Oaks Blvd	Suite 282		Westlake Village	CA	91362	
ALL SYSTEMS SERVICES		7901 WHISPERING WOODS LN.			N. Richland Hills	TX	75240	
Allan Huffman		Address on File						
ALLAN PAPPWORTH		Address on File						
Allien ISD	Attn Elizabeth Weller	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Allien ISD	c/o Laurie A. Spindler, Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
ALLEN KIM		Address on File						
ALLEN, MICHAELA S.		Address on File						
ALLEN, TARA		Address on File						
Alliens Arthur Robinson		GPO Box 50			Sydney	NSW	02001	AUSTRALIA
Alliance Legal Staffing		PO Box 670534			Dallas	TX	75367	
ALLIANCE REPORTING LLC		3500 OAK LAWN AVE	SUITE 400		Dallas	TX	75219	
Allied Capital Partners		PO BOX 676649			Dallas	TX	75267-6649	
Allied Electronics Inc.	Accts Receivable Dept.	PO Box 2325			Fort Worth	TX	76113-2325	
Allison Lam	c/o Frederik Michel	Address on File						
Allison Taylor		PO Box 187			Dingmans Ferry	PA	18328	
ALPHA ELECTRICAL SERVICES INC		3727 HWY 138			Stockbridge	GA	30281	
AlphaLit		8201 Greensboro Drive	Suite 717		McLean	VA	22102	
Alphasense, Inc.		PO Box 37176			San Francisco	CA	94137-0176	
Alpine Macro		1130 Sherbrooke St West PH1			Montreal	QC	H3A2M8	Canada
Aliston & Bird LLP		1201 W. Peachtree Street			Atlanta	GA	30309-3424	
Alternative Asset Investment Mgmt LLC		PO Box 5274			New York	NY	10185	
Altex Electronics, Ltd.		11342 HI 35 North			San Antonio	TX	78233	
Altus Network Solutions, Inc.		dba nFront Security	4920 Atlanta Highway, Suite 313		Alpharetta	GA	30004-2921	
Alvarez & Marsal Global Forensic and Dispute Services		555 Thirteenth Street NW, 5th Floor West			Washington	DC	20004	
Alvarez & Marsal North America, LLC		2029 Century Park East, Suite 2060			Los Angeles	CA	90067	
Alvarez and Marsal CRF Management, LLC		2029 Century Park East, Suite 2060			Los Angeles	CA	90067	
ALVAREZ, ADRIANA		Address on File						
Alvaro Idoate Photographer		18 Tapia Street			San Juan	PR	00911	
Alvaro Magalhaes		Address on File						
AM Linen Rental		1611B Tantor Rd			Dallas	TX	75229	
Amanda Coussens		Address on File						
AMANDA RUDOLPH		Address on File						
Amazon Web Services, Inc.	Attn AWS Legal	410 Terry Avenue North			Seattle	WA	98109-5210	

003211

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
AMB Janitorial Services	American Building Maintenance	PO Box 97292			Dallas	TX	75397	
Ambassador Funds		Level 8, 3 Spring St			Sydney	N8W	02000	AUSTRALIA
Ambassador Funds		STE 1202, LEVEL 12	3 SPRING ST		SYDNEY	NSW	02000	AUSTRALIA
Amber Electrical Contractors		2251 Century Center Blvd	520 Eighth Ave, 25th Floor		Irving	TX	75062	
Ambridge Partners LLC		Due Diligence Services			New York	NY	10018	
AMC Theaters		13731 Collections Center Drive			Chicago	IL	60693	
American Airlines		4255 Amon Carter Blvd	MD 4106		Fort Worth	TX	76155	
American Airlines, Inc.		PO Box 619616 MD4106			Ft Worth	TX	76155-0000	
AMERICAN APPRAISAL CANADA, INC		310 FRONT ST WEST Suite 710			TORONTO	ON	M5V 3B5	CANADA
American Arbitration Association	ATTN Kathleen Cantrell	1750 Two Galleria Tower	13455 Noel Road		Dallas	TX	75240	
American Arbitration Association		120 Broadway, 21st Floor			New York	NY	10271	
American Arbitration Association		Lackey Hershman, LLP	3102 Oak Lawn Avenue, Suite 777		Dallas	TX	75219	
American Arbitration Association		13455 Noel Road, Suite 1750			Dallas	TX	75240	
AMERICAN BANK NOTE COMPANY		PO BOX 1931			Columbia	TN	38402	
American Banknote Corporation	Attention Patrick J. Gentile	560 Sylvan Avenue			Englewood Cliffs	NJ	07632	
American Bar Association		PO Box 4745			Carol Stream	IL	60197-4745	
American Bldg. Maintenance Co.		PO Box 951864			Dallas	TX	75395-1864	
American Cancer Society	ATTN JAMIE SLOAN	1199 S Belt Line Rd Ste 160			Coppell	TX	75019-4656	
American Cancer Society	Attn Sharyn Klumb	1199 S Belt Line Rd Ste 160			Coppell	TX	75019-4656	
American Chamber of Commerce Resources		65 East Wacker Place	Suite 1804		Chicago	IL	60601	
American Express National Bank	c/o Becket & Lee LLP	PO Box 3001			Malvern,	PA	19355-0701	
American Federation of the Arts		305 East 47 St.	10 th Floor		New York	NY	10017	
American Furniture Rental		3201 E. Arkansas Lane	Suite 101		Arlington	TX	76010	
American Global Wealth Management		1600 Pennsylvania Avenue			McDonough	GA	30253	
American Heart Assoc. National Center	Attn SouthWest Affiliate-AR	PO Box 4002903			Des Moines	IA	50340-2903	
American Heart Association	c/o Cotes du Coeur	Attn Gabbi Sikes	105 Decker Ct, Ste 200		Irving	TX	75062	
American Heart Association		2550 US Highway 1			North Brunswick	NJ	08902	
American Heart Association		Greater Kansas City Community Found	1055 Broadway Blvd., Suite 130		Kansas City	MO	64105	
American Heart Association		Southwest Affiliate	105 Decker Court, Suite 200		Irving	TX	75062	
American Heart Association		7272 Greenville Avenue			Dallas	TX	75231	

003212

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
American Heart Association		8200 Brookriver Dr	Suite N-100		Dallas	TX	75247	
American Heart Association		SouthWest Affiliate - Acct Rec. PO BOX 219189	PO Box 4002031		Des Moines	IA	50340-2031	
American Language Technologies		3941 Legacy Drive, #204 830 THIRD AVE	PMB 199A		Kansas City	MO	64121-9189	
AMERICAN LOCKSMITHS		Subscription Department	PO Box 15127		Plano	TX	75023	
American National Bank & Trust	Attention Commercial Lending	2732 Midwestern Parkway			New York	NY	10022	
American National Bank & Trust		2732 Midwestern Parkway			North Hollywood	CA	91615-5127	
American Portfolios - Kolinsky With Mgt		4250 Veterans Memorial Hwy	Ste 420 E		Wichita Falls	TX	76308	
American Portfolios Financial Svcs Inc.	Attn Ann Antunovich	4250 Veterans Memorial Hwy			Wichita Falls	TX	76308	
American Program Bureau, Inc.		One Gateway Center PO Box 4002018	Suite 751		Holbrook	NY	11741	
AMERICAN RESEARCH BUREAU		2386 HERITAGE WAY			Holbrook	NY	11741	
American Restaurant Association		2907 126th Ter E			Newton	MA	02458	
American Solutions for Business		NW#7794	PO Box 1450		Des Moines	IA	50340-2018	
American Solutions for Business		PO Box 218			Salt Lake City	UT	84109-1808	
American Solutions for Business		8479 Solution Center PO Box 11181A			Parrish	FL	34219-1629	
American Stock Exchange		BOX 757510			Minneapolis	MN	55485-7794	
Ameriprise Financial Services, Inc.		50798 Ameriprise Financial Center			Glenwood	MN	56334-0218	
Amicus Search Group		700 N. Pearl St	Suite # 1640		Chicago	IL	60677-8004	
AMIR RAO		1020 MEDFORD RD			New York	NY	10286-1181	
AMX Environmental Ltd		2351 W Northwest HWY-STE 2118			Philadelphia	PA	19175-7510	
Amy Nguyen		Address on File			Minneapolis	MN	55474	
Analysis Group		111 Huntington Ave, 14th Floor			Dallas	TX	75201	
ANAND DESAI		Address on File			Pasadena	CA	91107	
Anchor Advisory Services Corporation		4 Court St.	Ste 207		Dallas	TX	75220-8406	
ANDERSEN, DEREK C.		Address on File			Boston	MA	02199	
ANDERSON, KIRK		Address on File			Plymouth	MA	02360	
ANDREI DORENBAUM		Address on File						
ANDREI DORENBAUM		Address on File						
Andrew Hayton		Address on File						
Andrew Hilgenbrink		Address on File						
Andrew Lieberman		Address on File						

003213

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Andrew Mangin		Address on File						
Andrew Merrick Homes LLC		13455 NOEL RD	STE 1330		Dallas	TX	75240	
Andrew Parmentier		Address on File						
Andrew Rosemore		Address on File						
ANDREW STONE		Address on File						
ANDREW YACENDA		Address on File						
Andrews Kurth	Scott A. Brister, Esq.	Address on File						
Andrews Kurth		Address on File						
Andrews Kurth LLP		600 Travis St., Suite 4200			Houston	TX	77002	
Andrews Kurth LLP		PO Box 301276			Dallas	TX	75303-1276	
Andrius Balta		Address on File						
Animal Defense League		11300 Nacogdoches Rd			San Antonio	TX	78217-2318	
Anish Tailor		Address on File						
Anna Englert		Address on File						
Ansarada Pty Limited		30 South Wacker Dr	22 Floor		Chicago	IL	60606	
ANTONOVICH, THOMAS G.		Address on File						
Aon Consulting, Inc.		445 Hutchinson Ave	Ste 900		Columbus	OH	43235-0000	
Aon Consulting, Inc.		29695 Network Place			Chicago	IL	60673-1296	
APIR Systems Ltd.		PO Box 5446			Kingston	ACT	02604	AUSTRALIA
APKE & KIMBRELL, LLP		1650 HIGHWAY 6	STE 100		Sugar Land	TX	77478	
Appleby Corporate Services (Bermuda) Ltd.		PO Box HM 1179			Hamilton	HM EX	BM EX	BERMUDA
Appliance Fixx Air & Heat		PO Box 271258			Flower Mound	TX	75027-1258	
Aptiviti, Inc.		145 W 28th St Fl 9			New York	NY	10001-6114	
Aramark		2120 Hutton Dr	Suite 100		Carrollton	TX	75006	
ARCHON SOLICITORS		MARTIN HOUSE			London			United Kingdom
ARCpoint Labs of Irving		8925 Sterling Street	Suite 255		Irving	TX	75063	
ARGENTIC REAL ESTATE FINANCE LLC		40 WEST 57TH STREET	29TH FLOOR		New York	NY	10019	
Argo Partners		12 West 37th Street, 9th Floor			New York	NY	10018	
Argonaut Insurance Company		225 W Washington Street	24th floor		Chicago	IL	60606-0000	
Argosy Group		PO Box 5094			Brentwood	TN	37024	
Argosy Group		Two Washingtonian Center Blvd., Ste. 200	9737 Washingtonian Blvd., Ste. 200		Gaithersburg	MD	20878-7364	
Argosy Group LLC		9737 Washingtonian Blvd.	Ste. 100		Gaithersburg	MD	20878	
Argus Software		PO BOX 671591			Dallas	TX	75267	
Argus Software		3050 Post Oak Blvd	Suite 900		Houston	TX	77056	
Ari L. Faneuil		Address on File						
Arizona Biltmore Resort & Hotel		PO Box 740949			Los Angeles	CA	90074-0949	
Arizona Corporation Commission		Z Corp Commission - Securities DIV	1300 West Washington Street, 3rd Floor		Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		ATTN Collections Division			Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		1600 West Monroe St			Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		PO BOX 29079			Phoenix	AZ	85038	

003214



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ARIZONA DEPARTMENT OF REVENUE		PO Box 29085			Phoenix	AZ	85038-9085	
Arizona Land Management Services, LLC		4900 North Scottsdale Rd	Suite 3000		Scottsdale	AZ	85251	
Arizona Land Management Services, LLC		PO Box 13303			Scottsdale	AZ	85267-3303	
Arizona Outback Adventures		17465 N 93rd St			Scottsdale	AZ	85255-6324	
Arizona PSPRS Trust		E Camelback Road	Suite 200		Phoenix	AZ	85016	
Arkadin, Inc.		Lockbox #32726	Collection Center Dr		Chicago	IL	60693-0726	
Arkansas Secretary of State	Business & Commercial Services Division	PO Box 8014			Little Rock	AR	72203	
Arkansas Securities Department		201 E. Markham, Rm 300	Heritage West Bldg		Little Rock	AR	72201	
Ardell, Connor		Address on File						
Arnold, Jeffrey		Address on File						
Arnstein & Lehr LLP		120 South Riverside Plaza	Ste 1200		Chicago	IL	60606-3910	
Arntzen de Besche		Address on File						
ARORA, SANDEEP		Address on File						
Arredondo, Alba M.		Address on File						
Arris Western Corp.		718 N Buckner #316			Dallas	TX	75218	
Arthouse Design		2373 Central Park Blvd	Suite 204		Denver	CO	80238	
Arthur Klausner		Address on File						
Article 1		Rua Eugen Germer, 86	Blumenau		Santa Catarina	TX	89015--140	BRAZIL
Artografx, Inc.		2611 Ancljon			Dallas	TX	75220	BERMUDA
AS&K Services Limited		PO Box HM 1179			Hamilton		HM EX	
Asante Phase I Community Association		1600 W Broadway	Suite 200		Tempe	AZ	85282	
Ashby & Geddes		PO Box 1150			Wilmington	DE	19899	
Ashley Van Hoef		Address on File						
Ashton Consulting Limited		9F, Atago East Building			Minato-ku	Tokyo	105-0003	JAPAN
Ashurst LLP		Time Square Tower	7 Time Square		New York	NY	10036	
ASI Business Solutions		820 W Sandy Lake Rd Ste 100			Coppell	TX	75019-4108	
ASI Business Solutions		12801 N Stemmons Frwy Ste 710			Dallas	TX	75234-5881	
ASI, Corporate		8181 Jetstar Drive	Suite 100		Irving	TX	75063	
ASI, Corporate		3860 W. Northwest Hwy	Suite 350		Dallas	TX	75220	
Asociacion Suzuki de Violin de PR		Villa Nevarez	1026 calle 18		San Juan	PR	00927	
Aspen Publishers Inc.		7201 McKinney Circle			Frederick	MD	21704	
Aspen Publishers Inc.		PO Box 64054			Baltimore	MD	21264-4054	
Aspen Publishers Inc.		4829 INNOVATION WAY			Chicago	IL	60682-0048	
ASSAR, VATSAL		Address on File						
Asset Communications, Inc.		1764 Prospector Ave	Suite 1		Park City	UT	84060	
Asset-Backed Alert		5 Marine View Plaza # 400			Hoboken	NJ	07030-5795	
ASSIST THE OFFICER FOUNDATION		1412 GRIFFIN ST E			Dallas	TX	75215	
Assn of Asian American Invest Managers	Attn Amy Gee	50 California Street	Suite 2320		San Francisco	CA	94111	

003215

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Assoc. Asian American Investment Mgrs	c/o V. Lau, Leading Edge Invest Advisors	50 california Street, Suite 2320			San Francisco	CA	94111	
Assoc. for American Innovation, Inc.		2200 Wilson Blvd	Suite 102-533		Arlington	VA	22201	
Assoc. of Asian America Investment Mgrs		1045 N. Utah St., Suite 512			Arlington	VA	22201	
Assured Environments		45 Broadway	10th Floor		New York	NY	10019	
AST Equity Plan Solutions		123 S. Broad Street	Suite 1160		Philadelphia	PA	19109	
AST Equity Plan Solutions		PO Box 12893			Philadelphia	PA	19176-0893	
ASTRON SOLUTIONS		535 W 34TH ST	STE 407		New York	NY	10001	
ASW Law Limited		Crawford House	50 Cedar Avenue		Hamilton		0HM11	Bermuda
ASW Law Limited		Crawford House	PO Box HM2879		Hamilton		0HMLX	Bermuda
AT&T	c/o Bankruptcy	4331 Communications Dr	Fir 4W		Dallas	TX	75211	
AT&T		PO BOX 5012			Carol Stream	IL	60197	
AT&T		PO BOX 5019			Carol Stream	IL	60197	
AT&T		PO BOX 78045			Phoenix	AZ	85062	
AT&T		PO BOX 13128			Newark	NJ	07101-5628	
AT&T		PO BOX 13146			Newark	NJ	07101-5646	
AT&T		PO BOX 105068			Atlanta	GA	30348-5068	
AT&T		PO Box 105414			Atlanta	GA	30348-5414	
AT&T		PO BOX 5001			Carol Stream	IL	60197-5001	
AT&T		PO BOX 5020			Carol Stream	IL	60197-5020	
AT&T		PO Box 9005			Carol Stream	IL	60197-9005	
AT&T		PO BOX 630047			Dallas	TX	75263-0047	
AT&T		PO BOX 650661			Dallas	TX	75265-0661	
AT&T		PO BOX 660324			Dallas	TX	75266-0324	
AT&T		PO Box 660921			Dallas	TX	75266-0921	
AT&T		PO BOX 930170			Dallas	TX	75393-0170	
AT&T		PO BOX 940012			Dallas	TX	75394-0012	
AT&T		PO BOX 78225			Phoenix	AZ	85062-8225	
AT&T Internet Services	ATTN HIPOS	PO BOX 650040			Dallas	TX	75265-0040	
AT&T Internet Services		PO BOX 5016			Carol Stream	IL	60197-5016	
AT&T Internet Services		PO Box 650396			Dallas	TX	75265-0396	
AT&T Long Distance		PO Box 5017			Carol Stream	IL	60197-5017	
AT&T MOBILITY		PO Box 105773			Atlanta	GA	30348-5773	
AT&T MOBILITY		PO BOX 538695			Atlanta	GA	30353-8695	
AT&T MOBILITY		PO BOX 31287			Tampa	FL	33631-3287	
AT&T MOBILITY		PO BOX 31488			Tampa	FL	33631-3488	
AT&T MOBILITY		PO BOX 6428			Carol Stream	IL	60197-6428	
AT&T MOBILITY		PO Box 6444			Carol Stream	IL	60197-6444	
AT&T MOBILITY		PO BOX 6463			Carol Stream	IL	60197-6463	
AT&T MOBILITY		PO Box 8229			Aurora	IL	60572-8229	
AT&T Mobility		208 South Akard Street			Dallas	TX	75202-0000	
AT&T MOBILITY		PO Box 650553			Dallas	TX	75265-0553	
AT&T MOBILITY		PO BOX 650574			Dallas	TX	75265-0574	
AT&T Performing Arts Center	Attn Development	700 N. Pearl Street, Suite N1800			Dallas	TX	75201	
Atlas IDF, LP	c/o Atlas IDF GP, LLC	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Atlia Medical, PC		5820 Oberlin Dr. Suite 205			San Diego	CA	92121	

003216

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Attorney General of South Carolina	Securities Division	1000 Assembly St Address on File	Rembert C. Dennis Office Bldg		Columbia	SC	29201	
Atul Kavthekar								
Audio Visual Innovations, Inc.		P.O. Box 62251			Baltimore	MD	21264-2251	
AURORA BOREALIS	ATTN GEORGE WHITE	101 BARCLAY ST 13W			New York	NY	10286	
AUSHRIF JAVEED		Address on File						
Austin Brown		Address on File						
AUSTIN TRANTHAM		Address on File						
AUSTIN, TIMOTHY		Address on File						
Automotive News		DRAWER #7718	PO BOX 79001		Detroit	MI	48279	
Automotive News		Subscriber Services Department 77940			Detroit	MI	48277-0940	
Avalon Synergy		One Galleria Tower	13355 Noel Rd, Suite 1100		Dallas	TX	75240	
AvePoint, Inc		3 Second Street Suite 803			Jersey City	NJ	07311	
Avi Levine		Address on File						
AVIATION SERVICES ELITE		4502 CLAIRE CHENNAULT			Addison	TX	75001	
Aviation Services Group		14001 Dallas Pkwy			Dallas	TX	75240	
Aviation Week		PO Box 505			Hightstown	NJ	08520-9897	
AVIDITY PARTNERS		180 N STETSON	STE 1310		Chicago	IL	60601	
AVI-SPL		13859 Diplomat Drive	Suite 180		Dallas	TX	75234	
AVI-SPL		PO Box 844612			Boston	MA	02284-4612	
AVI-SPL		PO BOX 62251			Baltimore	MD	21264-2251	
Avitar Technologies, Inc.		65 Dan Rd			Canton	MA	02021	
Avtech	ATTN Accounts Receivable	PO Box 394			Newport	RI	02840-0004	
AWAIS SHAIKH		Address on File						
AWARE		2828 Hood Street	Residence 1705		Dallas	TX	75219	
Axicon Partners, LLC	ATTN Robert T. Scott	1325 Avenue of the Americas	27th floor		New York	NY	10019	
Axios Institute		PO Box 457			Edinburg	VA	22824	
Axis Global Systems		PO Box 831			North Bergen	NJ	07047	
A-Z Cleaning Services		1729 Crosby Rd.			Carrollton	TX	75006	
B&H Photo - Video, Inc.		420 Ninth Avenue			New York	NY	10001	
B3 Entertainment Productions, Inc.		1509 Schooner Bay Dr.			Wylie	TX	75098	
Badge of Honor Memorial Fund		Executive Office	3131 Maple Ave 7E		Dallas	TX	75201	
Bailey Kennedy, LLP		8984 Spanish Ridge Ave			Las Vegas	NV	89148	
Bailey, Connor		Address on File						
Baker & Daniels		111 E Wayne Ste 800			Fort Wayne	IN	46802	
Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Avenue			New York	NY	10018	
Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500		Dallas	TX	75201	
Baker Botts LLP		901 Louisiana Street			Houston	TX	77002	
Baker Botts LLP		PO BOX 201626			Houston	TX	77216	
Baker Botts LLP		PO Box 301251			Dallas	TX	75303-1251	
Baker McKenzie LLP		100 New Bridge Street			London			United Kingdom
Baker McKenzie LLP		2300 Trammell Crow Center	2001 Ross Ave		Dallas	TX	75201	
Baker McKenzie LLP		815 Connecticut Ave, NW			Washington	DC	20006-4078	

003217

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Baker Tilly Virchow Krause, LLP		1050 Crown Pointe Parkway, Ste 1650			Atlanta	GA	30338	
Baker Tilly Virchow Krause, LLP		205 N Michigan Ave Address on File			Chicago	IL	60601-5927	
Baker, Lauren		Address on File						
BAKER, SCOTT		Address on File						
Baker, Stephen		Address on File						
Balch & Bingham LLP		P.O. Box 306			Birmingham	AL	35201	
BALFOUR ASSOCIATES, INC	ATTN DAVID VANVALKENBURG	5350 PRESERVE DR 1735 Market Street	51st Floor		Greenwood Village Philadelphia	CO PA	80121 19103	United Kingdom
BALLS BROTHERS Bancroft Associates PLLC		313 CAMBRIDGE HEATH RD 500 New Jersey Avenue	BETHNAL GREEN Seventh Floor		London Washington		E2 9LQ 20001	
Bank Director		201 Summit Drive	Suite 250		Brentwood	TN	37027	
Bank Director		5110 Maryland Way Ste 250			Brentwood	TN	37027-9501	
BANK OF AMERICA		335 MADISON AVE			New York	NY	10017	
Bannon, Lucy		Address on File						
Baradach, Artsiom		Address on File						
BARANSI, SAMER		Address on File						
Barbera, Angela		Address on File						
Bamdollar Investment Advisory Services		2719 Letap Ct	Ste 101		Land O Lakes	FL	34638	
BARNES & ROBERTS, LLC		2701 Canton St.			Dallas	TX	75226	
BARNES & ROBERTS, LLC		2816 COMMERCE ST			Dallas	TX	75226	
Barnes and Noble College		2943 SMU Blvd			Dallas	TX	75205	
BARNES&THORNBURG LLP		11 South Meridian Street			Indianapolis	IN	46204	
Barri Pearson		Address on File						
Barrier Advisors		13455 Noel Rd, Ste 2200			Dallas	TX	75240	
Barrington Financial Group, LLC		77 Franklin Street	Suite 802		Boston	MA	02110	
Barrister Books, Com		615 Florida St.			Lawrence	KS	66044	
Barristers & Attorneys		PO Box HM 26			Hamilton	BERMUDA	HM LX	
Barrons		200 Burnett Rd	PO Box 7031		Chicopee	MA	01021-7031	
BARTH GROSS ELECTRIC CO, INC		110 W 26th ST			New York	NY	10001	
BARTLIT BECK HERMAN PALENCHAR SCOTT		COURTHOUSE PLACE	Suite 300		Chicago	IL	60610	
Bass, Berry & Sims PLC		150 Third Ave South, Ste 2800			Nashville	TN	37201	
BATCHWORK MANAGEMENT LTD		HOME PARK ESTATE	STATION RD		KINGS LANGLEY		WD4 8DH	United Kingdom
BATEMAN, JACK		Address on File						
Bates Group, LLC		5005 S.W. Meadows Rd, Ste 300			Lake Oswego	OR	97035	
Bates White, LLC		Bates White, LLC	2001 K Street NW, North Bldg Suite 500		Washington	DC	20006	
Bates White, LLC		2001 K Street, NW	North Building, Suite 500		Washington	DC	20006	

003218

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BAUER, WILLIAM		Address on File						
Bayard, P.A.		222 Delaware Avenue, 9th Floor			Wilmington	DE	19801	
Baynard, Cameron		Address on File						
Bazooka Search Ltd		115 Coventry Rd			London		E2 6GG	United Kingdom
BB&T Securities, LLC		2619 N Oak Street, 3rd Floor			Myrtle Beach	SC	29577	
BBD, LLP		1835 Market Street	3rd Floor		Philadelphia	PA	19103	
BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206	
BCA Publications Ltd.		1002 Sherbooke St West Ste 1600			Montreal	QC	H3A 3L6	CANADA
BCA Research Inc		1002 Sherbrooke St. W	Suite 1600		Montreal	QC	H3A 3L6	CANADA
BDC Review, LLC		407 East Maple Street	Ste 305		Cumming	GA	30040	
BDO USA, LLP		700 North Pearl	Suite 2000		Dallas	TX	75201	
BDO USA, LLP		P.O. Box 31001-0860			Pasadena	CA	91110-0860	
BEALL-SARRIS, ASHLEY E.		Address on File						
BEARD, MATTHEW		Address on File						
Beauchamp, Thomas		Address on File						
Becky Bowler		Address on File						
Bedell Cristin		Address on File						
BEEF SLABS OF TEXAS LLC		2000 N HWY 157	STE 112		Mansfield	TX	76063	
Behind the Numbers LLC		8140 Walnut Hill Ln #300			Dallas	TX	75231	
BELINGER & DEWOLF, LLP		10000 N CENTRAL EXPWY	STE 900		Dallas	TX	75231	
Bell Nunnally and Martin, LP	Russell W. Mills	2323 Ross Avenue Suite 1900			Dallas	TX	75201	
Bell, Boyd & Lloyd		70 West Madison S, Ste 3300			Chicago	IL	60602	
Bella Flora of Dallas		Three First National Plaza			Dallas	TX	75207	
BEN ASARE		118 Oak Lawn Ave.						
Ben E. Keith		Address on File						
Ben Greenfield, Human		Address on File						
Wellness Sol. LLC		8515 N Argonne Rd			Spokane	WA	99217	
BEN VONDERHAAR		Address on File						
Benefit Data		2220 San Jacinto Blvd, Ste 345			Denton	TX	76205	
Benesch	LouAnne Molinaro	222 Delaware Avenue, Suite 801			Wilmington	DE	19801-1611	
BENJAMIN FINGER		Address on File						
Benjamin Sarly		Address on File						
Benson Hlavaty Architects		3141 Hood St Ste 420			Dallas	TX	75219	
Bent Tree Country Club, Inc.		5201 Westgrove Drive			Dallas	TX	75248	
Bent Tree Country Club, Inc.		PO Box 204795			Dallas	TX	75320-4795	
BERIHUN, ELIZABETH		Address on File						
Berkeley Research Group, LLC	Emily Kirksey	1800 M Street NW	Second Floor		Washington	DC	20036	
Berkeley Research Group, LLC	Valerie Riva	2200 Powell Street Suite 1200			Emeryville	CA	94608	

003219

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Berkeley Research Group, LLC	Valerie Riva	2200 Powell Street Suite 1200			Emeryville	CA	94608	
Berkeley Research Group, LLC		2200 Powell Street	Suite 1200		Emeryville	CA	94608	
Berkeley Square Advisors LLC		701 N Green Valley Pkwy Ste 200			Henderson	NV	89074	
Berkshire Capital Securities, LLC		535 Madison Avenue			New York	NY	10022	
Bernard DeMeo		Address on File						
Bernard Peperstraete		Address on File						
Berry Appleman & Leiden LLP		3355 W. Alabama Street	Suite 1050		Houston	TX	77098	
Berry Appleman & Leiden LLP		353 Sacramento Street	Suite 1300		San Francisco	CA	94111	
Berthel Fisher & Company	Attn Connie Allard	701 Tama Street	8090 N 85th Way, Ste 101		Marion	IA	52302	
Berthel Fisher & Company	Attn Dan Barnard	Berthel Fisher & Company			Scottsdale	AZ	85258	
Berthel Fisher & Company		16100 Chesterfield Parkway West	Suite 150		Chesterfield	MO	63017	
Best Companies Group		1500 Paxton Street			Harrisburg	PA	17104	
Beyond		8700 Ambassador Row			Dallas	TX	75247	
Beyond the Box		2544 West Commerce Street			Dallas	TX	75212	
Bhavani Jaroff		Address on File						
BHIL Distributors, Inc.		325 John H. McConnell Blvd	Suite 200		Columbus	OH	43215	
Bickel & Brewer		1717 Main St			Dallas	TX	75201	
Bifferato Gentilotti LLC		100 Biddle Avenue	Springside Plaza	Suite 100	Newark	DE	19702	
Big Brother Big Sister		450 E. John Carpenter Fwy, Ste 300			Irving	TX	75062	
Big Brothers Big Sisters of Mass Bay	Attn Erin DeMarco	75 Federal Street, 8th Floor			Boston	MA	02110	
Big Honkin Ideas		1424 Lincoln Blvd			Santa Monica	CA	90401	
Big Thought		2501 Oak Lawn	Ste 550, LB-42		Dallas	TX	75219	
BILL CRISPIN		Address on File						
Bill J Crouch & Associates		210 MacCorkle Ave SE			Chalston	WV	25314	
BILL MITENBERGER		Address on File						
BILL WALLISCH		Address on File						
Bill Wilton		Address on File						
BILLINGHURST, MINDY		Address on File						
BIMAL KALVANI		Address on File						
Bingham McCutchen LLP		P.O. Box 3486			Boston	MA	02241-3486	
BioCentury Publications		PO Box 1246			San Carlos	CA	94070	
Bison Coolers, LLC		5113 Commercial Drive			North Richland Hills	TX	76180	
BISYS		PO Box 19468A			Newark	NJ	07195-0468	
BKM Total Office of Texas		9755 Clifford Drive #100			Dallas	TX	75220	
Black Box Network Services		PO Box 890699			Dallas	TX	75389-0699	
Black Mountain Systems, LLC		12520 High Bluff Dr	Ste 340		San Diego	CA	92130	
BLACK, WINSTON		Address on File						
Blackberry Wireless		12432 Collections Center Dr			Chicago	IL	60693	

003220

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BLACKBURN, MICHAEL		Address on File						
BLACKWELL SANDERS PEPER MARTIN LLP		PO BOX 795135			Saint Louis	MO	63179	
Blair Roeber		Address on File						
BLAKE DEXTER		Address on File						
Blake Morrell		Address on File						
Blank Rome LLP		Lockbox #8586	PO Box 8500		Philadelphia	PA	19178-8500	
Blast Creative		2703 Poly Drive			Billings	MT	59102	
Blast Creative		3036 Hunters Ridge Loop			Billings	MT	59102	
Block Garden & McNeill, LLP		Sterling Plaza	5949 Sherry Lane, Suite 900		Dallas	TX	75225	
BLOMBERG FINANCE L.P.		731 LEXINGTON AVE			New York	NY	10022	
Bloom Strategic Consulting, Inc.	Atn Accounts Receivable	431 Fayette Avenue			Mamaroneck	NY	10543	
Bloomberg		4514 Cole Ave.	Suite 600		Dallas	TX	75205	
Bloomberg Businessweek		PO Box 30244			Hartford	CT	06150-2044	
Bloomberg Finance LP		PO Box 37531			Boone	IA	50037-0531	
Bloomberg Finance LP		PO BOX 30244			Hartford	CT	06150	
Bloomberg Finance LP		731 Lexington Ave.			New York	NY	10022	
Bloomberg Finance LP		PO Box 416604			Boston	MA	02241-6604	
Blue Cross Blue Shield of Texas		1001 East Lookout Drive			Richardson	TX	75082	
Blue Cross Blue Shield of Texas		PO Box 731428			Dallas	TX	75373-1428	
Blue Ribbon Advantage		7020 Portwest Drive, Suite 150			Houston	TX	77024	
Blue Ribbon Advantage		P.O. Box 79487			Houston	TX	77279-9487	
Blue Ribbon Industries		408 Singleton Blvd			Dallas	TX	75212	
Blue Vault Partners, LLC		407 E Maple St	Suite 305		Cumming	GA	30040	
Blueprint for Prosperity	Atn Finance	500 North Akard St, Suite 2600			Dallas	TX	75201	
Blumberg/Excelsior		62 White St			New York	NY	10013	
BLUMER, JENNIFER		Address on File						
BMC Software, Inc.		2101 Citywest Blvd			Houston	TX	77042	
BMC Software, Inc.		PO Box 301165			Dallas	TX	75303-1165	
BMZ Discovery Services LLC		1400 Biscaya Drive			Miami Beach	FL	33154	
BNA		PO BOX 17009			Baltimore	MD	21297-1009	
BNY Mellon		525 Penn Place			Pittsburgh	PA	15219-0000	
Bob Grier		Address on File						
Bob Marx		Address on File						
Bochetto & Lentz, P.C.		1524 Locust Street			Philadelphia	PA	19102	
BOCK, MARIA		Address on File						
BODRON, MICHAEL		Address on File						
Boies, Schiller & Flexner LLP	Scott E. Gant, Esq.	Boies, Schiller & Flexner LLP	5301 Wisconsin Ave. NW		Washington	DC	20015	
Boies, Schiller & Flexner LLP		5301 Wisconsin Ave NW			Washington	DC	20015-2015	
BOK Financial Asset Management		The Lyric Centre	440 Louisiana, Suite 2500		Houston	TX	77002	

003221



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BOK Financial Asset Management		PO Box 1270			Tulsa	OK	74101-1270	
BOK Financial Securities, Inc.	Attn Leslie Swafford	1 Williams Center, 16th Fir			Tulsa	OK	74172	
Bonahoom & Associates		10850 Switzer Ave #101			Dallas	TX	75238	
Bonnie Murray		Address on File			New York	NY	10007	
Boom Global Media Inc		295 Greenwhich St. # 296			Tulsa	OK	74172	
BOSC, Inc.	Attn Chelle Davidson	One Williams Center, 9 NE						
BOSE, ROHAN		Address on File						
Boston Financial Data Services		PO Box 74008640	Lockbox 008640		Chicago	IL	60674-8640	
Boston Financial Data Services		330 W. 9th Street			Kansas City	MO	64105-1514	
Boston Properties, L.P.		800 Boylston Street	Suite 1900		Boston	MA	02199	
Boston Properties, L.P.		599 Lexington Ave			New York	NY	10022-6004	
Boundless Network		200 E. 6th Street	Suite 300		Austin	TX	78701	
Bow Line Media		1809 Thale Drive			Dallas	TX	75228	
Bowman Dahl, LLC		120 West 28th Street	#3C		New York	NY	10001	
Bowne		PO BOX 6081			Church Street			
Bowne		PO Box 951060			Station	NY	10277-2706	
BOX.com		900 Jefferson Ave			Dallas	TX	75247-1060	
BOYCE, PATRICK		Address on File			Redwood City	CA	94063-0000	
Boyce-Field, Mollie		Address on File						
Boys & Girls Clubs of Greater Fort Worth		Address on File						
	Attn Christi Langas	3218 East Belknap			Fort Worth	TX	76111	
BRACEWELL & GIULIANI LLP		PO BOX 848566			Dallas	TX	75284-8566	
Bracewell & Patterson		PO Box 848566			Dallas	TX	75284-8566	
Brad Beman		Address on File						
Brad Borud	Daniel P Winikka	Loewinsohn Flegle Deary	12377 Merit Drive, Suite 900		Dallas	TX	75251	
BRAD BORUD		Simon LLP						
BRAD BORUD		Address on File						
BRAD BORUD		Address on File						
BRAD DAVEY		Address on File						
BRAD GUY		Address on File						
Brad Mendenhall		Address on File						
BRAD VOSS		Address on File						
Braden Bair		Address on File						
Bradfield Elementary	Attn Jackie Tilden, VP of Development	4300 Southern Avenue			Dallas	TX	75205	
Bradford K Borud		Address on File						
BRADLEY MACK		Address on File						
BRADY, CHARLA		Address on File						
Bragalone Conroy PC		Chase Tower	2200 Ross Avenue	Suite 4500W	Dallas	TX	75201-7924	
Branda Fanning		Address on File						
Brandywine Process Servers, Ltd.		PO Box 1360			Wilmington	DE	19899	
BRANER, PHILIP		Address on File						

003222

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BREITZ TX PROPERTIES LP		PO Box 842530			Dallas	TX	75284-2530	
Breaault, Evan		Address on File						
Breaault, Evan		Address on File						
Breazeale, Sachse & Wilson LLP		One American Place	Suite 2300		Baton Rouge	LA	70821-3197	
Breezy Higa		Address on File						
Brenda Samples, Tax Assessor		Kaufman County Tax Office	PO Box 339		Kaufman	TX	75142	
Brennan, Kieran		Address on File						
Brennan, Michael		Address on File						
Brent Gregoire		Address on File						
Brentwood CLO Ltd., et al.	Joseph E. Bain	Jones Walker LLP	811 Main St. Suite 2900		Houston	TX	77002	
Brentwood CLO Ltd., et al.	Schulte Roth & Zabel LLP	James T. Bentley	919 Third Avenue		New York	NY	10022	Cayman Islands
Brentwood CLO, Ltd.	MaplesFS	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman		KY1-1104	Cayman Islands
Brentwood CLO, Ltd.		Maples Finance Limited, PO Box 1093GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Brentwood CLO, Ltd. Investors Bank & Trust Company	Brentwood CLO, Ltd. c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Brentwood CLO, Ltd. Investors Bank & Trust Company	Investors Bank & Trust Company	200 Clarendon Street	CDO Services - Brentwood CLO, Ltd		Boston	MA	02116	
Bressler, Amery & Ross, P.C.		325 Columbia Turnpike			Florham Park	NJ	07932	
Brett Benjamin		Address on File						
Brett H. McCloskey		Address on File						
Brett Hoge		Address on File						
Brett Pope		Address on File						
Bretton Advisors, Inc.		Address on File						
Brian Andrusin		Address on File						
Brian Broadbent		Address on File						
Brian Collins	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
BRIAN COX		Address on File			New York	NY	10004	
Brian D. Glueckstein	Sullivan Cromwell LLP	125 Broad Street						
Brian Fitzsimmons		Address on File						
Brian G Albert Esq.		Address on File						
Brian Goehl		Address on File						
Brian Hochhauser		Address on File						
Brian Home		Address on File						
BRIAN JONES		Address on File						
Brian Jones.		Address on File						
Brian Josephson		Address on File						
Brian Lauten, PC		Address on File						
Brian Li		Address on File						
BRIAN LOHRDING		Address on File						
Brian Malizia		Address on File						

003223

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Brian P. Shaw		Address on File						
BRIAN PRICE		Address on File						
BRIAN TILTON		Address on File						
Bridge Title Company, LLC		8150 N. Central Expwy	Ste 650		Dallas	TX	75205	
Bighthouse Financial		PO Box 371310			Pittsburgh	PA	15250-7310	
Bighthouse Life Insurance Company		PO Box 371487			Pittsburgh	PA	15250-7487	
Brighton House Associates, LLC		2 Park Central Drive	Suite 300		Southborough	MA	01772	
BRIGHTWORK	ATTN JOYCE WELSH	16 OLDE TAVERNE LANE			Amesbury	MA	01913	
Brian Enterprises, Inc.		1545 Prudential Dr.			Dallas	TX	75235-4111	
Britain, William		Address on File						
BRITAIN, WILLIAM L.		Address on File						
Brittain, Mark		Address on File						
BRITNEE WOOLDRIDGE		2201 WOLF ST	#6106		Dallas	TX	75201	
BRITTNEY CUNNINGHAM		Address on File						
BROADCASTING & CABLE		PO BOX 5655			Harlan	IA	51593-1155	
Broadus, Paul		Address on File						
Broadridge Customer Communications		5516 Collection Ctr Dr			Chicago	IL	60693	
Broadridge Customer Communications		2600 Southwest Blvd.			Kansas City	MO	64108	
Broadridge ICS		PO Box 416423			Boston	MA	02241-6423	
Broadridge Investor Communication Soluti								
Broadridge Output Solutions, Inc.		One Park Ave			New York	NY	10016-0000	
BROADVIEW NETWORKS		PO Box 15788			Chicago	IL	60693	
Brodeur, Steven		PO Box 9242			Uniondale	NY	11555-9242	
BRODRICK NORMAN		Address on File						
Broker Dealer Financial Services Corp.		456 9th St	#8		Hoboken	NJ	07030	
Broker Educational Sales Training, Inc.		6775 Booneville Rd			WDM	IA	50266-8093	
Brook Lane Partners, LLC		7137 Congress Street			New Port Richey	FL	34653-6464	
Brook Lane Partners, LLC		330 East 75th Street	Suite 10H		New York	NY	10021	
Brookmont Capital Management, LLC		445 Park Avenue	10th Floor		New York	NY	10022	
Brookover, Steven		2000 McKinney Avenue	Suite 1230		Dallas	TX	75201	
Brosier & Buchanan Partners		Address on File						
Brown & Hofmeister LLP		320 W. 7th			Amarillo	TX	79101	
Brown & Sikes, Inc.		740 E Campbell	Suite 800		Richardson	TX	75081	
Brown Pruitt Peterson & Wambsgans, P.C.		325 N St Paul St Ste 1280			Dallas	TX	75201	
Brown Rudnick Berlack Israels LLP		201 Main St			Fort Worth	TX	76102	
Brown Rudnick LLP	Robert J. Stark	One Financial Center			Boston	MA	02111	
Brown, Austin		7 Times Square			New York	NY	10036	
Brown, Austin		Address on File						
Brown, Austin		Address on File						

003224

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BROWN, BLAKE		Address on File						
BROWN, BRITTON		Address on File						
BROWN, LEE		Address on File						
Brown, Rachel		Address on File						
BROWNELL, JESSE R.		Address on File						
Brownstein Hyatt Farber Schreck LLP		100 City Parkway 100 North City Parkway, Suite 1600	suite 1600		Las Vegas	NV	89106	
Brownstein Hyatt Farber Schreck, LLP	Samuel A. Schwartz, Esq.				Las Vegas	NV	89106	
Bruce Beetz		Address on File						
BRUCE CHAPIN		Address on File						
BrucePac		811 N First St			Silverton	OR	97381	
Bruchou Fernandez Mandero & Lombardi		BFM y L S.R.L., Ing. Butty 275, PISO 12			Buenos Aires		C-1001AFA	Argentina
BRUMLEY, ANGELA		Address on File						
Brumley, Angela K.		Address on File						
Bryan Cave LLP		PO Box 503089			Saint Louis	MO	63150-3089	
BRYAN CLARK		Address on File						
Brynteson Reporting, Inc. BT Video Inc		2404 Belle Haven Meadows Ct PO Box 540365			Alexandria	VA	22306	
Buchalter Nemer		1000 Wilshire Blvd	Suite 1500		Dallas	TX	75354-0365	
BUCKLES BY JIM		PO BOX 1885			Los Angelos	CA	90017	
Budget Blinds		4012 Daniel Way			Mabank	TX	75147-1885	
Bulk Books		Address on File			Frisco	TX	75035	
Buntz, Jennifer		Address on File						
BURKE HANSEN LLC		1601 N 7TH ST, STE 200			Phoenix	AZ	85006	
Burkey, John		Address on File						
Burns Transcription Service		11311 N Central Expwy Ste 216			Dallas	TX	75243	
Burns, Nathan		Address on File						
Bury Street Capital Ltd BUSH, ALBERT		Devonshire House Address on File	1 Devonshire Street		London		W1W 5DR	United Kingdom
Business Essentials		PO BOX 37			Grapevine	TX	76099	
Business Essentials		PO Box 292696			Lewisville	TX	75029-2696	
Business Executives National Security		1030 15th Street NW	Suite 200 East		Washington	DC	20005	
Business Flooring Speacilists		7341 Dogwood park			Fort Worth	TX	76118	
Business Intelligence Advisors		One Washington Mall One&th Flr			Boston	MA	02108	
Business Real Estate		PO Box 15216			Scottsdale	AZ	85267	
Business Technologies, Inc. Business Week		16060 Ventura Blvd Ste 105- 505			Encino	CA	91436	
Business Wire		PO Box 8419			Red Oak	IA	51591-1419	
Business Wire		Department 34182			San Francisco	CA	94139	
Butler Burgher Group		PO Box 45348			San Francisco	CA	94145-0348	
Byron Wilson		4300 Alexander Dr. Address on File	Suite 200		Alpharette	GA	30022	

003225

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
C.J. Martin		Address on File						
C2 Imaging		3180 Pullman Street			Costa Mesa	CA	92626	
C2 LEGAL OF DALLAS		2001 BRYAN ST	STE 3025		Dallas	TX	75201	
C5 Texas	Attn Rachel Jenkins	PO Box 191129			Dallas	TX	75219	
Cabot Lodge Securities LLC		200 Vesey St.			New York	NY	10281	
Cades Schutte LLP		1000 Bishop Street, 12th floor			Honolulu	HI	96813	
Cadwalader, Wickersham, & Taft LLP		General Post Office	PO Box 5929		New York	NY	10087-5929	
CALAPRS		575 Market Street	Suite 2125		San Francisco	CA	94105	
Caleb Dorfman		Address on File						
Caleb Moore		Address on File						
Caledonian Directors Limited		PO Box 1043	George Town		Grand Cayman		KY1-1002	Cayman Islands
Caledonian Directors Limited		PO Box 1043			George Town		KY1-1102	Cayman Islands
California Department of Insurance	Attn Name Reservation Unit	45 Fremont Street, 24th Floor			San Francisco	CA	94105	
California Dept. of Business Oversight		Securities Registration Division	1515 K Street, Suite 200		Sacramento	CA	95814	
California Public Employees Retirement System		One Embarcadero Center, 32nd Floor			Sacramento	CA	95814	
CALLAN, BENTLEY	c/o Louis J. Cisz, III	Nixon Peabody LLP			San Francisco	CA	94111	
Cambridge International Partners, Inc.		Address on File						
Cambridge Investment Research, Inc.	c/o Premier Wealth Management	780 Third Ave 25th Flr			New York	NY	10017	
Cambridge Investment Research, Inc.	Przewlocki James, Inc.	5004 Lenker Street, Suite 200			Mechanicsburg	PA	17050	
CAMP CUTHRELL		2030 E Speedway	Suite 220		Tucson	AZ	85719	
Campano & Associates		1776 Pleasant Plain Rd			Fairfield	IA	52556	
CAMPBELL, JIM		fbo Jimmy J. Williams, Rep #GM6			Fairfield	IA	52556	
CAMPBELL, JIM		Address on File	1776 Pleasant Plain Rd		Fairfield	IA	52556	
Canadian Imperial Bank of Commerce		Address on File						
Candidates on Demand Group, Inc.		425 Lexington Avenue			New York	NY	10017	
Canon Solutions America, Inc		433 Fifth Ave, 6th Flr			New York	NY	10016	
Canteen Vending Services		15004 Collections Center Dr			Chicago	IL	60693	
Cantor Fitzgerald & Co.	Attn McKenzie Campbell	PO Box 417632			Boston	MA	02241-7632	
CAPE RANKEN		110 East 59th Street			New York	NY	10022	
Cape Securities, Inc.		Address on File						
CAPITAL FOR KIDS	ATTN Susan Nichol	1600 Pennsylvania Ave.			McDonough	GA	30253	
		2807 Allen St. #816			Dallas	TX	75204	

003226

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Capital Hedge, LLC		145 W Washington Street, Suite 16			Norwell	MA	02061	
Capital Investment Group, Inc.		PO Box 32249			Raleigh	NC	27622	
Capital Link Forum, Inc.		230 Park Ave, Ste 1536			New York	NY	10169	
Capital Royalty LP	ATTN Mary Logan	1000 Main St	Suite 2500		Houston	TX	77002	
Capitalize for Kids		01-208-Adelaide Street West			Toronto	ON	M5H 1W7	CANADA
Capitol Service Inc		PO Box 1831			Austin	TX	78767	
CAPITOL SERVICES, INC		PO BOX 1831			Austin	TX	78767	
Caplin Photography		50 W 90th Street	#C6		New York	NY	10024	
Caprock Court Reporting, Inc.		1112 Texas Avenue, Suite 200			Lubbock	TX	79401	
Capstone Advisory Group		Park 80 West	Plaza I-Plaza Level		Saddle Brook	NJ	07663	
Capstone LLC		1400 Eye Street, NW Suite 1115	Suite 104		Washington	DC	20005	
Captain Hopes Kids		10480 Shady Trail			Dallas	TX	75220	
CAREER BLAZERS		PO BOX 414050			Boston	MA	02241-4050	
CAREER BLAZERS		GLOBAL EMPLOYMENT SOLUTIONS, INC	PO BOX 842595		Boston	MA	02284-2595	
Career Group Inc		PO Box 203654			Dallas	TX	75320-3654	
CAREERBUILDER, LLC		200 N. LaSalle St	Suite 1100		Chicago	IL	60601	
CAREERBUILDER, LLC		13047 COLLECTION CTR DR			Chicago	IL	60693-0130	
Carey Holdings, Inc.	Attention General Counsel	4530 Wisconsin Avenue, N.W., 5th Floor			Washington	DC	20016	
Carey International, Inc.	Attn Diane Ennist	7445 New Technology Way			Frederick	MD	21703	
Carey International, Inc.	Attn Thomas McKee, Jr	Greenberg Traurig, LLP	1750 Tysons Blvd., #1000		McLean	VA	22102	
Carey International, Inc.		Billing Department	PO Box 842350		Boston	MA	02284-2350	
Carey International, Inc.	Gary Kessler	4530 Wisconsin Ave. NW	Suite 500		Washington	DC	20016	
Carey Olsen	attn Sam Dawson	Willow House Cricket Square			Grand Cayman		KY1-1001	Cayman Islands
Carey Olsen		Address on File						
Carey Olsen (Guernsey) LLP		PO Box 98, Carey House, Les Banques			St Peter Port	Guernsey	GY1 4BZ	Channel Islands
CARL MOORE		Address on File						
Carl Steigenwald III		Address on File						
CARL WELLMAN		Address on File						
Carla Martin		Address on File						
Carla Siegal Interiors		31 Sturges Hwy			Westport	CT	06880	
CARLSON, STEPHEN		Address on File						
Carmona, Benjamin		Address on File						
CARNEGIE CONSULTING		44 CARNABY ST			London		WTF 9PP	United Kingdom
Carol Bavousett Mattick PC		919 Congress Ave Suite 919			Austin	TX	78701	
CAROLYN SANCHEZ		Address on File						
CARON, JOHN H		Address on File						
Carpenter Lipps & Leland LLP		280 Plaza, Suite 1300	280 North High Street		Columbus	OH	43215	
Carrington Coleman		Address on File						

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CARROLL, JUSTIN		Address on File						
Carter Ledyard & Milburn LLP		Counsellors at Law 2 Wall St			New York	NY	10005	
CARTER, JEROME		Address on File						
CARTUS CORPORATION PTE LTD		4 SHENTON WAY	#09-01/04 SGX CENTRE 2		Singapore		068807	SINGAPORE
Carwin Advisors		2100 McKinney Ave. Suite 1510			Dallas	TX	75201	
Case Anywhere LLC		21860 Burbank Blvd.	Suite 125		Woodland Hills	CA	91367	
Casepoint, LLC		7900 Tysons One Place, 680			McLean	VA	22102	
Cashier - Texas Workforce Commission		PO Box 149037			Austin	TX	78714-9037	
CASPER COMPANY LLC		830 POST RD E			Westport	CT	06880	
CASTELLA, ANDRES		Address on File						
CASTELLA, ANDRES		Address on File						
Catalyst Financial Partners LLC		118 E 28th Street	Suite 314		New York	NY	10016	
Catapult Systems Inc.		1221 South MoPac Expressway	Ste 350		Austin	TX	78746	
Catherine M. Luvisa, trustee	Cooper Lee Luvisa Educational Trust	Address on File						
Catherine M. Luvisa, trustee		Address on File						
Catherine McCoy		Address on File						
Catherine P. Matthews		Address on File						
Cattle Barons Ball	Attn Underwriting Chairs	3838 Oak Lawn Avenue, Suite 700			Dallas	TX	75219	
Cattle Barons Ball		30 Highland Park Village Ste 216			Dallas	TX	75205	
CATTLE BUYERS WEEKLY		PO BOX 2533			Petaluma	CA	94953-2533	
Cawley, Gillespie & Associates, Inc.		306 West 7th Street, Ste 302			Fort Worth	TX	76102	
Cawley, Keith		Address on File						
CB RICHARD ELLIS		2700 POST OAK BLVD	STE 250		Houston	TX	77056	
CB Richard Ellis, Inc		2700 Post Oak Blvd. Suite 250			Houston	TX	77056	
CB Richard Ellis, Inc		Valuation & Advisory Services	2415 East Camelback Rd		Phoenix	AZ	85016-4290	
Cbeyond		210 Interstate North Pkwy SE Ste 300			Atlanta	GA	30339-2233	
Cbeyond		PO Box 848432			Dallas	TX	75284-8432	
CBIZ Valuation Group, Inc.	ATTN ACCOUNTS RECEIVABLE	PO BOX 849846			Dallas	TX	75284-9846	
CBIZ Valuation Group, Inc.		3030 LBJ Freeway, Ste 1650			Dallas	TX	75234	
CBIZ Valuation Group, Inc.		4851 LBJ Freeway	Suite 800		Dallas	TX	75244	
CBIZ Valuation Group, LLC	Attn Accounts Receivable	4851 LBJ Freeway #800			Dallas	TX	75284	
Cboe LiveVol, Inc.		400 South LaSalle Street			Chicago	IL	60605	
CBRE, Inc.		Location Code 2981	P.O. Box 406588		Atlanta	GA	30384-6588	
CCH		21250 HAWTHORNE BLVD			Torrance	CA	90503-5502	
CCH Incorporated		PO Box 4307			Carol Stream	IL	60197-4307	
CCH Prosystem FX		PO Box 5729			Carol Stream	IL	60197-5729	

003228



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CCH Prosystem FX		P.O. Box 2701			Torrance	CA	90509-2701	
CCS Medical		1505 LBJ Freeway	Suite 600		Farmers Branch	TX	75234	
CCW Recovery Solutions		4 Mount Ephraim Road	Tunbridge Wells		Kent		TN1 1EE	United Kingdom
CDW	Attn Ronelle Erickson	200 N. Milwaukee Ave			Vernon Hills	IL	60061	
CDW Direct		PO Box 75723			Chicago	IL	60675-5723	
Cecilio Gomez		Address on File						
Cedar Glade LP	Attn Robert K. Minkoff, President	600 Madison Ave, 17th Floor	Suite 200		New York	NY	10022	
Centaurus Financial, Inc.		2300 E. Katella Ave			Anaheim	CA	92806	
Center for Financial Professionals Ltd		The Maltings, Roydon Road			Stanstead Abbots	Herts	SG12 8HG	United Kingdom
Center Street Securities, Inc.	c/o CFP Events, Suite 68	2 International Plz Ste 301			Nashville	TN	37217-2088	
Centerpoint Advisors		301 Commerce St Ste 1750			Fort Worth	TX	76102	
Centerpoint Builders		5339 Alpha Rd Ste 250			Dallas	TX	75240	
CENTRAL REPRODUCTION COMPANY		PO BOX 131971			Dallas	TX	75313	
Centroid		1050 Wilshire Dr.	Ste #170		Troy	MI	48084	
Centroid		900 Wilshire Dr.	Ste. #273		Troy	MI	48084	
CenturyLink		100 CenturyLink Drive			Monroe	LA	71203-0000	
CenturyLink Communications, LLC		1801 California Street			Denver	CO	80202	
CERA	Accounts Receivable	Department 55 Cambridge Pkwy			Cambridge	MA	02142	
Certified Moving & Storage Company		286 Madison Avenue			New York	NY	10017	
Certified Process Servers, Inc.		PO Box 496508			Garland	TX	75049-6508	
Certified Staffing Solutions		66 Orange Street, 3rd FL			Providence	RI	02903	
Cetera Advisor Networks LLC	Attn STS	200 N. Sepulveda Blvd, Ste 1300			El Segundo	CA	90245	
Cetera Advisor Networks LLC	c/o Legacy Advisor, C. Tabaka	2450 Rimrock Rd, Ste 203			Madison	WI	53713	
Cetera Financial Group	c/o Due Diligence Dept	200 N. Sepulveda Blvd, Ste 1200			El Segundo	CA	90245	
Cezar AV, Inc.		393 Upland Avenue			Yonkers	NY	10703	
CFA Society Los Angeles		520 S. Grand Ave	Ste 370		Los Angeles	CA	90071	
CFALA		520 S. Grand Ave.	Ste 655		Los Angeles	CA	90071	
CFA-SW	ATTN Scott Woodward	UHY, LLP	1717 Main Street		Dallas	TX	75201	
CFO & CONTROLLER ALERT		370 TECHNOLOGY DR	PO BOX 3019		Malvern	PA	19355	
Chad Clark		Address on File						
CHAD SCHRAMEK		Address on File						
Chakheeva, Svetlana		Address on File						
CHAMBERS, TRACIE		Address on File						
CHAN, WING FUNG WILLY		Address on File						
CHANCERY ST JAMES PLC		5 ST JAMESs SQUARE			London		SW1Y 4SJ	United Kingdom
Chang, Frederic		Address on File						
Chang, Lewis		Address on File						

003229

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Chapline, Thomas		Address on File						
Charitable DAF Fund GP, LLC	Grant Scott	4140 Park Lake Avenue	Suite 600		Raleigh	NC	27612	
Charitable DAF Fund, L.P.	Grant Scott	4140 Park Lake Avenue	Suite 600		Raleigh	NC	27612	
Charles Byrne		Address on File						
Charles Geraci		Address on File						
CHARLES GREGOR		Address on File						
Charles Hoedebeck	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Charles River Associates		PO Box 845960			Boston	MA	02284-5960	
Charles Schwab & Co., Inc.		211 Main Street	MS SF-211MN-08-434		San Francisco	CA	94105	
Charley Krause		Address on File						
Charlie Maynard		Address on File						
Charlotte Investor IV LP	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
Charlotte Investor IV, L.P.	Attn Erica Weisgerber Debevoise and Plimpton LLP	919 Third Avenue			New York	NY	10022	
Charlotte Investor IV, L.P.	Charlotte Investor IV LP	c/o HarbourVest Partners, LLC	One Financial Center		Boston	MA	02111	
Charter Finan. Publishing Network, Inc.		PO Box 7550			Shrewsbury	NJ	07702-7550	
Chase Bank of Texas, N.A.		600 Travis Street	8th Floor	Global Trust Services	Houston	TX	77002	
CHASE COURIERS, INC		1220 Champaign Circle	#114		Carrollton	TX	75006	
CHASE COURIERS, INC		1002 N. Central Expressway #495			Richardson	TX	75080	
CHASE COURIERS, INC		1002 N CENTRAL EXPWY, #229			Richardson	TX	75080	
Chase Miller		Address on File						
Chatham Worth		Address on File						
CHAVARRIAGA, MAURICIO		Address on File						
CHEMICAL DATA		2900 N LOOP WEST	STE 830		Houston	TX	77092	
CHEMICAL MARKET ASSOCIATES, INC		PO BOX 974416			Dallas	TX	75397-4416	
Chen, Bryan		Address on File						
Chen, Jonathan C.		Address on File						
Cherith Harrison		Address on File						
Chetan Aras		Address on File						
Chi Un Chun		Address on File						
Chick-fill-A		12120 Inwood Road			Dallas	TX	75244	
Chick-fill-A		1201 Elm Street	LL06		Dallas	TX	75270	
CHILDRENS SEEK CAMP		Cory Cheat	3624 Long Prairie Rd.		Flower Mound	TX	75022	
CHIRAG PANCHOLI		Address on File	Ste #101					
CHISM, CARTER		Address on File						
Chisum, Naomi		Address on File						
Choi, Jae Young		Address on File						
CHOI, YUN S.		Address on File						
CHOICE INVESTMENTS, INC		4800 BEE CAVE ROAD			Austin	TX	78746	
Chris Carrillo		Address on File						

003230

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CHRIS COLVIN		Address on File						
CHRIS CRAWSHAW		Address on File						
Chris Hakemack		Address on File						
Chris Hyleen		Address on File						
Chris Jackson		Address on File						
Chris Lombardi		Address on File						
Chris Malone		Address on File						
Chris Miller		Address on File						
Chris Saehler		Address on File						
Chris Sullivan		Address on File						
Christian & Small LLP		505 N 20th Street, Suite 1800			Birmingham	AL	35203-2696	
Christian Carrillo		Address on File						
Christian MacCaron		Address on File						
Christina Dandar		Address on File						
Christina Seaman		Address on File						
Christine Hedrick		Address on File						
Christine Ragnauth		Address on File						
Christopher Courbier		Address on File						
CHRISTOPHER EGER		Address on File						
CHRISTOPHER NILSEN		Address on File						
CHRISTOPHER PITTMAN		Address on File						
Christopher Rice	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Christopher Rossi		Address on File						
Chronicle of Higher Education		PO Box 1955			Marion	OH	43306-8055	
Chronicle of Philanthropy	Attn Subscription Department	PO Box 1989			Marion	OH	43306-8089	
Chubb		2001 Bryan St.	Ste. 3600		Dallas	TX	75201-0000	
Chubb National Insurance Company	c/o Chubb	202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
Chuck Hoar		Address on File						
Chuck McQueary		Address on File						
Church, Daniel		Address on File						
CIGNA HEALTHCARE		CGLIC-Chicago	5476 Collections Center Dr		Chicago	IL	60693-0547	
CIRCLE B		3536 MILLER PARK			Garland	TX	75042-7519	
Cisco		170 West Tasman Dr			San Jose	CA	95134-0000	
CISCO Capital		File No. 73226	PO Box 60000		San Francisco	CA	94160-3230	
Cisco Webex Events		170 West Tasman Dr			San Jose	CA	95134-0000	
Cisco WebEx, LLC		16720 Collections Center Dr			Chicago	IL	60693	
Cision US Inc.		PO Box 842869			Boston	MA	02284-2869	
Cision US Inc.		1 Prudential Plaza, 7th floor			Chicago	IL	60601-0000	
CIT TECHNOLOGY	ATTN CUSTOMER SERVICE	PO BOX 550599			Jacksonville	FL	32255-0599	
Citibank, N.A.	Doug Warren	390 Greenwich Street	4th Floor		New York	NY	10013	
CITICORP VENDOR FINANCE		PO BOX 7247-0118			Philadelphia	PA	19170-0118	

003231

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Citigroup Financial Products Inc. Citigroup Global Markets Inc.	Citigroup Global Markets Inc.	390 Greenwich Street, 4th Floor	Managing Director	Global Structured Credit Products	New York	NY	10013	
Citizens of Georgia Power Citrix Online, LLC	Attn Stephen Kin, Bin #63031	7825 River Road 7414 Hollister Avenue			Waynesboro Goleta	GA CA	30830 93117	
City of Allen	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	76015	
City of Dallas	City of Dallas	1500 Marilla Street	2D South		Dallas	TX	75201	
City of Dallas	City of Dallas	City Hall 1AN			Dallas	TX	75277	
City of Dallas	City of Dallas	City Hall, 2D South			Dallas	TX	75277	
City of Dallas	City of Dallas	Security Alarms	P.O. Box 139076		Dallas	TX	75313-9076	
City of Dallas	Linda D. Reece	c/o Perdue Brandon Fielder et al	Suite 310, LB 40		Garland	TX	75042	
City of Richardson	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair and Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	75207	
City of Surprise		16000 N. Civic Center Plaza	Stormwater Division		Surprise	AZ	85374-7470	
Civic Research Institute		4478 US Route 27 PO Box 585			Kingston	NJ	08528	
CJ Peng		Address on File						
CL McDade & Company		PO Box 702565			Dallas	TX	75370	
Claraphi Advisory Network		25301 Cabot Rd	Suite 203		Laguna Hills	CA	92653	
CLARITY IN NUMBERS, LLC		10 UPENA LN APT 304			KIHEI	HI	96753-5112	
Clark Hill Strasburger		Address on File						
Clark, James		Address on File						
Clark, Stetson		Address on File						
Classic Legal Document Services, Inc.		1717 Main Street, Suite 2280			Dallas	TX	75201	
Claudia C Pleitez		Address on File						
Clay Callan		Address on File						
Clayton Coleman		Address on File						
Cleanwater Analytics LLC		777 W Main St	Ste 900		Boise	ID	83702-0000	
Cleanwell Systems, INC.		441 Lounge Ave			Mountain View	CA	94043	
Cleary Gottlieb Steen & Hamilton LLP		One Liberty Plaza			New York	NY	10006-1470	
Clerk of the Municipal Courts		2014 Main Street			Dallas	TX	75201	
CLERK, SUPREME COURT		PO BOX 149335			Austin	TX	78714-9335	
ClickDimensions, LLC		5901 Peachtree Dunwoody Rd., Ste B500			Atlanta	GA	30328	
Client One Securities, LLC		11460 Tomahawk Creek Parkway	Suite 100		Leawood	KS	66211	
Clientwise LLC		487 East Main Street	Suite 303		Mount Kisco	NY	10549	
Clifford Chance		Address on File						
Clifford Chance		PO Box 7247-6805			Philadelphia	PA	19170-6805	
Clint Swisher		Address on File						
CLO Holdco, Ltd.	c/o Grant Scott, Esq	Myers Bigel Sibley & Sajovec, P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	Grant Scott, Director	Myers Bigel P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CLO Holdco, Ltd.	Grant Scott, Director	Myers Bigel P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	Grant Scott, Esq.	Myers Bigel Sibley & Sajovec, P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	John J Kane	Kane Russell Coleman Logan PC	901 Main Street, Suite 5200		Dallas	TX	75202	Cayman Islands
CLO Holdco, Ltd.		190 Elgin Avenue	George Town	Grand Cayman	George Town	KY	19005	United Kingdom
CM Murray LLP		37th Floor	One Canada Square, Canary Wharf		London	TX	E14 5AA	
CMGRP, Inc.		1717 Main St, Ste 1600			Dallas	TX	75201	
CMGRP, Inc.		PO Box 74008263			Chicago	IL	60674-8263	
CMS BondEdge		PO Box 98616			Chicago	IL	60693	
CNBC LLC	c/o Legal Dept, Attn Janet Williams	900 Sylvan Avenue			Englewood Cliffs	NJ	07632	
Coastal Equities Inc.		1201 N. Orange Street	9th Floor		Wilmington	DE	19801	
Coates Analytics		PO Box 371685			Pittsburgh	PA	15251-7685	
COBURN, JASON M		Address on File						
COBURN, JASON M		Address on File						
Coch, Trevor		Address on File						
Cockle Printing Co		2311 Douglas St			Omaha	NE	68102	
COCVAC		BOX 399			Clark Mills	NY	13321	
Cohen & Company, Ltd		PO BOX 94787			Cleveland	OH	44101-4787	
Cohen, Jeffrey		Address on File						
Coheso, Inc.		7083 Commerce Cir Ste 1			Pleasanton	CA	94588-8017	
Colbert, Kenneth T.		Address on File						
ColdFusion Ice		4901 Saint Lawrence Road			Fort Worth	TX	76103	
Cole Schotz	Court Plaza North	25 Main Street	P.O. Box 800		Hackensack	NJ	07602-0800	
Cole Schotz	Michael D. Warner, Esq.	Cole Schotz Meisel Forman & Leonard	301 Commerce Street, Suite 1700		Fort Worth	TX	76102	
Coleman Research Group, Inc.	Attn Legal	1 Glenwood Ave			Raleigh	NC	27603	
Coleman Research Group, Inc.		100 Park Avenue Suite 1600			New York	NY	10017	
Coleman Research Group, Inc.		120 West 45th St	25th Floor		New York	NY	10036	
Coleman, Clayton		Address on File						
Collas Crill	attn Stephen Leontsinis	Floor 2, Willow House	Cricket Square PO Box 709		Grand Cayman		KY1-1107	Cayman Islands
Collas Crill		Floor 2, Willow House, Cricket Square, PO Box 709			Grand Cayman		KY1-1107	Cayman Islands
COLLAS CRILL LLP, ADVOCATES CLIENT ACCOUNT		Gategny Court, PO Box 140, Gategny Esplanade			St Peter Port	Guernsey	GY1 4EW	Channel Islands
Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	1700 Redbud Blvd., Suite 300			McKinney	TX	75069	
Collin County Tax Assessor/Collector		P.O. Box 8046			McKinney	TX	75070	
Collin County Tax Assessor/Collector		P.O. Box 8046			McKinney	TX	75070	

003233

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Collins Building Services, Inc		Court Square Place, 24-01 44th Rd	15th Fl		Long Island City	NY	11101	
Collins Legal Video Service		1700 Pacific Ave	Suite 2410		Dallas	TX	75201	
Collins Realtime Reporting		1700 Pacific Ave	Suite 2410		Dallas	TX	75201	
COLLINS, BRIAN		Address on File						
Colin McDermott		Address on File						
Colonial Surety Company		123 Tice Boulevard, Suite 250			Woodcliff Lake	NJ	07677	
Colorado Department of Revenue		Colorado Department of Revenue			Denver	CO	80261	
Colorado State Treasurer		Colorado DEPT of Regulatory Agencies	1560 Broadway, Suite 900		Denver	CO	80202-5150	
ColorMark, L.C.		1840 Hutton Dr	Bldg 208		Carrollton	TX	75006	
COLVIN, CHRISTOPHER		Address on File						
COLVIN, MICHAEL		Address on File						
Commissioner of Revenue Services		DEPARTMENT OF REVENUE SERVICES	PO BOX 2936		Hartford	CT	06104-2936	
Commissioner of Securities, State of LA		Office of Financial Institutions	8660 United Plaza Boulevard, 2nd Floor		Baton Rouge	LA	70809	
COMMISSIONER OF TAXATION AND FINANCE		NYS ASSESSMENT RECEIVABLES	PO BOX 4127		Binghamton	NY	13902-4127	
Commodity Futures Trading Commission		Three Lafayette Centre	1155 21st Street, NW		Washington	DC	20581	
COMMONWEALTH OF MASSACHUSETTS		Securities Division	1 Ashburton Place, Room 1701		Boston	MA	02108	
COMMONWEALTH OF MASSACHUSETTS		COMMONWEALTH OF REVENUE	PO BOX 7065		Boston	MA	02204-7065	
Communities Foundation of Texas, Inc.		Caruth Haven Lane			Dallas	TX	75225-8146	
Communities in Schools of North Texas		PO Box 295543			Lewisville	TX	75029-5543	
Community Beer Company		1530 Inspiration Drive	Suite 200		Dallas	TX	75207	
Community Partners of Dallas		1215 Skiles Street			Dallas	TX	75204	
Commvault Backup		1 Commvault Way			Tinton Falls	NJ	07724-0000	
COMPASS BANK OPERATING		PO BOX 630020			Dallas	TX	75263-9720	
Compass Lexecon		PO Box 630391			Baltimore	MD	21263-0391	
Compass Lexecon		1244 Dryden Pl			Evanston	IL	60201-3399	
Compass Lexecon LLC		PO Box 418005			Boston	MA	02241-8005	
COMPETITIVE LOGISTICS LLC		53 PERIMETER CENTER E	STE 201		Atlanta	GA	30346	
Complete Coherence Ltd		Newton House, Suite B	Newton Lane		Romsey, Hants		SO51 8LE	United Kingdom
Complete Fitness Outfitters		PO Box 1237			Atoka	OK	74252	
Complete Legal, Ltd		1201 Elm St.	Suite 2560		Dallas	TX	75270	
Compliance Science, Inc.		875 Avenue of the Americas	12th Floor		New York	NY	10001	
Compliance Search Group		1001 Avenue of the Americas	Suite 2401		New York	NY	10018	
Compliance Search Group		450 Seventh Ave	Suite 1409		New York	NY	10123	

003234

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Comptroller of Maryland		Revenue Administration Division	110 Carroll Street		Annapolis	MD	21411-0001	
Comptroller of Public Accounts		PO Box 149348			Austin	TX	78714	
Computforms Data Products, Inc.		PO Box 101536			Fort Worth	TX	76185-1536	
Compulink Technologies, Inc.		214 West 29 Street	Suite 201		New York	NY	10001	
Computershare		250 Royall St #1011			Canton	MA	02021	
Computershare		14257 Collection Ctr Dr			Chicago	IL	60693	
Computershare		16750 Collection Ctr Dr			Chicago	IL	60693	
Computershare Trust								
Company, N.A.		PO BOX 43078			Providence	RI	02940-3078	
Comsys Services, LLC		PO Box 60260			Charlotte	NC	28260	
Concord Marketing Solutions		2000 Bloomingdale Road			Glendale Heights	IL	60139	
Concorde Holdings, Inc.		1120 East Long Lake Rd	Suite 207		Troy	MI	48085	
Concorde Investment Services		1120 East Long Lake Road	Ste 207		Troy	MI	48085	
Concur Technologies, Inc.		62157 Collections Center Drive			Chicago	IL	60693	
Concur Technologies, Inc.		18400 NE Union Hill Road			Redmond	WA	98052	
Conference Plus, Inc		8153 Solutions Center			Chicago	IL	60677-8001	
Conference Room AV		13601 W McMillan Rd	Suite 102-277		Boise	ID	83713	
Conga		P.O. Box 7839			Broomfield	CO	80021	
ConnectAndSell, Inc		856 Rand St.			San Mateo	CA	94401	
Connected Software		PO Box 29			West Newbury	MA	01985	
Connecticut Department of Banking		Securities & Business Invest Division	260 Constitution Plaza		Hartford	CT	06103	
CONNER, PATRICK		Address on File						
Connex Systems, Inc.		2033 Chenault Drive, Suite 150			Carrollton	TX	75006	
CONNIE MILTENBERGER		127 KENDALL BLUFF COURT			Chesterfield	MO	63017	
Connolly Bove Lodge & Hutz LLP		1007 North Orange St			Wilmington	DE	19899	
Connolly Gallagher LLP		1201 North Market Street	20th Floor		Wilmington	DE	19801	
Connolly, James		Address on File						
Connor White		Address on File						
Conseco Life Insurance Company		PO Box 71214			Charlotte	NC	28272-1214	
CONSOLIDATED GENERAL LIFE INSURANCE CO		4245 N CENTRAL EXPWY	STE 500		Dallas	TX	75205	
Context Summits LLC		401 City Avenue	Suite 815		Bala Cynwyd	PA	19004	
Continental Court Reporters, Inc.		2777 Allen Parkway, Suite 600			Houston	TX	77019-2166	
Continental Office Group, LLC		PO Box 132			Wylie	TX	75098	
Contrarian Funds, LLC		500 Ross St 154-0455			Pittsburgh	PA	15262	
Contrarian Funds, LLC		500 Ross St 154-0455			Pittsburgh	PA	15262	

003235



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Contrarian Funds, LLC	Attn Alpa Jimenez	411 West Putnam Ave., Suite 425			Greenwich	CT	06830	
ConvergeOne, Inc.	Selina Held	10900 Nesbitt Avenue South			Bloomington	MN	55437	
ConvergeOne, Inc.		NW 5806	PO Box 1450		Minneapolis	MN	55485-5806	
Conway, Jacob		Address on File						
CONYERS DILL & PEARMAN		CLARENDON HOUSE 2	CHURCH STREET		Hamilton		0HM11	BERMUJDA United Kingdom
Cooke Young Keidan	Philip Young	21 Lombard St			London		EC3V 9AH	United Kingdom
Cooke, Brad		Address on File						
COOLTECH AIR								
CONDITIONING LTD								
COOPER LEVENSON APRIL		530 LONDON ROAD	Stanwell		Ashford		TW15 3AE	United Kingdom
NIEDELMAN		1125 ATLANTIC AVE			Atlantic City	NJ	08401	
Copy Sense		121 E. 8th	Ste 100B		Austin	TX	78701	
Copy Solutions		2001 Bryan St	Suite 1935		Dallas	TX	75201	
CopyPLEX		400 Tri-State Bldg 432 Walnut St						
Copyright Clearance Center		222 Rosewood Dr			Cincinnati	OH	45202	
Copyright Clearance Center		PO Box 843006			Danvers	MA	01923	
CORAL EQUITY PARTNERS		28 Innisbrook Ave			Boston	MA	02284-3006	
CORCORAN, KIMBERLY		Address on File			Las Vegas	NV	89113	
CORE Staffing Services, Inc.		463 Fashion Ave Rm 1800			New York	NY	10018-7760	
Corinne Durand		Address on File						
CORNELIUS, WILLIAM		Address on File						
Comer Bakery		CB Catering 91 PO Box 844288			Dallas	TX	75284-4288	
Comerstone Healthcare Group Holding Inc	David Smith	3030 Ross Avenue	Suite 5400		Dallas	TX	75201	
Comerstone Healthcare Group Holding, In		2200 Ross Ave	Ste. 5400		Dallas	TX	75201-0000	
Comerstone Healthcare Group Holding, Inc.	Attn Michael Brohm	13455 Noel Road, Suite 1320			Dallas	TX	75240	
Comerstone Macro LLC		1330 Avenue of the Americas Fl 5			New York	NY	10019-5493	
Comerstone Restructuring LLC		1125 Maxwell Ln	Suite 1010		Hoboken	NJ	07030	
ComerStone Staffing		PO Box 909			Grapevine	TX	76099	
CORPORATE COFFEE SYSTEMS		745 SUMMA AVE			Westbury	NY	11590	
CORPORATE EXPRESS INC		PO BOX 71217			Chicago	IL	71217	
Corporate Expressions		11 Blackberry Ln.			Norwalk	CT	06850	
Corporate Golf		604 West Morgan St Ste 202			Durham	NC	27701	
Corporate Green		PO Box 820725			Dallas	TX	75382	
Corporate Interiors Inc.		PO Box 709			Frisco	TX	75034-0709	
Corporate Montage		9950 Westpark Dr Ste 602			Houston	TX	77063-5196	
Corporate Search Partners		6116 N Central Expwy Ste 406			Dallas	TX	75206	
Corporate Source Ltd		2651 N Harwood Ste 260			Dallas	TX	75201	

003236

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Corporate Source Ltd		1505 Oak Lawn Ave	Suite 300		Dallas	TX	75207	
Corporate Source Ltd		Lockbox 671236			Dallas	TX	75267-1236	
Corporate Strategies by SkillPath		6900 Squibb Rd			Mission	KS	66202	
Corporate Strategies by SkillPath		PO Box 803839			Kansas City	MO	64180-3839	
Corporate Transportation Group		335 Bond St			Brooklyn	NY	11231	
Corporation Service Company		PO BOX 13397			Philadelphia	PA	19101-3397	
Cory McCallum		Address on File			Edgewater	NJ	07020	
COSMOPOLITAN GLASS		307 DAIBES CT			Baltimore	MD	21279-1123	
CoStar Realty Information, Inc.		PO Box 791123						
Cotton, Austin		Address on File						
Coughlin, William		Address on File						
Coughlin, William A.		Address on File						
Counsel Press LLC		PO Box 1053			New York	NY	10018-9998	
CounselWorks LLC		477 Madison Avenue	Suite 740		New York	NY	10022	
COURIERS INC		225 MILLWELL DR			Maryland Heights	MO	63043	
Cournoyer, Timothy		Address on File						
Courthouse Digital Video		8848 Twin Pines Ln			Frisco	TX	75036-1427	
Courtlandt Securities Corporation		PO Box 11929			Newport Beach	CA	92658	
Courtroom Intelligence, Inc.		620 N Grant	Suite 512		Odessa	TX	79761	
Courtroom Intelligence, Inc.		1219 West University Blvd			Odessa	TX	79764	
Covenant Review LLC		708 Third Ave	6th Floor		New York	NY	10017	
Covenant Review LLC		230 Park Ave, Suite 812			New York	NY	10169	
COVERT INVESTIGATIVE SERVICES		PO BOX 67			Lewisville	TX	75057	
COVITZ, HUNTER		Address on File						
Cowen and Company, LLC		Finance Group - 21st Floor	599 Lexington Avenue		New York	NY	10022	
Cowie, Jason		Address on File						
COX, BRIAN		Address on File						
COZEN O CONNER ATTORNEYS		W1385	PO BOX 7777		Philadelphia	PA	19175-0775	
CP EATON PARTNERS, LLC		131 ROWAYTON AVE			Rowayton	CT	06853	
CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Avenue		New York	NY	10018	
CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500	Dallas	TX	75201	
CPCM, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610		Dallas	TX	75201	
CPCM, LLC		6505 W. Park Blvd, Ste. 306	PMB# 352		Piano	TX	75093	
Craig and Macauley Professional Corp.		600 Atlantic Ave			Boston	MA	02210	
Crain Communications Inc.		16309 Collection Center Dr.			Chicago	IL	60693	
Crain Communications Inc.		1155 Gratiot Ave			Detroit	MI	48207-2732	
Cranellis		10047 Park Meadows Dr			Lone Tree	CO	80124	
Crawford Wishnew & Lang	Michael J Lang	1700 Pacific Avenue Suite 2390			Dallas	TX	75201	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CRE ADVISORS, LLC		PO BOX 2302			Addison	TX	75001	
Creative Meetings & Incentives		2405 Mill Plain Rd			Fairfield	CT	06824	
CREATIVE PRINTING		311 N STEMMONS	STE 400		Dallas	TX	75207	
CREDIT SUISSE	ATTN JUDY HARNETT	11 MADISON AVE, 11TH FLR			New York	NY	10010	
CREDIT SUISSE		700 College Road East			Princeton	NJ	08540	
CREDIT SUISSE		11 MADISON AVE, 26TH FLR	AARON OVEDIA		New York	NY	10010	United Kingdom
Creditflux		63 Clerkenwell Rd			London		EC 1M- 5NP	
Crescent Asset Managment		1440 Broadway	17th flr		New York	NY	10018	
Crescent Partners, LLC		1440 Broadway	17th floor		New York	NY	10018	
Crescent Research		PO Box 64-3622			Vero Beach	FL	32964	
Crescent TC Investors LP		200 Crescent Ct	Suite 250		Dallas	TX	75201	
Crescent TC Investors, L.P.	c/o Michael S. Held	2323 Ross Avenue, Suite 600			Dallas	TX	75201	
Crescent TC Investors, L.P.	Dale Todd, President	277 Park Ave., 36th Floor			New York	NY	10017	
Crescent TC Investors, L.P.	Hien Le	5847 San Felipe St., Suite 150			Houston	TX	77057	
Crescent TC Investors, L.P.	Hien Le	5847 San Felipe St., Suite 150			Houston	TX	77057	
Crescent TC Investors, L.P.	Jackson Walker LLP	Michael S. Held	2323 Ross Ave., Suite	600	Dallas	TX	75201	
Crescent TC Investors, L.P.	Michael S. Held	2323 Ross Ave., Suite 300			Dallas	TX	75201	
Crescent TC Investors, L.P.		Post Office Box 841772			Dallas	TX	75284	
Crescent TC Investors, L.P.		Post Office Box 841772			Dallas	TX	75284	
CREST, DAVID		Address on File						
Cris Rodriguez		Address on File						
Crisostomo, Norm		Address on File						
Critical Electric Systems Group, LLC		704 Central Pkwy East			Plano	TX	75074	
CROSS 3 LLC		7324 ELDRED AVE, NE	#1200A		Rockford	MI	49341	
Crosson Dannis, Inc.		8150 N. Central Expressway, Suite 950			Dallas	TX	75206	
Crossroads Audio, Inc.		2623 Myrtle Springs Avenue			Dallas	TX	75220	
Crowe & Dunlevy, P.C.	Vickie L. Driver	2525 McKinnon Street, Suite 425			Dallas	TX	75201	
Crowe Dunlevy		Address on File						
Crowell & Moring		1001 Pennsylvania Ave NW			Washington	DC	20004-2595	
CROWELL, LEONARD		Address on File						
Crown Capital Securities, L.P.		725 Town & Country Rd	Suite 530		Orange	CA	92868	
CRT CAPITAL GROUP, LLC		262 HARBOR DR			Stamford	CT	06902	
CSC		PO Box 13397			Philadelphia	PA	19101-3397	
CSI e-Discovery Services, LLC		4950 N. OConnor Rd.	Suite 152		Irving	TX	75062	
CSI Global Deposition Services	Accounting Dept-972-719-5000	4950 N. OConnor Rd., 1 st Fl			Irving	TX	75062-2778	

003238

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CSI Litigation Psychology, LLC		4950 North O'Connor Rd.	Corporate Plaza 1, First Floor		Irving	TX	75062	
CSS Medical Inc.	Steve Saft	14255 49th Street North	Suite 301		Cleanwater	FL	33762	
CT Corp		PO Box 4349			Carol Stream	IL	60197-4349	
CT Corporation		1999 Bryan Street	Ste 900		Dallas	TX	75201-0000	
CT Corporation System	ATTN Michael E. Jones	350 N. St. Paul Street, Ste. 2900			Dallas	TX	75201	
CT Corporation System	C/O STEPHANIE WATTS-DARTY	DALLAS CORPORATE TEAM 2	350 North St. Paul St.		Dallas	TX	75201	
CT Corporation System		PO Box 4349			Carol Stream	IL	60197-4349	
CT Lien Solutions		PO Box 301133			Dallas	TX	75303	
CT Lien Solutions		Lockbox 200824			Houston	TX	77216	
CTRL+V Inc.		251 Union St.			Lawrence	NY	11559	
Culhane Meadows PLLC		PO Box 49716			Atlanta	GA	30359	
Culinaire International	Attn Catering Dept	2943 SMU Blvd			Dallas	TX	75205	
CULLEN ESTATE TRUST		601 JEFFERSON ST STE 4000			Houston	TX	77002-7913	
CUNNINGHAM, BRITNEY		Address on File						
CurAlea Associates LLC		12 Roszel Road	Suite B102		Princeton	NJ	08540	
Cushman & Wakefield of Arizona, Inc.		2555 East Camelback Road, Ste 400			Phoenix	AZ	85016	
CUSIP		55 Water Street	43rd Floor		New York	NY	10041	
CUSIP Global Services		33356 Collection Center Dr			Chicago	IL	60693-0333	
CUSIP Service Bureau		2542 Collection Center Drive			Chicago	IL	60693	
CUSIP Service Bureau		Standard and Poores			Chicago	IL	60693	
CUSIP Service Bureau		PO Box 19140A			Newark	NJ	07195-0140	
CUSTOM BOOK BINDERY, INC.		9 SHERIDAN AVE			Clifton	NJ	07011	
Custom Headsets of Dallas		5949 W Hwy/ 175			Kaufman	TX	75142	
CVE Technologies Group Inc.		1414 S. Gustin Rd.			Salt Lake City	UT	84104	
CVE technology		3000 E Plano Pkwy			Plano	TX	75074-0000	
CW PARTNERS LLC		2811 MCKINNEY AVE	STE 214		Dallas	TX	75204	
Cylance		400 Spectrum Center Dr.	Suite 900		Irvine	CA	92618-0000	
CYNTHIA VALLES		Address on File						
CYRUS SPURLINO		7214 N MOBLEY RD			Odessa	FL	33556-2303	
REVOCABLE TRUST								
Cystic Fibrosis Foundation	NE Texas/Fort Worth Chapter	1600 Airport Fwy Ste 501			Bedford	TX	76022-6882	
Cystic Fibrosis Foundation		7506 E Independence Blvd #120			Charlotte	NC	28227	
Cystic Fibrosis Foundation		3102 Maple Ave, Ste 120			Dallas	TX	75201	
Cystic Fibrosis Foundation		Northeast Texas Chapter			New York	NY	10122	
CZG Dynamics Associates		14 Penn Plaza, Suite 1712			Dallas	TX	75201	
D Magazine		750 North St. Paul Street	Suite 2100		Dallas	TX	75201	
D Magazine		4311 Oak Lawn Ave Ste 100			Dallas	TX	75219-9701	
D&S Enterprises		10703 Sweetwater Drive			Frisco	TX	75035	
D. Alan Bowlby		PO Box 1067			Addison	TX	75001	

003239

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
D. Allan Bowliby & Associates, Inc		PO BOX 1067			Addison	TX	75001	
D.F. King & Co, Inc.		48 Wall Street			New York	NY	10005	
D.H. Hill Securities, LLLP		1543 Green Oak Place			Kingwood	TX	77339	
DAETSCH, MOLLY		Address on File	Ste 100					
DALE BEHM		Address on File						
Date Frey		Address on File						
Dallas A&M Club	Attn Mike Henderson	4303 Glenwick			Dallas	TX	75205	
Dallas After/School Network		3900 Willow St Ste 110			Dallas	TX	75226-1247	
Dallas Area Habitat for Humanity		House Party	PO Box 700924		Dallas	TX	75370	
Dallas Art & Design		3617 Fairmount St Ste 101			Dallas	TX	75219	
Dallas Bar Association		2101 Ross Ave			Dallas	TX	75201	
Dallas Basketball Ltd.		1333 N Stemmons Fwy	Ste 105		Dallas	TX	75207-3722	
Dallas Business Journal		PO Box 840190			Dallas	TX	75284-0190	
Dallas CASA		2757 Swiss Avenue			Dallas	TX	75204	
Dallas Challenge		7777 Forest Lane	Suite C-410		Dallas	TX	75203	
DALLAS CHAPTER TEI	ATTN Sharon Langlotz	Cash America International, Inc	1600 West 7th St		Ft. Worth	TX	76102-6803	
DALLAS CHAPTER TEI		901 MAIN ST	69TH FLR, BANK AMERICA PLAZA		Dallas	TX	75202	
DALLAS CHAPTER TEI		PO BOX 961101	BNSF RAILWAY COMPANY, SCOTT RYNEARSON		Fort Worth	TX	76161-1101	
Dallas Childrens Advocacy Center	Attn Stepheni Jordan	5351 Samuell Blvd			Dallas	TX	75228	
Dallas Childrens Theater	Attn Michael Gonzales	5938 Skillman			Dallas	TX	75231	
Dallas Committee on Foreign Relations		4925 Greenville Avenue	Suite 1025		Dallas	TX	75206-4092	
Dallas Contemporary, MTV	Attn Hannah Fagadau	161 Glass Street			Dallas	TX	75207	
Dallas County	Attn Elizabeth Weller	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Dallas County	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	75207	
Dallas County Republican Party		10100 N Central Expwy	Ste 175		Dallas	TX	75231	
Dallas County Tax Assessor	John R. Ames, CTA	1201 Elm Street	Suite 2600		Dallas	TX	75270	
Dallas County Tax Assessor	John R. Ames, CTA	PO Box 139066			Dallas	TX	75313-9066	
Dallas County Tax Office		PO Box 139033			Dallas	TX	75313-9033	
Dallas Courier Service, Inc.		PO Box 833583			Richardson	TX	75083	
DALLAS DUCKS UNLIMITED		400 TURTLE CREEK CENTER BLVD	3811 TURTLE CREEK	SCOTT WEBER	Dallas	TX	75219	
Dallas Employment Services		6125 Luther Ln # 299			Dallas	TX	75225-6202	
Dallas Gigs LLC	Attn Eddie Parker	PO Box 225423			Dallas	TX	75222	
Dallas Glass & Door Company, Ltd		PO Box 440			Fate	TX	75132	
Dallas Hispanic Firefighters Association		703 McKinney Ave	Suite 201		Dallas	TX	75202	
DALLAS HR		4100 SPRING VALLEY RD	STE 300		Dallas	TX	75244	
Dallas Jewish Community Foundation		One Hillcrest Green	12700 Hillcrest Rd, Suite 201		Dallas	TX	75230	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Dallas Junior Chamber of Commerce Found.		PO Box 130721			Dallas	TX	75313	
Dallas Kid to Do	Attn Megan Harrison	650 South R.L. Thornton Freeway			Dallas	TX	75203-3013	
Dallas Landscape Lighting		2026 Midlake Rd			Dallas	TX	75205	
Dallas Museum of Art		1717 North Harwood			Dallas	TX	75201	
DALLAS PETROLEUM CLUB		2200 ROSS AVE	LB 171		Dallas	TX	75201-2799	
DALLAS POLICE AND FIRE		THE VICTOR LAZADA MEMORIAL FUND	7474 FERGUSON RD		Dallas	TX	75228	
Dallas Police Department	Alarm Permit Compliance Unit	PO Box 840186			Dallas	TX	75284-0186	
Dallas Producers Club	c/o J. Patrick Collins	PMB 414	3824 Cedar Springs Rd		Dallas	TX	75219-4136	
Dallas Regional Chamber	Attn Finance	500 North Akard St, Suite 2600			Dallas	TX	75201	
Dallas Security Systems, Inc.		PO Box 550939			Dallas	TX	75355-0939	
Dallas Stars		2601 Avenue of the Stars			Frisco	TX	75034-9089	
Dallas Summer Musicals, Inc.		909 1st Ave			Dallas	TX	75210-1042	
Dallas T-Shirt Company		2626 Manana Dr			Dallas	TX	75220	
Dallas Urban Debate Alliance		PO Box 670564	Suite A		Dallas	TX	75367	
Dallas Wildcat Committee	Attn Barbara Johnston	2200 Ross Ave, Suite 4150E			Dallas	TX	75201	
Dallas Womens Foundation		8150 North Central Expwy Suite #110			Dallas	TX	75206	
Dallas Youth Council		PO Box 793604			Dallas	TX	75379	
Dallas Zoological Society		650 South RL Thornton Fwy			Dallas	TX	75203-3013	
Damage Recovery		PO Box 801770			Kansas City	MO	64180	
DAMC	ATTN CARL BAGGETT	NORCOM CAPITAL	15770 N DALLAS PKWY		Dallas	TX	75248	
DAMERIS, THEODORE		Address on File						
DAMEWARE DEVELOPMENT		241 MORNINGSIDE DR			Mandeville	LA	70448	
Dan Drabinski		Address on File						
Dan Subach		Address on File						
Dan Winikka	c/o Loewinsohn Flegle Deary Simon	12377 Merit Drive			Dallas	TX	75251	
Dana Driensky		Address on File						
DANAHY, BRIAN J.		Address on File						
DANDAR, CHRISTINA		Address on File						
Daniel J Edelman, Inc		JP Morgan Chase Bank, NA	21992 Network Place		Chicago	IL	60673	
Daniel Kaplan Associates LLC		55 Madison Ave, 4th Flr			Morristown	NJ	07960	
Daniel Moisis		Address on File						
Daniel N. Shaviro		Address on File						
Daniel P Winikka	Loewinsohn Flegle Deary Simon LLP	12377 Merit Drive, Suite 900			Dallas	TX	75251	
Daniel Ranson		Address on File						
Daniel Riedler		Address on File						
Daniel Sexton		Address on File						

003241

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Daniel Sharvit		Address on File						
Daniel Sheehan & Associates, PLLC	Daniel J Sheehan, Jr	8150 N. Central Expressway Suite 100			Dallas	TX	75206	
Daniela Garrett		Address on File						
Daniels & Erickson, PC		12221 Merit Dr.	Suite 760		Dallas	TX	75251	
Dansby White		Address on File						
Darby Dunn Communications		461 Manor Lane			Pelham	NY	10803	
Darla M Chavez		Address on File						
Daryls By Design		1801 N Griffin Street			Dallas	TX	75202	
DATAWARE SOFTWARE GROUP INC		445 PARK AVE	10TH FLR		New York	NY	10022	
Datamax		PO Box 20527			Saint Louis	MO	63139	
DataPlus Consulting Incorporated		750 North St Paul St. Suite 1225			Dallas	TX	75201	
DataPlus Consulting Incorporated		PO Box 190634			Dallas	TX	75219	
DataPlus Consulting Incorporated		750 North St Paul	Suite 1225		Dallas	TX	75201	United Kingdom
Datapoint Management DAUGHERTY, PATRICK		210 Empire House	1 Empire Way		Wembley		HA9 0EW	
DAUM, KURT		Address on File						
Dave Barnett		Address on File						
DAVE WALLS		Address on File						
DAVID BLANKS		Address on File						
DAVID BLANKS		Address on File						
David Boguslawski		Address on File						
David C. Smith		Address on File						
DAVID CALLAHAN		Address on File						
David Childs Tax Assessor-Collector		PO Box 620088			Dallas	TX	75262-0088	
David Childs Tax Assessor-Collector		PO BOX 139066	DALLAS COUNTY TAX ASSESSOR-COLLECTOR		Dallas	TX	75313-9066	
David Culley		Address on File						
David Feldman Worldwide, Inc		PO Box 2392			New York	NY	10116-2392	
David Fraiberg		Address on File						
DAVID FULLERTON		Address on File						
David Geneson		Address on File						
David Hill		Address on File						
David Hu		Address on File						
David Huff Photography LLC		22022 N 119th Drive			Sun City	AZ	85373	
DAVID LANCELOT		Address on File						
DAVID LEE		Address on File						
DAVID LEHUQUET		Address on File						
David M. Cooper		Address on File						
DAVID MARTIN		Address on File						
David Ourlicht		Address on File						
DAVID POWERS		Address on File						

003242



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
DAVID R HOLBROOKE ROTH IRA		120 BULKLEY AVE APT 405 Address on File			Sausalito	CA	94965-2149	
DAVID SALYER		Address on File						
DAVID SMITH		Address on File						
David Spiegel		Address on File						
David Tomek PLLC		325 N St Paul Street	Suite 3300		Dallas	TX	75201	
David W. Langford, CSR, CRR, RDR	Official Court Reporter	101st Judicial District Court Address on File	George L. Allen Courts Building		Dallas	TX	75202-4631	
David Walls		Address on File						
David Weisbach		Address on File						
DAVIES WARD PHILLIPS & VINEBERG LLP		44TH FLR 2701 Dallas Parkway, Suite 590	1 FIRST CANADIAN PLACE		TORONTO	ON	M5X 1B1	CANADA
Davis Deadman	Jason P. Kathman	Address on File			Plano	TX	75093	
Davis Deadman		Address on File						
DAVIS FORESTRY		PO BOX 24633			Little Rock	AR	72221	
Davis Polk & Wardwell	Attn Andrew Dean	450 Lexington Ave Address on File			New York	NY	10017	
Davis R. Deadman		2600 Century Square 1501 Fourth Ave			Seattle	WA	98101-1688	
Davis Wright Tremaine LLP		Address on File						
DAVIS, MARY M.		Address on File						
DAVIS, MARY MARTHA		Address on File						
Dawn O'Rourke		Address on File						
Day Pitney LLP		PO Box 416234			Boston	MA	02241-6234	CZECH REPUBLIC
DDC Financial Group s.r.o.		Bohusovicka 230-12 Address on File	190 00 Prague		Praha 9			
DEADMAN, DAVIS		Address on File						
DealFlow Media, Inc		PO Box 122			Syosset	NY	11791	
Deana K. Adams	Official Court Reporter	600 Commerce, 630 C Address on File	6th Floor, East Tower		Dallas	TX	75202	
Deanne Engle		Address on File						
Debevoise & Plimpton		919 Third Ave			New York	NY	10022	
Debevoise & Plimpton LLC	M. Natasha Labovitz, Erica S. Weisgerber, Daniel E. Stroik c/o Accounting Dept. 28th Floor	919 Third Avenue			New York	NY	10022	
Debevoise & Plimpton LLP	Attn Christopher K. Tahbaz, Esq.	909 Third Ave			New York	NY	10022	
Debevoise and Plimpton LLP		919 Third Avenue			New York	NY	10022	
Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue			New York	NY	10018	
Debt Domain		295 Madison Ave	Ste 24		New York	NY	10017-0000	
Debtomain (USA) Inc.		295 Madison Ave	Suite 924		New York	NY	10017	
DECHERT LLP		PO BOX 7247-6643			Philadelphia	PA	19170-6643	United Kingdom
Dechert UK		160 Queen Victoria Street Address on File			London	England	EC4V 4QQ	
DEDYO, STEPHEN J.		Address on File						
DeGolyer & MacNaughton		5001 Spring Valley Rd	Suite 800 east		Dallas	TX	75244	
Del Vecchio Reporting Services, LLC		117 Randi Drive Address on File			Madison	CT	06443	
DELAROSA, STEVEN								

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
DELAWARE DIVISION OF CORPORATIONS		401 FEDERAL ST	STE 4		Dover	DE	19901	
Delaware Secretary of State	Division of Corporations	401 Federal St, Suite 4			Dover	DE	19901	
Delaware Secretary of State	DIVISION OF CORPORATIONS	PO BOX 11728			Newark	NJ	07101-4728	
Delaware Secretary of State	Division of Corporations	PO Box 5509			Binghamton	NY	13902-5509	
Delaware Secretary of State	Division of Corporations	PO Box 74072			Baltimore	MD	22174-4072	
DELAWARE SECRETARY OF STATE # 51-6000279		1209 Orange St			Wilmington	DE	19801	
DELAWARE SECRETARY OF STATE # 51-6000279		State of Delaware Division of Corp	PO Box 5509		Binghamton	NY	13902-5509	
DELGADO, MAURICIO		Address on File						
Dell Business Credit		Payment Processing Center	PO Box 5275		Carol Stream	IL	60197-5275	
Dell Commercial Credit		Dept. 50-0049055190 PO BOX 689020			Des Moines	IA	50368-9020	
Dell Financial Services		Payment Processing Center	4307 Collection Center Dr.		Chicago	IL	60693	
Dell Financial Services L.L.C.		PO Box 81577			Austin	TX	78708	
Dell Marketing LP	DFS-Bankruptcy	PO Box 676021			Dallas	TX	75267-6021	
DELOITTE & TOUCHE	c/o Dell USA LP	10 WESTPORT RD			Wilton	CT	06897	
Deloitte Financial Advisory Services LLP	ATTN KILEY RODEN							
Deloitte Financial Advisory Services LLP		4022 Sells Drive			Hermitage	TN	37076	
Deloitte Financial Advisory Services LLP		2200 Ross Ave			Dallas	TX	75201	
Deloitte Financial Advisory Services LLP		PO Box 2062			Carol Stream	IL	60132-2062	
Deloitte Tax LLP		4022 Sells Drive			Hermitage	TN	37076	
Deloitte Tax LLP		PO BOX 2079			Carol Stream	IL	60132-2079	
Deloitte Tax LLP		PO Box 844736			Dallas	TX	75284-4736	
Delphi Legal Technologies		350 N. Saint Paul Suite 275			Dallas	TX	75201	
Delphi Legal Technologies		PO Box 133026			Dallas	TX	75313-3026	
Delta Dallas Staffing, LP		Tollway Plaza II	15950 N. Dallas Pkwy, Ste 500		Dallas	TX	75248	
Deluxe Business Forms		PO Box 742572			Cincinnati	OH	45274-2572	
Denison Glass & Mirror		4231 S State Highway 91			Denison	TX	75020-8115	
Dennis Sugino		Address on File						
DENNIS WINTER IRA		Address on File						
Denton County		PO Box 90223			Denton	TX	76202	
Denton County Tax Assessor								
Denton US LLP		PO Box 90223			Denton	TX	76202	
Dentons US LLP		Dept. 894579			Los Angeles	CA	90189-4579	
Dentons US LLP	Attn Lauren Macksoud, Esq. and Patrick Maxcy, Esq.	1221 Avenue of the Americas			New York	NY	10020	
Dentons US LLP	Casey Doherty	1221 McKinney Street, Suite 1900			Houston	TX	77010-2006	
Denver Daughtry		Address on File						
Department of Business Oversight		1515 K St #200			Sacramento	CA	95814	

003244

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Department of Corporations (CA)		Securities Regulations Div.	320 W 4th St, Ste 750		Los Angeles	CA	90013-1105	
Department of Finance, State of Idaho		Securities Bureau	800 Park Boulevard, Suite 200		Boise	ID	83712	
Department of State	Division of Corporations	99 Washington Ave.			Albany	NY	12231-0001	
DEPARTMENT OF TAX AND REVENUE	WV STATE TAX DEPT	PO BOX 2745	INTERNAL AUDITING DIVISION		Charleston	WV	25330-2745	
Department of Taxation and finance		Dept of Labor-Unemp Insurance Div	PO Box 15012		Albany	NY	12212	
DEPARTMENT OF THE TREASURY	INTERNAL REVENUE SERVICE	ACS SUPPORT	PO BOX 57		Bensalem	PA	19020-8514	
DEPARTMENT OF THE TREASURY	IRS	STOP 5107 NWSAT	4050 ALPHA RD		Farmers Branch	TX	75244-4201	
DEPARTMENT OF THE TREASURY		Internal Revenue Service			Cincinnati	OH	45999-0009	
Department of the Treasury		4050 Alpha Road	Suite 517, MC 8000NDAL		Dallas	TX	75201-7849	
Department of the Treasury - Internal Revenue Service		1100 Commerce St	M/S MC5027DAL		Dallas	TX	75242	
Department of the Treasury - Internal Revenue Service		P.O. Box 7346			Philadelphia	PA	19101-7346	
Dept. of Licensing & Regulatory Affairs	Corp. Securities & Comm Licensing Bureau	525 W. Allegan Street - Audit & Exam Div			Lansing	MI	48909	
DERRICK PITTS		Address on File						
Desai, Neil		Address on File						
Dessaint, Louis C.		Address on File						
DEWITT, AUDREY		Address on File						
DFPG Investments, Inc.		9017 S. Riverside Dr.	Ste 210		Sandy	UT	84070	
DFW Ice Cream		10198 Western Hills Dr.			Frisco	TX	75034	
DFW MULTIMEDIA INC		1330 RIVER BEND DR	SUITE 850		Dallas	TX	75247	
DFW Private Equity Forum	Attn Amy Thompson	2323 Victory Avenue	Suite 2000		Dallas	TX	75219	
DFW VIDEO		DFW Multimedia, Inc.	13300 River Bend Drive, Ste. 850		Dallas	TX	75247	
DGHS Holdings, LLC		5949 Sherry Lane	Suite 750		Dallas	TX	75225	
Dhamodharan Srinivasan		583 Jeremy Drive			Bourbonnais	IL	60606	
Dharmidharka, Kerry		Address on File						
DHL EXPRESS		PO BOX 4723			Houston	TX	77210-4723	
DHR INTERNATIONAL, INC		10 South Riverside Plaza	Suite 2220		Chicago	IL	60606	
Dice Holdings, Inc.		4939 COLLECTIONS CENTER DR.			Chicago	IL	60693	
DICE INC		DR.			Chicago	IL	60693	
Dickman Davenport, Inc.		3131 Turtle Creek Blvd	Suite 320		Dallas	TX	75219	
DIECKHAUS, SCOTT		Address on File						
DIECKHAUS, SCOTT		Address on File						
DIFC Global		11-12 St. James Square			London			United Kingdom
DIFFA/Dallas		2050 Stemmons Fwy	Mail Unit 262		Dallas	TX	75207	
Diffenderfer, Claude A.		Address on File						
Digital Copy LLC		500 N Akard St, Suite 250			Dallas	TX	75201	
Digital Legal LLC		1001 Jefferson Plaza	Suite 100		Wilmington	DE	19801	

003245

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Digital Marketing and Print Solutions		3305 Wiley Post			Carrollton	TX	75006	
Digital Mountain		5050 El Camino Real	Suite 205		Los Altos	CA	94022	
Digital Telefonos		PO Box 852184			Richardson	TX	75085-2184	
Digital Verdict, Inc.		750 N. St. Paul Street	Suite 1225		Dallas	TX	75201	
Digital Works		6606 LBJ Fwy	Suite 240		Dallas	TX	75240	
DiningIn LLC		50 Milk St Ste 110	Ste 400		Boston	MA	02109-5004	
DiningIn Out in Dallas		3030 Olive Street	PH 102		Dallas	TX	75219	
Dinoto Inc.		535 Dean Street			Brooklyn	NY	11217	
DiOrto, Matthew		Address on File						
Direct Corporate Resources, Inc.		Freedom Center 10203						
		Kotzebue Ste 114			San Antonio	TX	78217	
Director of Compliance	Re Prime Brokerage Services	Jefferies LLC	520 Madison Avenue, 16th Floor		New York	NY	10022	
Directors Desk LLC		Lockbox 50200	PO Box 8500		Philadelphia	PA	19178-0200	
DirectTV		208 South Akard Street			Dallas	TX	75202-0000	
Directv, LLC		PO Box 60036			Los Angeles	CA	90060-0036	
DISCOVERY BENEFITS		3216 13TH AVE S			Fargo	ND	58103	
DISCOVERY BENEFITS		PO BOX 869	COBRA DEPT		Fargo	ND	58107	
DISCOVERY BENEFITS		PO BOX 9528			Fargo	ND	58107-0869	
DISCOVERY BENEFITS		PO BOX 2079			Omaha	NE	68108-2079	
Discovery Benefits Inc		4321 20th Ave. S.			Fargo	ND	58103-0000	
Discovery Data		12 Christopher Way, Ste 202			Eatontown	NJ	07724	
Displays Unlimited, Inc.		626 106th Street			Arlington	TX	76011	
District Director	Attn Insolvency	Internal Revenue Service	31 Hopkins Plaza, Room 1150		Baltimore	MD	21201	
Diversus Investment Advisers (Asia) Ltd		410 Oxford Street			Bondi Junction	NSW	02022	AUSTRALIA
DIVYASH PATEL		Address on File						
Dixon Hughes Goodman LLP		4350 Congress Street	Suite 900		Charlotte	NC	28209	
Dixon Hughes Goodman LLP		PO Box 602828			Charlotte	NC	28260-2828	
DKW Law Group LLC		600 Grant St, 58th Flr			Pittsburgh	PA	15219	
DLA Piper LLP (US)	Marc D. Katz, Esq.	DLA Piper LLP (US)	1900 N Pearl St, Suite 2200		Dallas	TX	75201	
DLA Piper LLP (US)		1900 N Pearl St, Suite 2200			Dallas	TX	75201	
DLA Piper LLP US		6225 Smith Avenue			Baltimore	MD	21209	
DOAR Communications, Inc.		170 Earle Ave			Lynbrook	NY	11563	
Document Technologies, Inc.		PO Box 933435			Atlanta	GA	31193-3435	
Don Bryant		Address on File						
Don Drive Interiors		8408 Chancellor Row			Dallas	TX	75247	
Don Netzer Photography		2510 Southwell Rd.	#107		Dallas	TX	75229	
Don Netzer Photography		2510 Southwest Rd. # 107			Dallas	TX	75229	
DONALD OSBORNE		Address on File						
Donald Salvino		Address on File						
DONALDSON, MICHEAL		Address on File						
Donaldson, Steven		Address on File						
DONDERO, JAMES		Address on File						
Donggeng Gong		Address on File						
Donnelley Financial Solutions		PO Box 842282			Boston	MA	02284-2282	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Donnelley Financial, LLC		35 W Wacker Drive			Chicago	IL	60601	
Donnelley Financial, LLC		20 Commerce Way, Ste 800	Lockbox #842282		Woburn	MA	01801-1057	
Donnelley Financial, LLC		PO Box 842282			Boston	MA	02284-2282	
Donnelley Financial, LLC		PO Box 531832			Atlanta	GA	30353-1832	
DORENBaum, ANDREI		Address on File						
DOUG MEYER		Address on File						
DOUGHERTY, RAYMOND		Address on File						
DOUGHERTY, RAYMOND		Address on File						
Douglas Wade Carvell		Address on File						
Dow Jones & Company, Inc.	ATTN PAUL CHAMPIGNY	8251 PRESIDENTS DR	BARRON/CUSTOMER SERVICE		Orlando	FL	32809	
Dow Jones & Company, Inc.		84 Second Ave.			Chicopee	MA	01020	
Dow Jones & Company, Inc.		Subscriptions Dept.	200 Burnett Rd		Chicopee	MA	01020	
Dow Jones & Company, Inc.		1211 Avenue of the Americas			New York	NY	10036	
Dow Jones & Company, Inc.		BOX 4137			New York	NY	10261-4137	
Dow Jones & Company, Inc.		WALL ST JRNL OR						
Dow Jones Reuters Business Interactive		BARRONS	PO Box 4137		New York	NY	10261-4137	
DOWNEN, MARTIN		PO Box 7247-0237			Philadelphia	PA	19170-0237	
Dozal, Ana		Address on File						
Dozal, Ana		Address on File						
DRABINSKI, DANIEL J.		Address on File						
Dravis, Samantha		Address on File						
Drew Dedelow		Address on File						
Drew Thomas		Address on File						
DREW, RICHARD		Address on File						
Drilling Info, Inc.		PO Box 679093			Dallas	TX	75267-9093	
DrillingInfo		PO Box 5545			Austin	TX	78763	
Drinker Biddle & Reath LLP		One Logan Square, Ste 2000			Philadelphia	PA	19103-6996	
DRINNON, KASEY		Address on File						
DRONOV, ALEXEY		Address on File						
Dropoff, Inc.		Dept 3696	PO Box 123696		Dallas	TX	75312-3696	
DSFOP		PO Box 36023			Dallas	TX	75235-1023	
DSHS		Mail Code 2003	PO Box 149347		Austin	TX	78714-9347	
DST Asset Manager Solutions		330 W. 9th	Ste 219230		Kansas City	MO	64105	
DST RESEARCH ANALYTICS & CONSULTING, LLC		DST TECHNOLOGIES, INC	5523 Collections Center Drive		Chicago	IL	60693	
DST Systems, Inc.		2454 Collections Center Dr			Chicago	IL	60693-0024	
DST Technologies, Inc.		2454 Collections Center Drive			Chicago	IL	60693-0024	
DTCC ITP LLC		PO Box 27590			New York	NY	10087-7590	
Duane Morris LLP	ATTN Payment Processing	30 South 17th St			Philadelphia	PA	19103-4196	
DUBOSE FUNERAL HOME		703 SOUTH ROCKWALL ST			Terrell	TX	75160	
Ducera Partners LLC		499 Park Ave, 16th Floor			New York	NY	10022	
Duff & Phelps, LLC	c/o David Landman	Benesch, Friedlander, Coplan & Aronoff	200 Public Square, Suite 2300		Cleveland	OH	44114-2378	
Duff & Phelps, LLC		2397 Paysphere Circle			Chicago	IL	60674	

003247

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Duff & Phelps, LLC		DUFF & PHELPS, LLC	12595 Collection Center Drive		Chicago	IL	60693	
Duff & Phelps, LLP	Benesch	LouAnne Molinaro	222 Delaware Avenue, Suite 801		Wilmington	DE	19801-1611	
Duff & Phelps, LLP	David A. Landman	200 Public Square, Ste. 2300			Cleveland	OH	44114	
Duff & Phelps, LLP	Richard G. Hardy, Esq.	1660 West 2nd Street, Suite 1100			Cleveland	OH	44113	
Duffy, James B.		Address on File						
Duffy, William		Address on File						
Dun & Bradstreet	Dun & Bradstreet Inc.	PO Box 75434			Chicago	IL	60675-5434	
Dun & Bradstreet	The Rowland Law Firm	PO Box 3108			Crofton	MD	21114	
Dun & Bradstreet	The Rowland Law Firm	Ronald L. Rowland, Authorized Agent	2453 Vineyard Lane		Crofton	MD	21114	
DUNN, CHRISTOPHER		Address on File						
Dunn, John		Address on File						
DUO Security		170 West Tasman Dr			San Jose	CA	95134	
Dustin Schneider		Address on File						
DUSTIN WORLEY		Address on File						
DuWest Realty		3319 Darmouth Ave.			Dallas	TX	75205	
DuWest Realty		4403 N Central Expy			Dallas	TX	75205	
DuWest Realty		4514 Cole Avenue	Suite 1100		Dallas	TX	75205	
Dykema Gossett, PLLC		400 Renaissance Center			Detroit	MI	48243-1668	
Dynamex		Greeley Square Station	PO Box 20284		New York	NY	10001	
Dynamex		PO BOX 20284 GREELEY SQ STATION			New York	NY	10001	
Dynamex		PO Box 842304			Dallas	TX	75284-2304	
E Gallery Studios		1330 Motor Circle			Dallas	TX	75207	
eA Data Automation Services, LLC		5000 Olde Towne Parkway	Suite 100		Marietta	GA	30068	
EA Electric		2941 Trade Center Drive	#200		Carrollton	TX	75007-4647	
EAB HealthWorks LLC		400 West End Ave	Suite 8A		New York	NY	10024	
Eagle Software		124 Indiana Ave			Salina	KS	67401	
Earl F. Hale, Jr.		Address on File						
EarthColor Houston Inc.		PO Box 840578			Dallas	TX	75284-0578	
Earthstream Global Inc.		800 Town & Country Blvd	Suite 300		Houston	TX	77024	
EASLEY & MARQUIS, PLLC		5000 LEGACY DR	STE 400		Plano	TX	75024	
Eastern Point Trust Company	Attn Accounts Receivable	PO Box 3322			Warrenton	VA	20188-3322	
Eastern Point Trust Company, Inc.	George S. Robinson, IV	4685 Millennium Drive			Belcamp	MD	21017	
Eastland CLO Ltd.		190 Elgin Avenue	George Town		Grand Cayman			Cayman Islands
Eastland CLO, Ltd.	c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman		KY 1-9005	Cayman Islands
Eastland CLO, Ltd.	Eastland CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT	Queensgate House, South Church Street	George Town	George Town, Grand Cayman		KY1-1108	Cayman Islands

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Eastland CLO, Ltd. and Investors Bank and Trust Company	Eastland CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1234	Queensgate House	The Directors-Eastland CLO, Ltd.	George Town, Grand Cayman		KY11-1108	Cayman Islands
Eastland CLO, Ltd. and Investors Bank and Trust Company	Investors Bank and Trust Company Attn CDO Services Group Ref Eastland CLO	200 Clarendon St 3637 Temecula Creek Trail	Mail Code EUC 108		Boston McKinney	MA TX	02116 75070	
EASY 2 HIRE LLC		5550 S. Ft. Apache Rd 6850 Manhattan Blvd.	Suite 101 Suite 300		Las Vegas Fort Worth	NV TX	89148-7667 76120	
Eckelkamp Retirement Planning		PO Box 110849 Address on File			Carrollton	TX	75011-0849	
Eclipse Entertainment, LLC		701 Central Plaza	18 Harbour Road	Wan Chai	HONG KONG			HONG KONG
EcoSystems Environmental, Inc.		18th Flr Ferrum Tower 66 Address on File			Seoul		100210	South Korea
Ed Trampolsky		3900 Essex 50 Washington St 9th Flr	Suite 900		Houston Norwalk	TX CT	77027 06854	
Edelman Pub Relations Worldwide (HK) Ltd		11200 Rockville Pike, Ste. 310 88747 Expedite Way			Rockville Chicago	MD IL	20852 60695-1700	
Edelman Pub Relations Worldwide Korea Ltd		5950 Berkshire Ln 807 West Lynn Ste 218	Suite 200		Dallas Austin	TX TX	75225 78703	
Edgar, Hugh B.	c/o Michael D Breen	Address on File			Edina Dallas	MN TX	55424 75201	
EDGAR filings, Ltd		5100 Wooddale Ave 2711 N. Haskell Ave.	Suite 2070, LB 18					
Edgar Online		Address on File						
Edgar Online		Address on File						
Edge Realty Partners		Address on File						
Edgewater Financial LLC		Address on File						
Edje Fox		Address on File						
Edina Country Club		1 Throndal Circle			Darien	CT	06820	
Education is Freedom		1040 Avenue of the Americas 4939 Collections Center Dr	8th Floor		New York Chicago	NY IL	10018 60693	
Edward A Barber		Address on File						
Edward Lin		Address on File						
Edward McRedmond		Address on File						
Effort Group, LLC		Address on File						
efinancialcareers		Address on File						
efinancialcareers		Address on File						
Eftekhari, Cyrus		Address on File						
EGON ZEHNDER INTERNATIONAL		350 PARK AVE			New York	NY	10022	
Egret Management, Inc.		10515 Egret Lane			Dallas	TX	75230	
EIDSON, ALLISON		Address on File						
EIMEN, CATHERINE		Address on File						
EIMER STAHL KLEVORN & SOLBERG LLP		224 SOUTH MICHIGAN AVE 225 Park Avenue South, 7th Floor	STE 1100		Chicago	IL	60604	
EIMN, LLC	Attn Accounting Department	1000 EL CONQUISTADOR AVE			New York	NY	10003	
EL CONQUISTADOR GOLF RESORT CASINO		Address on File			Fajardo	PR	00738	
Elatia Abate		Address on File						
Eleanor Munson, PhD		Address on File						
Electra Cruises, Inc.		3439 Via Oporto			Newport Beach	CA	92663	
Elektronik Devices Company		1712 Poinciana Ln			Plano	TX	75075	



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ELGIN CAPITAL		130 JERMYN ST			London		SW1Y 4UR	United Kingdom
Eliason, Hayley		Address on File						
Eliot Weisberg	The Investors Center, Inc.	70 East Main St, POB 1447			Avon	CT	06001	
Elisa Dreier Reporting		950 Third Avenue 5th Floor			New York	NY	10022	
Elisa Dreier Reporting Corp.		780 Third Ave, 7th Flr			New York	NY	10017	
ELISABETH LEIDERMAN		Address on File						
Elite Casino Events		P.O. Box 6755			Fort Worth	TX	76115	
Elite Copy Solutions, Inc.		403 N Stemmons Freeway Ste 100			Dallas	TX	75207	
Elite Deposition Technologies		400 N. St Paul St, 13th Floor, Ste 1340			Dallas	TX	75201	
Elite Document Technology-Dallas		400 N. Saint Paul St.	Suite 1300		Dallas	TX	75201	
Elite Document Technology-Dallas		403 North Stemmons Freeway Suite 100			Dallas	TX	75207	
Elite Scheduling Services, LLC		8442 S. Union Lake Dr. SE			Alexandria	MN	56308	
Elkins McSherry		225 Liberty St	24th floor		New York	NY	10281-0000	
ELKINS/MCSHERRY, LLC		2 WFC	225 LIBERTY ST, 24TH FLR		New York	NY	10281	
ELKINS/MCSHERRY, LLC	ATTN FINANCE	1290 Avenue of the Americas	22nd Floor		New York	NY	10104	
Ellen W. Slights, Esq.	United States Attorney s Office	District of Delaware	1007 N. Orange Street, Suite 700		Wilmington	DE	19801	
Ellington, Scott	c/o Frances A Smith	Ross & Smith PC	Plaza of the Americas 1610		Dallas	TX	75201	
Ellington, Scott		Address on File						
EMC Integrated Systems Group		121 Central Ave	Suite 200		Grapevine	TX	76051	
Emerald City Management		4688 Reunion Dr.			Plano	TX	75024	
Emerging Portfolio Fund Research, Inc.		PO Box 417184			Boston	MA	02241-7184	
Emerson Network Power		PO BOX 70474			Chicago	IL	60673-0001	
Emert, Craig		Address on File						
EMI Environmental Group		14850 Montfort Dr Ste 205			Dallas	TX	75254	
Emma Cruttenden		Address on File						
EMMANUEL, ARTHUR		Address on File						
Emmet, Marvin & Martin, LLP		120 Broadway	32nd Floor		New York	NY	10271	
Employer Compliance Service		611 Pennsylvania Ave SE #4000			Washington	DC	20003-4303	
Employment Security Division		500 East Third Street			Carson City	NV	89713-0030	
EMSI-Examination Mgmt Services, Inc		Health Service Division	PO Box 910465		Dallas	TX	75391-0465	
ENA Capital, LLC	Attn Steve Ellman and Bob Kauffman	Ellman Management Group, Inc.	4040 E. Camelback Road, Suite 250		Phoenix	AZ	85018	
Encore Discovery Solutions		Dept 2651	PO Box 122651		Dallas	TX	75312-2651	
Encore Live, LLC		600 E Exchange Ave			Fort Worth	TX	76164-8246	
Encore Productions		2012 Greenbriar Lane			Plano	TX	75074	

003250

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
EnerCom, Inc.		800 18th Street	Suite 200		Denver	CO	80202	
Energy Search Associates, LLC		7709 San Jacinto Place	Ste 206		Plano	TX	75024	
EnergyNet Services, Inc.		7201 W. Interstate 40	Suite 319		Amarillo	TX	79106	
ENGSTROM, DONNA		Address on File						
EnMark Services, Inc.		1700 Pacific Avenue	Suite 2660		Dallas	TX	75201	
ENOCH, KEVIN		Address on File						
Entwistle & Cappucci LLP		280 Park Ave	26th Floor West		New York	NY	10017	
Envestmet Tamarac		701 5th Ave, Ste 1400			Seattle	WA	98104	
Envoy Data Corporation		1310 W. Boxwood Ave			Gilbert	AZ	85233	
EPFR Global		PO Box 417184			Boston	MA	02241-7184	
Epiq eDiscovery Solutions		Dept 2651	PO Box 122651		Dallas	TX	75312-2651	
Episcopal School of Dallas	Karla Wigley	ESD Development Office	4100 Merrell Rd.		Dallas	TX	75229	
Episcopal School of Dallas		4100 Merrell Rd			Dallas	TX	75229	
Epocal		2060 Waikley Rd.			Ottawa	ON	K1G 3P5	CANADA
Equest		PO Box 2109			Wylie	TX	75098	
Equest		PO Box 171779			Dallas	TX	75217	
Equity Search Partners		200 Crescent Court, Ste 1300			Dallas	TX	75201	
Equivalent Data		4809 Westway Park Blvd.	Payment Center		Houston	TX	77041	
eRevival LLC		141 Lanza Ave	Bldg 5		Garfield	NJ	07026	
Eric Girard		Address on File						
ERIC KEPHART		Address on File						
ERIC MARK		Address on File						
Eric Pearson		Address on File						
Eric Reynolds		Address on File						
Eric Thayer		Address on File						
Erick Rawlings		Address on File						
Erin Sheehan		Address on File						
Ernst & Young		200 Plaza Drive			Secaucus	NJ	07094	
ERS		101 S Coit Rd Bldg 36, Ste 297			Richardson	TX	75080	
Erskine Chambers - Andrew Blake		33 Chancery Lane			London		WC2A 1EN	United Kingdom
Erskine Chambers - Michael Todd		33 Chancery Lane			London		WC2A 1EN	United Kingdom
Escudero, Gaston		Address on File						
ESD	ATTN SARA CAMPBELL	EPISCOPAL SCHOOL OF DALLAS	4100 MERRELL RD		Dallas	TX	75229	
Esquire Deposition Services, LLC		PO Box 827829			Philadelphia	PA	19182-7829	
Esquire Deposition Solutions, LLC		PO Box 846099			Dallas	TX	75284	
Esquire Litigation Solutions, LLC		PO Box 785751			Philadelphia	PA	19178-5756	
Estevez, Jaime		Address on File						
Estudio ROVIRA		Address on File						
ETCI		1850 North Greenville Ave #158			Richardson	TX	75081	
ETrade Financial	Attn AR/Mutual Funds	PO Box 3512			Arlington	VA	22203	

003251

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
EUROMONEY		PO Box 4009			Chesterfield	MO	63006-4009	
INSTITUTIONAL INVESTOR		1826 Hollars Place			Middleburg	FL	32068	
EuroUSA Shipping Inc.		4643 S. Ulster, Suite 800			Denver	CO	80237	
Evans & McFarland, LLC		Address on File						
Evans, Christian								
EventWork Photography, LLC		1712 Midcrest Dr			Plano	TX	75075	
Evercore Restructuring LLC		55 East 52 St			New York	NY	10055	
eVestment		5000 Ole Towne Parkway	Suite 100		Marietta	GA	30068	
Evogue Data Center		250 Vesey Street 15th Floor			New York	NY	10281-0000	
EWIRE Inc		One Lincoln Centre	Suite 1060		Dallas	TX	75240	
EWING, LEAH		Address on File						
Exagere LLC		227 Dauphine			New Orleans	LA	70112	
Exclaimer Ltd.		445 Park Avenue	9th Floor		New York	NY	10022	
EXECUTIVE BEVERAGE								
SERVICE		PO BOX 850783			Richardson	TX	75081	
EXECUTIVE BEVERAGE								
SERVICE		5032 DICKENS LN			CARROLLTON	TX	75010-4915	
Executive Charge, Inc.		1440 39th St			Brooklyn	NY	11218	
Executive Liquidation		100 Redneck Avenue			Moonachie	NJ	07074	United Kingdom
Executive Office Group Limited					London		W1J 6HE	
Executive Scheduling Associates, Inc.		215 Lake Blvd. Ste 367			Redding	CA	96003	
Experience, Inc		2 Faneuil Hall Marketplace	3 rd Floor		Boston	MA	02109	
Experts Finance US, LLC		PO Box 905378			Charlotte	NC	28290-5378	
EXPERT PAY		PO BOX 659791			San Antonio	TX	78265-9791	
Exterior Consulting Innovations, Inc.								
F5		1406 S Clark Rd			Duncanville	TX	75137-2811	
Fabriclean, Inc.		801 5th Ave			Seattle	WA	98104-0000	
Factiva		11-39-50th Ave			Long Island City	NY	11101	
Factiva		PO BOX 30994			New York	NY	10261	
Factory Builder Stores		DJRBI, LLC	PO Box 7247-0237		Philadelphia	PA	19170-0237	
FACTSET RESEARCH SYSTEMS, INC.		512 E Dallas Rd	Ste 500		Grapevine	TX	76051	
FACTSET RESEARCH SYSTEMS, INC.	Attn Finance	301 Merritt 7, 3rd Floor			Norwalk	CT	06851	
Fafinski Mark & Johnson, P.A.		PO BOX 414756			Boston	MA	02241-4756	
Fair Harbor Capital, LLC	As Assignee of Action Shred of Texas	775 Prairie Center Drive, Suite 400			Eden Prairie	MN	55344	
Fair Harbor Capital, LLC	As Assignee of CVE Technologies Group Inc.	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	As Assignee of Daniel Sheehan & Associates, PLLC	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	As Assignee of Daniel Sheehan & Associates, PLLC	Ansonia Finance Station	PO Box 237037		New York	NY	10023	

003252

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Fair Harbor Capital, LLC	As Assignee of Vengroff Williams Inc as Authorized Agent of American Arbitration Association	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	Frederick Glass	130 West 57th Street, 5th Floor			New York	NY	10019	
Fair Market Life Settlements Corporation		435 Ford Rd	Suite 120		St. Louis Park	MIN	55426	
FAIRMONT DALLAS		1717 N AKARD ST	COLLIZ BAKER, GROUP BILLING COORDINATOR		Dallas	TX	75201	
Faith Petersen		Address on File						
Falcon E&P Opportunities GP, LLC	c/o PetroCap LLC	Marc Manzo	2602 McKinney Avenue Suite 400		Dallas	TX	75204	
Family Compass		4210 Junius Street			Dallas	TX	75246	
Family Office Association		500 West Putnam Ave.	Suite 400		Greenwich	CT	06830	
Fanning & Associates		PO Box 37			Denton	TX	76202	
Fanning & Associates		226 Sanders Rd			Denton	TX	76210	
FARIA, RICHARD		Address on File						
Farouk Z Lalji		Address on File						
FASKEN MARTINEAU		STE 4200 TORONTO	BOX 20 TORONTO-DOMINION CENTRE		TORONTO	ON	M5K 1N6	CANADA
DUMOULIN		3001 Knox Street	#105		Dallas	TX	75205	
FASTFRAME		11107 Sesame Street			Dallas	TX	75238	
Fat Ox		7715 E Montebello Avenue			Scottsdale	AZ	85250	
Faucades, Inc.		8888 Governors Row			Dallas	TX	75247	
Feast of Sain Arnold		8 Fourth Street			Colorado Springs	CO	80906	
Federal Insurance Company	Federal Insurance Company	202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
Federal Insurance Company	c/o Chubb	202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
c/o Chubb		4103 COLLECTION CENTER						
FedEx		DR			Chicago	IL	60693	
FedEx		Dept CH PO Box 10306			Palatine	IL	60055-0306	
FedEx		PO Box 94515			Palatine1	IL	60094-4515	
FedEx		PO Box 660481			Dallas	TX	75266-0481	
FEDORYSHYN, ERIC		Address on File						
FEHLIG, STACEY		Address on File						
Felhaber Larson Fenlon & Vogt		220 Southy 6th Street	Ste 2200		Minneapolis	MN	55402-4504	United Kingdom
Felicy Toube QC		3-4 South Square	Grays Inn		London		WC1R 5HP	
Ferguson, Misty		Address on File						
FERRELL, JOHN		Address on File						
Fetzer Architectural Woodwork		6223 West Double Eagle Circle			West Valley City	UT	84118	
Fidelity Information Services		PO Box 911653			Dallas	TX	75391-1653	
Fidelity Information Services Inc		PO Box 18012			Ashburn	VA	20146	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Fidelity Information Services Inc		Payment Processing Center	PO Box 4535		Carol Stream	IL	60197-4535	
Fidelity Investments Institutional		Operations Company, Inc.	PO Box 73307		Chicago	IL	60673-7307	
Fidelity National Information Services		Payment Processing Center	PO Box 18012		Ashburn	VA	20146	
FIGARI & DAVENPORT LLP		901 MAIN ST	3400 BANK OF AMERICA PLAZA		Dallas	TX	75202-3796	
FINANCIAL ACCOUNTING STANDARDS BOARD		PO BOX 630420			Baltimore	MD	21263-0420	
FINANCIAL AGENT		FEDERAL TAX DEPOSIT PROCESSING	PO BOX 970030		Saint Louis	MO	63197	
Financial Data Services, Inc.	Cash Management	4800 Deer Lake East Dr, 2nd Flr			Jackson	FL	32246-6484	
Financial Fineprint, Inc		1619 3rd Ave Apt 7K			New York	NY	10128-3036	
FINANCIAL GRAPHIC SERVICE, INC.		2910 S 18th AVE			Broadview	IL	60155-4727	
Financial Graphic Services		PO Box 85090			Chicago	IL	60680-0851	
Financial Industry Regulatory Authority		15200 Omega Drive, Suite 210			Rockville	MD	20850	
Financial Investment News		41 Union Square West	Suite 1021		New York	NY	10003	
Financial Investment News		267 Fifth Avenue	Suite 1010		New York	NY	10016	
Financial Media Group, LLC		9635 Maroon Circle	Ste 150		Englewood	CO	80112	
Financial Planning Association		1290 N Broadway # 1625			Denver	CO	80203-2122	
Financial Planning Association of Iowa		914 NE 53rd Court			Ankeny	IA	50021	
Financial Research Associates	Attn Erin Ramsey	18705 NE Cedar Drive			Battle Ground	WA	98604	
Financial Research Associates, LLC	ATTN Teri Lewis	18705 NE Cedar Drive			Battle Ground	WA	98604	
Financial Research Associates, LLC	Attn Teri Lewis	18705 NE Cedar Drive			Battle Ground	WA	98604	
Financial Risk Management		200 Washington Street	Suite 201		Santa Cruz	CA	95060	
Financial Services Institute		888 Seventh Ave			New York	NY	10019	
Financial Services Institute		607 14th St, NW	Suite 750		Washington	DC	20005	
Financial Times		PO Box 116730			Atlanta	GA	30368-6730	
Financial Tracking		PO Box 1627			Newburgh	NY	12551-9976	
Financial Tracking Technologies LLC		1111 East Putnam Ave	Ste 304		Riverside	CT	06878-0000	
Financial Tracking Technologies LLC		2 Soundview Dr, Ste 100			Greenwich	CT	06830	
Financial Tracking Technologies LLC		1111 E Putnam Ave.	Suite 304		Riverside	CT	06878	
Financial West Group	Attn Nicole White	4510 E. Thousand Oaks Blvd.			Westlake Village	CA	91362	
Fink, Jason		Address on File						
FINRA		1735 K Street, NW			Washington	DC	20006	
Fire Works Media Productions		2440 Pebblebrook Ct.			Grand Prairie	TX	75050	
First Allied Securities	Attn Commission Accounting	655 W. Broadway, 11th Flr			San Diego	CA	92101	

003254

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
First American Title Insurance Company		8311 W. Sunset Road	Suite 100		Las Vegas	NV	89113	
First Financial Network, Inc.		14000 Quail Springs Pkwy, Ste 200			Oklahoma City	OK	73134	
First Foundation Advisers		18101 Von Karman Avenue	Suite 750		Irvine	CA	92612	
First Foundation Inc.		18101 Van Karman Avenue	Ste 700		Irvine	CA	92612	
First Page Management LLC dba StatusLabs		151 South 1st	Ste 100		Austin	TX	78704-0000	
First Presbyterian Church		One West Putnam Ave			Greenwich	CT	06830	
First Southwest		325 North St. Paul St	Suite 800		Dallas	TX	75201	
First Trust Highland Floating Rate Fund		330 Bay St Ste 1300			Toronto	ON	M5H2S8	CANADA
FIS Brokerage & Securities Services LLC		62446 Collections Center Drive			Chicago	IL	60693-0624	
FIS Investment Systems LLC		601 Riverside Ave			Jacksonville	FL	32204	
Fischer Porter & Thomas, PC		440 Sylvan Avenue, Suite 130			Englewood Cliffs	NJ	07632-2700	
FISH & RICHARDSON P.C.		PO BOX 3295			Boston	MA	02110	
FITCH, STEPHANIE		Address on File						
FITEH ZEGEYE		Address on File						
FITZSIMMONS, BRIAN		Address on File						
Five Blocks, Inc.		5967 West 3rd Street	Suite 307		Los Angeles	CA	90036	
FJF INTERNATIONAL		858 TOWER VIEW CIRCLE			New Hope	PA	18938	
Flagship Cruises & Events		PO Box 120751			San Diego	CA	92112	
Flaherty, Sensabaught, & Bonasso, PLLC		200 Capital St	PO Box 3843		Charleston	WV	25338-3843	
Fleming Zulack Williamson Zauderer LLP		One Liberty Plaza	35th Floor		New York	NY	10006-1404	
Flexential		11900 East Cornell Avenue	Building B, 3rd Floor		Aurora	CO	80014-0000	
Flexential Colorado Corp.		8809 Lenox Point Drive	Suite G		Charlotte	NC	28273	
Flexential Colorado Corp.		PO Box 732368			Dallas	TX	75373-2368	
Flink, Robert		Address on File						
Florence & Associates Consulting		1475 Richardson Dr.	Suite 270		Richardson	TX	75080	
Florida Department of Banking & Finance	Division of Securities	200 East Gaines Street			Tallahassee	FL	32399-6502	
FLORIDA DEPARTMENT OF REVENUE		5050 W TENNESSEE ST			Tallahassee	FL	32399-0135	
Floissant Geological, LLC		5214 Vanderbilt Ave.			Dallas	TX	75206	
Flossie ORiley Photography		701 Woodcrest Dr			Hurst	TX	76053-4921	
Foley Gardere	Holly O'Neil, Esq.	Foley & Lardner LLP	2021 McKinney Avenue		Dallas	TX	75201	
FOLEY GARDERE		2021 MCKINNEY AVENUE	SUITE 1600		Dallas	TX	75201	
Foley Gardere, Foley Lardner LLP	Attn Holland N. O Neil	2021 McKinney Avenue, Ste. 1600			Dallas	TX	75201	
Folks & Associates		PO Box 851168			Mesquite	TX	75185-1168	
Forbes		PO BOX 5468			Harlan	IA	51593-0968	
Forbes		PO Box 5474			Harlan	IA	51593-0974	
Fordham, Michael		Address on File						

003255

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Forensic Risk Alliance		Third Floor, Audrey House	Ely Place		London		EC IN- 6SN	United Kingdom
Foreside Consulting Services, LLC		3 Canal Plaza	Suite 100		Portland	ME	04101	
Foreside Consulting Services, LLC		PO Box 7556			Portland	ME	04112-7556	
Foreside Financial Services, LLC		3 Canal Plaza	Suite 100		Portland	ME	04101	
Forest Resource Consultants, Inc		964 Georgia Ave Ste 100			Macon	GA	31201-6766	
Forest2Market, Inc.	ATTN Accounts Receivable	10030 Park Cedar Drive	Suite 201		Charlotte	NC	28210-8902	
Forney & Terrell Alarm Systems, LLC		P.O. Box 341			Terrell	TX	75160	
Forns, Alison		Address on File						
Forrest A. Garb & Associates, Inc.		5310 Harvest Hill, Ste 130			Dallas	TX	75230	
Forshey & Prostok, L.L.P. - IOLTA		777 Main St, Ste 1290			Fort Worth	TX	76102	
FORSIGHT Resources, LLC		8761 Dorchester Rd	Suite 102		North Charleston	SC	29420	
Fort Worth Stock Show Syndicate		PO Box 17005			Fort Worth	TX	76102	
Fort Worth Wildcatters		777 Main Street #800			Fort Worth	TX	76102	
Fortune		PO Box 60400			Tampa	FL	33660-0400	
Fortune		PO BOX 61460			Tampa	FL	33661-1460	
FORTUNE Personnel Consultants of Troy		560 Kirts Blvd	Suite 102		Troy	MI	48084	
Foundation for BrainHealth Advances	Center for BrainHealth	2200 West Mockingbird Lane			Dallas	TX	75235	
Four Seasons Plantscaping, LLC		139 Turtle Creek Blvd.			Dallas	TX	75207-6807	
Four Seasons Plantscaping, LLC		PO Box 793429			Dallas	TX	75379-0000	
FOWLER HATLEY		Address on File						
Fox Rothschild LLP	Attn Accounts Receivable-60	2000 Market St, 20th Floor			Philadelphia	PA	19103-3222	
FOX, SEAN		Address on File						
FPA Connecticut State Conference		95 West St			Rocky Hill	CT	06067	
FPA of Middle Tennessee	Patricia Fisher, Chapter Exec	PO Box 150608			Nashville	TN	37215	
FPA South Florida		8930 State Rd. 84, Ste 316			Davie	FL	33324	
FPANJ		551 Valley Rd #365			Upper Montclair	NJ	07043	
FPC	FORTUNE Personnel Consultants of Troy	560 Kirts Blvd.	Suite 102		Troy	MI	48084	
FPC OF SAVANNAH, INC.		PO BOX 8846			Savannah	GA	31412	
FPG CT Owner LP		PO Box 5297	Lockbox 305297		New York	NY	10008-5297	
FPG Galleria Two Owner, LP		PO Box 3085			Hicksville	NY	11802-3085	
FRAGOMEN, DEL REY, BERNSEN & LOEWY LLP		99 WOOD AVE SOUTH	10TH FLR		ISELIN	NJ	08830	
Frances Wildhaber		Address on File						

003256



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Franchise Tax Board	Bankruptcy Section MS A340	PO Box 2952			Sacramento	CA	95812-2952	
FRANCHISE TAX BOARD		PO BOX 942857			Sacramento	CA	94257-0511	
FRANCIS X GRAY & CO		122 W 26TH ST	STE 1101		New York	NY	10001	
Frank Cunningham		Address on File						
Frank Russell Company		NW 6327	PO Box 1450		Minneapolis	MN	55485-6327	
Frank Waterhouse	c/o David Neier	Winston Strawn LLP	200 Park Avenue		New York	NY	10166	
Frank Waterhouse	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue		New York	NY	10018	
Frank Waterhouse	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Frank Waterhouse	Ross & Smith, PC	Plaza of the Americas	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
Frank Waterhouse		Address on File						
Frank Foodservice Solutions		3149 Paysphere Circle			Chicago	IL	60674-0031	
Frederick C. Moss		Address on File						
FreedomPark LP		7501 Esters Blvd	Ste. 130		Irving	TX	75063	
FreeMotion Fitness		PO Box 99661			Chicago	IL	60690	
FRICK, TINA		Address on File						
FridsonVision		54 W 21st ST	STE 1007		New York	NY	10010	
FridsonVision		1 Penn Plaza Ste 3600			New York	NY	10119	
Fried Frank Harris Shriver & Jacobson		One New York Plaza			New York	NY	10004-1980	
Fried, Frank, Harris, Shriver & Jacobson		One New York Plaza			New York	NY	10004-1980	
Friedman Kaplan Seiler & Adelman LLP		1633 BROADWAY			New York	NY	10019-6708	
Friedreichs Ataxia Research Alliance		533 W. Uwchlan Avenue			Downington	PA	19335	
Friends of the Dallas Fire Dept.	c/o Ray Cheery	Dallas Security Systems PO Box 550939			Dallas	TX	75355-0939	
Friends of the Dallas Police		3232 McKinney Ave	#855		Dallas	TX	75204	
Friends of the IDF		29 E MADISON ST			Chicago	IL	60602	
FRITZ, ERIC		Address on File						
Frizell, Madeline		Address on File						
Frizell, Madeline		Address on File						
Front Sight Focus	Attn Tamara Watt	PO Box 12292			Raleigh	NC	27605	
Frontier State Bank	Attn Mr Steve Elliott	5100 South I-35 Service Road			Oklahoma City	OK	73129	
Frontline Source Group, Inc.		901 Main Street	Suite 4010		Dallas	TX	75202	
FSC Securities Corporation	Attn Reimbursement Processing	Lockbox 101092	3585 Atlanta Ave		Hapeville	GA	30354	
FSC Securities Corporation	Attn Shelly Kooliker	3737 Woodland Ave, Ste 500			West Des Moines	IA	50266	
FT Interactive Data		32 CROSBY DR			Bedford	MA	01730	
FT Interactive Data		PO Box 98616			Chicago	IL	60693	
FT Interactive Data Corporation		22 Crosby Drive			Bedford	MA	01730-0000	
FTI CONSULTING		2001 Ross Ave	Suite 400		Dallas	TX	75201	
FTI CONSULTING		PO BOX 630391			Baltimore	MD	21263-0391	

003257

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
FTI Consulting, Inc.		Three Times Square	10th floor		NewYork	NY	10036-0000	
Fuentes, Brian		Address on File						
Fulbright & Jaworski		2200 Ross Ave Ste 2800			Dallas	TX	75201-2784	
Fulbright & Jaworski		FULBRIGHT TOWER	1301 MCKINNEY	SUITE 5100	Houston	TX	77010-3095	
Fullmer, Kevin		Address on File						
Fullmer, Kevin		Address on File						
Fun Time Faces TX		417 Parkhurst Drive			Dallas	TX	75218	
FUNDFIRE	Money-Media, Inc.	1430 Broadway, 12th Flr	Suite 1208		New York	NY	10018	
FURNITURE FOR BUSINESS		14 CARLSON COURT			London			United Kingdom
Furniture Solutions Now Ltd.		1505 Oak Lawn Ave	Suite 300		Dallas	TX	SW15 2NQ 75207	
FUSE Research Network, LLC		200 Highland Avenue	Suite 403		Needham	MA	02494	
Fusion GPS		2122 P Street NW	Suite 202		Washington	DC	20037	
G.L. Seaman & Company		4201 International Parkway			Carrollton	TX	75007	
G.Neil Corporation		PO Box 451179			Sunrise	FL	33345-1179	
Gabriel Moss QC		3-4 South Square, Grays Inn			London		WC1R 5HP	United Kingdom
GAGE, CASEY S		Address on File						
Gail Davis & Associates, Inc.		3500 Oak Lawn	Suite 740		Dallas	TX	75219	
Gail Spurgeon		Address on File						
Gallop, Johnson & Neuman, L.C.		101 S Hanley Ste 1600			Saint Louis	MO	63105	
Game On!		502 South 2nd Avenue			Dallas	TX	75226	
Gaming Today		PO Box 93116			Las Vegas	NV	89193	
Garcia & Associates Security		Two Penn Plaza Ste 1500			New York	NY	10121	
GARCIA, ERICKA		Address on File						
GARDERE WYNNE SEWELL LLP		1000 LOUISIANA	STE 3400		Houston	TX	77002-5011	
Gardner Haas PLLC		2501 N. Harwood Street	Suite 1250		Dallas	TX	75201	
Gardner, William		Address on File						
Garland Independent School District	Linda D. Reece	c/o Perdue Brandon Fielder et al	1919 S. Shiloh Road, Suite 310, LB 40		Garland	TX	75042	
Garman Turner Gordon	William M. Noall	Address on File						
Garman Turner Gordon		7251 Amigo St Ste 210			Las Vegas	NV	89119-4302	
Gartner Inc		PO BOX 911319			Dallas	TX	75391-1319	
Gary Cao		Address on File						
Gary Durham Consulting, LLC		200 Crescent Court	Suite 1414		Dallas	TX	75201	
Gary Fitzsimmons, District Clerk		600 COMMERCE ST	STE 716		Dallas	TX	75202-4606	
Gary L. Gardner		Address on File						
Gary Sinse Foundation		PO Box 368			Woodland Hls	CA	91365-0368	
Gary V McGowan		Address on File						
GARZA, LAUREN		Address on File						
Gateway Financial Advisors, Inc.		4101 Dublin Blvd.	Suite F., PMB 57		Dublin	CA	94568	
GATHINGS, SALLY		Address on File						
GATZKI, KENT		Address on File						

003258

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
GAUNTT, AMANDA		Address on File						
Gaurav Singhal		Address on File						
Gautier, Chris		Address on File						
Gazelle Court Reporting Services, LLC		2807 Allen Street, No 727			Dallas	TX	75204	
GDHCC		4622 MAPLE AVE		STE 207	Dallas	TX	75219	
Geeks Who Drink LLC		9450 SW Gemini Dr # 84921			Beaverton	OR	97008-7105	
General American Life Insurance		PO Box 790201			Saint Louis	MO	63179-0196	
General Information Services	ATTN Sara Leslie	12770 Coit Rd, Ste 300			Dallas	TX	75251	
General Information Services		PO Box 538450			Atlanta	GA	30353-8450	
Geomap Company		PO Box 671077			Dallas	TX	75267-1077	
George Bates		Address on File						
George Catering		PO Box 140537			Dallas	TX	75214	
GEORGE FEIGER IRA		Address on File						
George Mathew		Address on File						
George W. Bush Foundation		2943 SMU Blvd	Leslie Cravens, Catering		Dallas	TX	75205	
George W. Bush Foundation		PO Box 600610			Dallas	TX	75360	
George W. Bush Presidential		Library and Museum	2943 SMU Boulevard		Dallas	TX	75205	
George W. Bush Presidential Center		2943 SMU Boulevard			Dallas	TX	75205	
GEORGIA DEPARTMENT OF REVENUE		TAXPAYER SERVICES DIVISION	PO BOX 105499		Atlanta	GA	30348-5499	
GEORGIA DEPARTMENT OF REVENUE		Processing Center	PO Box 740239		Atlanta	GA	30374-0239	
GEORGIA DEPARTMENT OF REVENUE		PROCESSING CENTER	PO BOX 740320		Atlanta	GA	30374-0320	
Georgia Secretary of State		2 Martin Luther King Jr. Drive	Suite 820 West Tower		Atlanta	GA	30334	
Geraghty, Dougherty and Edwards		1531 Hendry St, PO Box 1605			Fl. Myers	FL	33902	
Gerry Gartenberg Productions, Inc.		3 New York Avenue			White Plains	NY	10606	
Gerson Lehrman Group		850 Third Ave	9th Floor		New York	NY	10022	
Gerson Lehrman Group		BOX 200589			Pittsburgh	PA	15251-0589	
Getty Images US Inc.		PO Box 84434			Seattle	WA	98124-5734	
GHV Settlement Fund	C/O Richard Haskell	920 N Stone Ave			Lagrange Park	IL	60526	
Gianna Cerullo		Address on File						
GIBB, ALLISON		Address on File						
Gibbs & Bruns LLP		1100 Louisiana Street	Suite 5300		Houston	TX	77002	
GIBBSPRODUCTIONS		2429 Connecticut Lane			Dallas	TX	75214	
Gibson, Dunn & Crutcher LLP		333 South Grand Ave			Los Angeles	CA	90071	
Gifford Fong Associates		3658 Mt. Diablo Boulevard	Suite 200		Lafayette	CA	94549-4751	
Gigantic Color		PO Box 740209, Dept# 7052			Atlanta	GA	30374	
Gilbert Bromley		Address on File						
Gilbert Martinez Jr.		Address on File						
GILCHRIST, CLINT		Address on File						
GILL, NICOLE		Address on File						
GILLES, ERIN		Address on File						

003259

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Gillian C. Sartini		Address on File						
Gillian Sartini		Address on File						
GILLUM, KATIE		Address on File						
Gils Elegant Catering		1001 MacArthur Blvd			Grand Prairie	TX	75050	
GIMBEL, JESSICA D.		Address on File						
Girard Securities, Inc.	Attn Connie Goodell	5405 Morehouse Dr Ste 135			San Diego	CA	92121-4767	
GIRARD, ERIC		Address on File						
Girard, Kovarik & Associates	Attn Robert Danion	101 N. Clematis St, Ste 200			West Palm Beach	FL	33401	
GLASGOW, SAMUEL		Address on File						
Glassdoor		1 Harbor Drive	Suite 300		Sausalito	CA	94965	
Glassdoor		Dept 3436	PO Box 123436		Dallas	TX	75312-3436	
Glast, Phillips, & Murray		2200 One Galleria Tower	13355 Noel Rd, LB 48		Dallas	TX	75240-1518	
GLC Advisors & Co., LLC		451 Jackson Street	2nd Floor		San Francisco	CA	94111	
Gleneagles CLO, Ltd	The Directors	PO Box 1093 GT	Queensgate House, South Church Street		Grand Cayman		KY1-11-8	Cayman Islands
Gleneagles CLO, Ltd.		PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Gleneagles CLO, Ltd.								
JPMorgan Chase Bank, National Association	JPMorgan Chase Bank, National Association	600 Travis 50th Floor	Worldwide Securities Service	Gleneagles CLO, Ltd. Telecopy	Houston	TX	77002	
GLENN KIM		Address on File						
Glenn Morrison		Address on File						
Global Alpha Forum, LLC		30 Old Kings Hwy South			Darien	CT	06820	
Global Experience Specialists, Inc.		Bank of America, PO Box 96174			Chicago	IL	60693	
GLOBAL FINANCIAL SERVICES		PO BOX 856460			Louisville	KY	40285-6460	
Global Recruiters of Mid-Cities		PO Box 2165			Bedford Park	IL	60499-2165	
Global Shares Inc.		111 Town Square Place	Suite 1401		Jersey City	NJ	07310	
Global Shares Ireland Ltd		Unit 2, Building D,	West Cork Technology					
GlobalMacro Partners, LLC		1755 S. Naperville Rd	Park Clonkality Co. Ste 100		Cork		P85 EY90	IRELAND
GLOBE STORAGE & MOVING CO. INC		36 BLEECKER ST			Wheaton	IL	60189	
Glocap Search LLC		156 W 56th St.			New York	NY	10012	
Gloss Luxury Event Rentals		6525 Briarhaven Drive	4th Floor		New York	NY	10019	
GM SNYDER AND ASSOCIATES		300 Ozark Trail Drive			Dallas	TX	75240	
GoDaddy		14455 N. Hayden Rd.	Suite 104		Saint Louis	MO	63011	
Godfrey		1000 Louisiana	Ste. 219		Scottsdale	AZ	85260	
Godier, Lindsey		Address on File	Suite 5100		Houston	TX	77002-5096	
Goetz, Matthew		Address on File						
Goetz, Matthew X.		Address on File						
Goetz, Matthew X.		Address on File						
Goglia PLLC		4519 Melissa Lane			Dallas	TX	75229	
Gold Crown Valet Parking, Inc.		901 Waterfall Way	Suite 107		Richardson	TX	75080	
GOLD LION		8043 Abramshire Ave			Dallas	TX	75231	

003260

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Gold Medal Strategies, Inc.		319 1st Street West			Tierra Verde	FL	33715	
Gold Star Distributors, Inc.		PO Box 831150			Richardson	TX	75083-1150	
Golds Gym International	Attn Corporate Billing	125 E John Carpenter Frwy	Suite 1300		Irving	TX	75062	
Golds Gym International		4001 Maple Avenue	Suite 200		Dallas	TX	75219	
Golds Texas Holdings Group, Inc		4001 Maples Avenue Ste 200			Dallas	TX	75219-0000	
Goldsmith Associates, PLLC		6540 Highgate Lane			Dallas	TX	75214	
GOLDSMITH, JASON		Address on File						
GOLDSMITH, SARAH B.		Address on File						
Golf Balls Galore, Inc.		2181 J and C Blvd			Naples	FL	34109	
GONZAGA, GABRIELLA		Address on File						
GONZALEZ, EVAN		Address on File						
GOOD FULTON & FARRELL		2808 FAIRMOUNT ST	STE 300		Dallas	TX	75201	
Goodwin and Marshall, Inc.		2405 Mustang Drive			Grapevine	TX	76051	
GOODWIN PROCTER LLP		EXCHANGE PLACE	53 STATE STREET		Boston	MA	02109	
Gordon, Fournaris & Marmarella, P.A.		1925 Lovering Avenue			Wilmington	DE	19806	
Gosserand, Boyd		Address on File						
Gotham Promotions		67 Sullivan St			New York	NY	10012	
GourmEATS - Kevin Ashade		1407 Main St.	Apt 1703		Dallas	TX	75202	
Governance Re Ltd.		Wellesley House North	2nd Floor, 90 Pitts Bay Road		Pembroke		HM 08	Bermuda
Governance Re Ltd.		Wellesley House North,2nd Floor	90 Pitts Bay Road		Pembroke		HM 08	Bermuda
Governance RE Ltd.		Clarendon House	2 Church St		Hamilton		HM 11	Bermuda
GP Industries, Inc.		3230 Riverside Ave #110-A			Paso Robles	CA	93446	
GPI Lee Parkway, LP		3333 Lee Parkway			Dallas	TX	75219	
Grace Chang		Address on File						
Grafton Hospitality		340 South US Highway 1 Ste 306			Jupiter	FL	33477	
Graham, Jacquelyn		Address on File						
Grand Street Settlement		80 Pitt Street			New York	NY	10002	
Grant Thornton LLP		33570 Treasury Center			Chicago	IL	60694-3500	
Grant, Jennifer		Address on File						
Grants Interest Rate Observer		233 Broadway Fl 24			New York	NY	10279-2502	
Grapevine Consultants		3003 Double Creek Drive			Grapevine	TX	76051	
Grasshopper Lawn & Patio, LLC		1002 Ashby Dr			Allen	TX	75002	
GRATEKE, RYAN		Address on File						
Graubard Miller		Address on File						
Graves, Vanessa		Address on File						
Gray Reed & McGraw LLP	Jason S. Brookner	1601 Elm Street, Suite 4600			Dallas	TX	75201	
Gray Reed & McGraw LLP	Mark Gargiulo - CFO	1300 Post Oak Blvd., Suite 2000			Houston	TX	77056	
GRAY, MATTHEW		Address on File						
Grayson CLO Corp., et al		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Grayson CLO Ltd.	c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Grayson CLO Ltd.	Grayson CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Grayson CLO, Ltd.	Investors Bank and Trust Company c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town, Grand Cayman			Cayman Islands
Grayson CLO, Ltd. Investors Bank & Trust Company	Elizabeth Weller	P.O. Box 1234 Linebarger Goggan Blair & Sampson, LLP	Queensgate House South Church Street 2777 N. Stemmons Freeway, Suite 1000	The Directors - Grayson CLO, Ltd.	George Town, Grand Cayman	KY	1-1108	Cayman Islands
Grayson County		3525 Melanie Ln			Dallas	TX	75207	
Great American Photo Booths		3879 Maple Avenue			Plano	TX	75023	
Great Investors Best Ideas Foundation			Ste 350		Dallas	TX	75219	
Great Northern Insurance Company, Chubb National Insurance Company and Federal Insurance Company	c/o Chubb	202A Halls Mill Road - 2E 2417 3rd Ave Fl 3			Whitehouse Station	NJ	08889	
Great Performances		200 W Jackson #1000			Bronx	NY	10451-6339	
Great Point Capital LLC		8201 Preston Road			Chicago	IL	60606	
Great Southern Bank		9530 Skillman Street	Suite 305		Dallas	TX	75225	
Great Value Storage		401 Congress Ave, 33rd Flr			Dallas	TX	75243	
Great Value Storage		437 Fifth Avenue			Austin	TX	78701	
Greater Talent Network, Inc.		Address on File			New York	NY	10016	
Green, Allison		Address on File						
GREEN, JASON		2200 Ross Avenue	Suite 5200		Dallas	TX	75201	
Greenberg Traurig		1000 LOUISIANA ST	STE 1800		Houston	TX	77002	
Greenberg CLO, Ltd.	c/o Maples Finance Limited	PO Box 1093GT	Boundary Hall, Cricket Square	George Town	Grand Cayman		KY1-11-8	Cayman Islands
Greenbriar CLO, Ltd.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Greenbriar CLO, Ltd. and State Street Bank and Trust Company	Greenbriar CLO, Ltd. c/o Maples Finance Limited	P.O.Box 1093GT	Boundary Hall Cricket Square		George Town, Grand Cayman	KY	1-9902	Cayman Islands
Greenbriar CLO, Ltd. and State Street Bank and Trust Company	Company Attn CDO Services Group	200 Clarendon St	Mail Code EUC 108		Boston	MA	02116	
Greenway - 4641 Production, L.P.	c/o Robert Lynn Management	4851 LBJ Freeway	Suite 1000		Dallas	TX	75244	
Greenway - 4641 Production, L.P.	c/o Trinity Interests, Inc.	12750 Merit Dr Ste 1300			Dallas	TX	75251	
Greenway - 4641 Production, L.P.		2808 Fairmount Street	Ste 100		Dallas	TX	75201	
Greenway - 4641 Production, L.P.		5924 ROYAL LANE	STE 250		Dallas	TX	75230	
GREENWICH STRATEGIC ADVISORS LLC		42 CARY ROAD			Riverside	CT	06878	
Greenwood Office Outfitters		2951 Suffolk Drive	Suite 640		Fort Worth	TX	76133-1149	
Greg Campbell		Address on File						

003262

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Greg Jackson		Address on File						
Greg Lussen		Address on File						
GREGG IMAMOTO		Address on File						
Gregory C. Bussey		Address on File						
Gregory Chang		Address on File						
Gregory ECA Communications		27 West Athens Avenue			Ardmore	PA	19003	
Gregory Polsen		Address on File						
Gregory Webster		Address on File						
GREGORY, MICHAEL		Address on File						
GREGORY, MICHAEL		Address on File						
Greig Sagers		Address on File						
Greylane Partners, LLC		P.O. Box 733976			Dallas	TX	75373-3976	
Greyline Solutions		PO Box 733976			Dallas	TX	75373-3976	
Greyline Solutions LLC		1 Sansome Street, Ste 1895			San Francisco	CA	94104-4432	
GRIFFITH, CANDICE		Address on File						
GRIFFITH, CANDICE C.		Address on File						
GRIFFITH, MATTHEW		Address on File						
GRO Designs, LLC		3500 Commerce St. #100			Dallas	TX	75226	
GROFF, SCOTT		Address on File						
Groom Law Group		1701 Pennsylvania Ave NW	Ste 1200		Washington	DC	20006	
GROS EXECUTIVE RECRUITERS, INC		1616 WESTGATE CIRCLE			Brentwood	TN	37027-8019	
Group Services Inc		Condominium San Alberto,						
GROVES, SHAWN		Suite 721	605 Conado Ave		San Juan	PR	00907	
Gruber Hurst Johansen Hall Shank LLP		Address on File						
GRUBHUB for Work		PO Box 600041			Dallas	TX	75360-0041	
GrubHub Holdings Inc.		PO Box 748570			Los Angeles	CA	90074-8570	
Grubhub Holdings Inc.		111 W. Washington Street	Ste 2100		Chicago	IL	60602-0000	
GSB Digital		5050 Capitol Ave Apt 252	Suite 5500		Dallas	TX	75206-7724	
GT Dallas Properties LLC		30-30 47th Avenue			Long Island City	NY	11101	
G-TEXAS MANAGEMENT, INC.		PO Box 3085			Hicksville	NY	11802-3085	
Guardian Performance Solutions LLC		ATTN BARBARA BOURMAN			Dallas	TX	75215	
Guggenheim Strategic Opportunities Fund		836 57th Street	Suite 408		Sacramento	CA	95819	
Guidepoint Global		330 Madison Ave, 11th Floor			New York	NY	10017	
Guidepost Solutions, LLC		675 Avenue of The Americas Fl 2			New York	NY	10010-5117	
Guild Associates		415 Madison Ave	11th Floor		New York	NY	10017	
Gulati, Sanjay		153 Mitchell Hill Rd			Lyme	CT	06371-3021	
GUNNERSON, ERIK		Address on File						
GUSTAVO PRILICK		Address on File						
Guy J. Renzi & Associates		2277 State Hwy 33,			Trenton	NJ	08690	
H.I.S. BridgeBuilders		Golden Crest Corporate Center	Suite 410		Dallas	TX	75208	
		2705 West Commerce St						



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Haas Petroleum Engineering Svcs. Inc.		750 N Saint Paul St Ste 1750			Dallas	TX	75201-3288	
Hagar Restaurant Service LLC		1229 West Main St.			Oklahoma City	OK	73106	
Hain Capital Investors Master Fund, Ltd		301 Route 17, 7th Floor			Rutherford	NJ	07070	
Hakemack, Christopher		Address on File						
Hal Whalen		Address on File						
Hale, Sarah		Address on File						
HALL, PHIL		Address on File						
Halloran & Sage LLP		225 Asylum Street	One Goodwin Square		Hartford	CT	06103	
HALPIN, CHRISTOPHER		Address on File						
Haltom, Steven		Address on File						
Hamilton	PRICKETT, JONES & ELLIOTT, P.A.	Marcus E. Montejo	Kevin H. Davenport	1310 King Street	Wilmington	DE	19801	
Hamilton Communications		PO Box 555			Westbrook	CT	06498	
HAMILTON, TODD		Address on File						
Hand Securities Inc.		820 Gessner Rd	Suite 1250		Houston	TX	77024	
Hansen, Jessica		Address on File						
Hanson, Adam		Address on File						
HARBOR GROUP LTD		70 E SUNRISE HWY	#411		Valley Streram	NY	11581	
Harbor Yacht Clubs, LLC		1880 Harbor Island Drive			San Diego	CA	92101	
HarbourVest 2017 Global AIF L.P.								
HarbourVest 2017 Global AIF L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HARBOURVEST 2017 GLOBAL AIF L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HarbourVest 2017 Global Fund L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		Boston	MA	02111	
HARBOURVEST 2017 GLOBAL FUND L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HarbourVest Dover Street IX Investment L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Dover Street IX Investment L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
Harbourvest Dover Street IX Investment, LP		One Financial Center			Boston	MA	02111	
HarbourVest Partners L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HarbourVest Partners L.P. on behalf of funds and accounts under management	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Skew Base AIF L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Skew Base AIF L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HARBOURVEST SKEW BASE AIF L.P.		One Financial Centre, 44th Floor			Boston	MA	02111	
Harder LLP		132 S. RODEO DRIVE	FOURTH FLOOR		BEVERLY HILLS	CA	90212	
HARIKRISHNAN NAIR		8734 SHADY SHORE DR			Frisco	TX	75034	
Harlem Lacrosse		PO Box 708			New York	NY	10030	
Harper & Peterson, P.L.L.C		3040 Woodbury Drive			Woodbury	MIN	55129	
Harris Hilburn & Sherer		1111 Rosalie			Houston	TX	77004	
HARRIS, WILTSHIRE & HARRISON, MATTHEW		1200 EIGHTEENTH ST., NW			Washington	DC	20036	
Harsha Patwardhan		Address on File						
Hart Energy Publishing, L.P.		Address on File						
Hart Energy Publishing, L.P.		4545 Post Oak Pl Ste 210			Houston	TX	77027	
Hart Energy, LP		1616 S. Voss Rd	Suite 1000		Houston	TX	77057	
Hartford CFA Society		1616 S. Voss Street	Suite 1000		Houston	TX	77057	
Hartford Life Insurance Company		PO Box 266			Granby	CT	06035	
Hartline Dacus Barger Dreyer LLP		777 Main Street			Hartford	CT	06115	
Hartman Wanzor LLP	Kenneth Cantrell	6688 N. Central Expwy. #1000			Dallas	TX	75206	
Hartman Wanzor LLP		6050 Southwest Blvd Suite 150			Fort Worth	TX	76109	
Harvard Club of Dallas		6050 Southwest Blvd	Suite 200		Fort Worth	TX	76109	
Harvard Club of New York City		5706 E Mockingbird Ln Ste 115			Dallas	TX	75206-5461	
Harvest Exchange Corp		35 West 44th Street			New York	NY	10036	
Haselroth, Matthew		PMB 245	516 N Ogden Ave		Chicago	IL	60642-6421	
HASENAUER, MICHAEL		Address on File						
HASENAUER, MICHAEL		Address on File						
Haven Search Group, LLC		Address on File						
Hawaii State Tax Collector		3303 Lee Parkway	Suite 400		Dallas	TX	75219	
HAWK Network Defense, Inc.		PO Box 1530			Honolulu	HI	96806-1530	
Hayes, Christopher		5057 Keller Springs Road	Suite 300		Addison	TX	75001	
Hayley Eliason	Michael P. Hutchens, Esq.	Address on File						
HAYMARKET MEDIA LIMITED		Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Haynes and Boone, LLP		23/T, The Centrium, 60 Wyndham St	Central		HONG KONG			HONG KONG
Haynes and Boone, LLP	ATTN Cari Peretzman	901 Main St # 3100			Dallas	TX	75202	
Haynes and Boone, LLP		2323 Victory Ave	Suite 700		Dallas	TX	75219	
Hazen, Anthony		PO Box 841399			Dallas	TX	75284-1399	
HCM Market Letter, LLC		Address on File						
HCRE Partner, LLC	Wick Phillips Gould & Martin, LLP	Harch Capital Management, LLC	621 NW 53rd Street, Suite 400		Boca Raton	FL	33487	
HEAD, ALAN		Jason M. Rudd. Lauren K. Drawhorn	3131 McKinney Avenue, Suite 500		Dallas	TX	75204	
Health Strategy Consulting		Address on File						
		46 Kilvert St			Warwick	RI	02886	

003265

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Health Texas Provider Network		PO Box 844128			Dallas	TX	75284	
Heat Software USA Inc		PO Box #204375			Dallas	TX	75320-4375	
HEATHER BROWN		Address on File						
HEATHERINGTON, MELINDA		Address on File						
HEBERT, ERIC		Address on File						
Hedge Connection, Inc.		141 Parkway Rd	Suite 15		Bronxville	NY	10708	
Hedge Fund Alert		5 Marine View Plaza #400			Hoboken	NJ	07030-5795	
Hedge Fund Research, Inc.		10 South Riverside Plaza	Suite 700		Chicago	IL	60606	
Hedgebay Securities, LLC		62 Post Road West			Westport	CT	06880	
HEDGEFUND INTELLIGENCE LTD		NESTOR HOUSE, PLAYHOUSE YARD	ACCOUNT DEPT		London		EC4V 5EX	United Kingdom
Hedgeye Risk Management, LLC	Legal Department	1 High Ridge Park 3rd Floor			Stamford	CT	06905-0000	
HEIN ONKENHOUT		Address on File						
HEISS, BRADFORD		Address on File						
Helder Melendez		Address on File						
Helen Kim	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Helicopters for Heroes	c/o Jeff Davis	9219 Viscount Row			Dallas	TX	75247	
HELLER EHRMAN LLP		FILE NO 73536	PO BOX 60000		San Francisco	CA	94160-3536	
Helping Our Heroes Foundation		6505 W. Park Blvd	Ste 306-165		Plano	TX	75093	
Helwig, Kevin		Address on File						
HENDERSHOT, PAUL		Address on File						
HENDRIX, KRISTIN		Address on File						
Henjum Goucher		Address on File						
Henjum Goucher		Address on File						
HENNIGAN, BENNETT & DORMAN LLP		865 S FIGUEROA ST			Los Angeles	CA	90017	
Henry Chang		Address on File						
Herbert A. Rosenthal, Chartered		1020-19th St, NW, #400			Washington	DC	20036-6101	
HEROES FOR CHILDREN	ATTN LARISSA LINTON & JENNY SCOTT	3411 PRESTON RD, STE C-13-227			Frisco	TX	75034	
HERREN, CASEY		Address on File						
HERRICK, KATHRYN D.		Address on File						
Hersey, William		Address on File						
Hess, Zachary		Address on File						
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800	Wilmington	DE	19801	
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Harwood Street, Suite 500	Dallas	TX	75201	
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
HFF SECURITIES LP		10100 SANTA MONICA BLVD	STE 1400		Los Angeles	CA	90067	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HFP GP, LLC	Attn Highland Capital Management, L.P. as sole member	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
HG Deposition and Litigation Services		2777 N. Stemmons Freeway, Ste 1025			Dallas	TX	75207	
Higdon Barrett		Address on File			New York	NY	10169	
HIGDON PARTNERS		230 PARK AVE			Dallas	TX	75243	
High Bandwidth		10107 Candlebrook Drive						
High Profile, Inc.		4851 LBJ Freeway, Suite 500			Dallas	TX	75244	
High Road Touring		Jackson Haring	751 Bridgeway, 3rd Flr		Sausalito	CA	94965	
High Tower	Attn GIS	505 5th Ave, 14th Flr			New York	NY	10017	
High Tower	Attn Klaris Tamazian	200 W. Madison, Ste 2500			Chicago	IL	60606	
Highland Builders, Inc.		2342 Fabens Road	Ste 100		Dallas	TX	75229	
Highland Capital Insurance Solutions GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Capital Loan Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Capital Loan GP, LLC	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	Attn Davor Rukavina, Esq. and Julian P. Vasek, Esq.	Munsch Hardt Kopf & Harr, P.C.	3800 Ross Tower	500 N. Akard Street	Dallas	TX	75202-2790	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	A. Lee Hogwood, III	4350 Lassiter at North Hills Ave., Suite 300		Raleigh	NC	27609	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	Attn Artoush Varshosaz	1717 Main Street, Suite 2800		Dallas	TX	75201	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	Attn Stephen G. Topetzes	1601 K Street, NW		Washington	DC	20006-1600	
Highland Capital Management Services, Inc.		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Capital Multi-Strategy Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland CDO and Structured Products Fund, Ltd. Citigroup Financial Products Inc.	Citigroup Financial Products Inc.	390 Greenwich Street	Doug Warren		New York	NY	10013	
JPMorgan Chase Bank								
Highland CDO and Structured Products Fund, Ltd. Citigroup Financial Products Inc.	JPMorgan Chase Bank	600 Travis Street	50th Floor	ITS-Greg Sheehan	Houston	TX	77002	
JPMorgan Chase Bank		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland CDO Opportunity Fund GP, LLC								

003267

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Highland CDO Opportunity Fund, Ltd. IXIS Financial Products Inc. JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	600 Travis Street	50th Floor	WSS-Greg Sheehan	Houston	TX	77002	
Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette First Floor, Dorey Court, Admiral Park	500 West 2nd St., Suite 1800		Austin	TX	78701-4684	Chanel Islands
Highland CLO Funding, Ltd Highland CLO Management Ltd.		PO Box 309	St Peter Port Ugland House		Guernsey Grand Cayman		GY1 6HJ KY1-1104	Cayman Islands Cayman Islands
Highland Credit Opportunitites	Japanese Feeder Sub-Trust	c/o Intertrust (Cayman) Limited	190 Elgin Avenue	George Town	Grand Cayman		KY1-9005	Cayman Islands
Highland Credit Opportunitites	Japanese Unit Trust	c/o Intertrust (Cayman) Limited	190 Elgin Avenue	George Town	Grand Cayman		KY1-9005	Cayman Islands
Highland Credit Opportunitites CDO, Ltd.	c/o Walkers SPV Limited	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Crusader Offshore Partners, L.P., et al.	Michael A. Rosenthal, Gibson, Dunn and Crutcher LLP	Walker House 87 Mary Street	George Town		Grand Cayman		KY1-9002	Cayman Islands
Highland Dallas Foundation Inc.	c/o CT Corporation, Registered Agent	200 Park Avenue			New York	NY	10166	
Highland Dynamic Income Fund GP, LLC		1209 Orange St			Wilmington	DE	19801	
Highland Employee Retention Assets, LLC	Attn James Dondero	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Fund Holdings, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland GP Holdings LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Legacy Limited	c/o Maples & Calder/ Graham Lockington	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Legacy Limited	c/o Queensgate SPV Services Limited	PO Box 1093GT / Suzanne St. Thomas	Compass Center, 2nd Flr, Crewe Road	George Town	Grand Cayman			Cayman Islands
Highland Loan Fund, Ltd. et al		PO Box 309	Ugland House South Church Street	Grand Cayman	Cayman Island		KY1-1104	Cayman Islands
Highland Loan Funding V, Ltd.	c/o Maples & Calder/ F.O.E.	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Loan Funding V, Ltd.	c/o QSPV Limited	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Loan Master Fund, L.P.	c/o Maples Corporate Services Limited	PO Box 309	Ugland House		Grand Cayman		KY1-1104	Cayman Islands
Highland Multi-Strategy Credit Fund GP, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Multi-Strategy Credit Fund GP, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Multi-Strategy Credit Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Highland Multi-Strategy Fund GP, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Multi-Strategy Master Fund, L.P.	c/o MQ Services Ltd.	Victoria House	31 Victoria Street		Hamilton		0HM10	Bermuda
Highland Multi-Strategy Master Fund, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Park CDO I, Ltd.	Moody's Investors Service, Inc.	99 Church Street			New York	NY	10041	
Highland Park CDO I, Ltd.	Standard & Poors Ratings Services	55 Water Street, 41 st Floor	Commercial Mortgage Surveillance Group	CDO Surveillance	New York	NY	10041	
Highland Park CDO I, Ltd. The Bank of New York Trust Company, National Association	Highland Park CDO I, Ltd. c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House, South Church Street	George Town, The Directors	George Town			Cayman Islands
Highland Park CDO I, Ltd. The Bank of New York Trust Company, National Association	The Bank of New York Trust Company, National Association	601 Travis House	16th Fl		Houston	TX	77002	Cayman Islands
Highland Park CDO I, Ltd. Opportunities GP, LLC	c/o Maples Finance Limited	Two Galleria Tower	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Prometheus Feeder Fund I, L.P.	c/o Maples Corporate Services Limited	PO Box 309	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Prometheus Feeder Fund II, L.P.	c/o Maples Corporate Services Limited	PO Box 309	Ugland House		Grand Cayman		KY1-1104	Cayman Islands
Highland Prometheus Mast Fund, L.P.	c/o Maples Corporate Services Limited	PO Box 309	Ugland House		Grand Cayman		KY1-1104	Cayman Islands
Highland Restoration Capital Partners GP, LLC	c/o The Corporation Trust Company	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Restoration Capital Partners Master, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	Cayman Islands
Highland Restoration Capital Partners Offshore, L.P.	c/o Intertrust Cayman Company	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Highland Restoration Capital Partners, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Select Equity Fund GP	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Select Equity Fund GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Select Equity Master Fund, GP	c/o MQ Services Ltd. c/o The Corporation Trust Company	Victoria House	31 Victoria Street		Hamilton		0HM10	Bermuda
Highland SunBridge GP, LLC	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
HighTower Advisors	HighTower Advisors Attn GIS	505 5th Ave, 14th Floor			New York	NY	10017	
HighTower Advisors	HighTower Advisors	200 West Madison	Suite 2500		Chicago	IL	60606	
HighTower Advisors/The Sarian Group	HighTower Advisors/The Sarian Group	656 East Swedesford Road	Suite 360		Wayne	PA	19087	
HighTower Holding LLC	HighTower Holding LLC	200 W. Madison	Ste 2500		Chicago	IL	60606	
Hilary Adams		Address on File						

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HILGENBRINK, ANDREW		Address on File						
Hilgenbrink, Andrew		Address on File						
HILL, OWEN		Address on File						
Hill, Robert		Address on File						
Hilcrest Athletic Association	HHS Athletics c/o Andy Todd	9924 Hillcrest Rd			Dallas	TX	75230-5309	
Hillis, Blair		Address on File						
Hines REIT 2200 Ross Avenue LP		PO Box 841147			Dallas	TX	75284-1147	
Hines REIT 2200 Ross Avenue LP		PO Box 841197			Dallas	TX	75284-1197	
Hitchcock, Daniel		Address on File						
HM Life Insurance Company		PO Box 382229			Pittsburgh	PA	15250-8229	
Hoedebeck, Charlie		Address on File						
Hoermann, Richard		Address on File						
Hoge & Gameros, LLP		4311 Oak Lawn Ave Ste 600			Dallas	TX	75219	
Holland & Knight, LLP		PO Box 864084			Orlando	FL	32886-4084	
Hollister, Michael J.		Address on File						
Holloway, Travis		Address on File						
Holly Church Communications		3730 Pinebrook Cir Apt 606			Bradenton	FL	34209-8073	
Holmes Detective Bureau, Inc.		1270 Avenue of the Americas	Suite 1906		New York	NY	10020	
Holt, Eric		Address on File						
Home Health Service		2400 Dallas Parkway	STE 440		Plano	TX	75093	
Home Health Services		3333 Earheart Drive	Suite 210		Carrollton	TX	75006	
HOME, BRIAN		Address on File						
HONEYCUTT, JOHN BROOKS		Address on File						
HONEYCUTT, JOHN BROOKS		Address on File						
HONIS, JOHN		Address on File						
HONIS, JOHN		Address on File						
Honyaku Center Inc.		3-13-12 Mita			Minato-ku	Tokyo	109-0073	JAPAN
HOOPER HULL LLP		PO BOX 44989			Indianapolis	IN	46244-0989	
Hopes Door Inc.		860 F Ave	Suite 100		Plano	TX	75074	
HOPSON, STUART		Address on File						
Hotel Crescent Court		400 Crescent Court			Dallas	TX	75201	
Hotel Zaza		2332 Leonard Street			Dallas	TX	75201	
Houlihan Lokey	Attn Accounts Receivable	10250 Constellation Blvd, 5th Floor						
HOUSE OF BLUES	ATTN BARBARA BOUMAN	2200 N LAMAR ST			Los Angeles	CA	90067-6802	
Housing Crisis Center		Megan Singleton, Development Manager	4210 Junius Street		Dallas	TX	75246	
How Handy Is That		21650 Oxnard Street	Suite 1530		Woodland Hills	CA	91367	
Howard B. Wiener		Address on File						
HOWARD DRANSFIELD IRA		Address on File						
Howle, Ian		Address on File						
hrQ-Dallas, LLC		2859 Umatilla St			Denver	CO	80211	
HSIEH, ADA		Address on File						

003270



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HTH Worldwide Insurance Services	c/o Travel Accounting	One Radnor Corporate Center Address on File	933 1st Ave		King of Prussia	PA	19406-1342	
HUBBLE, JONATHAN HUDSON GLOBAL RESOURCES		75 Remittance Drive, Suite 6465			Chicago	IL	60675-6465	
Hudson Reporting & Video, Inc	A DEPOSITION CENTER	2124 Oak Tree Rd			New Jersey	NJ	08820	
HUGHES & HUBBARD		One Battery Park Plaza			New York	NY	10006	
Hughes & Luce LLP		1717 Main St Ste 2800			Dallas	TX	75201	
Hughes, Alex		Address on File						
HUKILL, NATHAN		Address on File						
HULL, CYNTHIA		Address on File						
Hummingbird		PO Box 8500-3885			Philadelphia	PA	19178-3885	
Hundi Reporting, L.L.C.		703 McKinney Ave, Ste 405			Dallas	TX	75202	
Hunt, Brandon		Address on File						
HUNT, HEATHER		Address on File						
Hunter Covitz	c/o David Neier, Winston Strawn LLP	6612 Sondra Dr.			Dallas	TX	75214	
Hunter Covitz		Address on File						
HUNTER COVITZ		Address on File						
Hunter Donaldson		Address on File						
Hunter Mountain Investment Trust	c/o Rand Advisors LLC	John Honis	87 Railroad Place Site 403		Saratoga Springs	NY	12866	
Hunter Mountain Trust	c/o E. P. Keiffer	Rochelle McCullough LLP	325 N Saint Paul St Ste 4500		Dallas	TX	75201-3827	
Hunter Mountain Trust	Hunter Mountain Trust	John Honis, Trustee for Hunter Mountain Trust	87 Railroad Place, Suite 403		Saratoga Springs	NE	12866	
Hunting & Fishing for ALS Research		2525 Fairmont St			Dallas	TX	75201	
HUNTINGTON, JOHN		Address on File						
Hunton & Williams LLP		RIVERFRONT PLAZA, EAST TOWER			Richmond	VA	23219	
Hunton & Williams LLP		PO BOX 840686			Dallas	TX	75284-0686	
Hunton Andrews Kurth LLP	Alexander G. McGeoch	1445 Ross Avenue Suite 3700			Dallas	TX	75202	
Hunton Andrews Kurth, LLP		1445 Ross Avenue	Suite 3700		Dallas	TX	75202-2799	
Hurley, Leslie		Address on File						
HURLEY, MICHIEL		Address on File						
Huron Consulting Group		4795 Paysphere Circle			Chicago	IL	60674	
Hutcherson Law		10000 N. Central Expressway			Dallas	TX	75231	
Hutchison & Steffen, PLLC		10080 W Alta Drive			Las Vegas	NV	89145	
HV International VIII Secondary L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HV International VIII Secondary L.P.	c/o HarbourVest	One Financial Center			Boston	MA	02111	
HV INTERNATIONAL VIII SECONDARY L.P.		One Financial Centre, 44th Floor			Boston	MA	02111	
Hyatt Regency Lost Pines Resort and Spa		5775 Hyatt Lost Pines Road			Lost Pines	TX	78612	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Hyatt Regency Scottsdale Resort & Spa		7500 E Doubletree Ranch Road			Scottsdale	AZ	85258	
I & A INTERNATIONAL		1717 MAIN ST	SUITE 4800		Dallas	TX	75201	
i Entertainment		2409 Avenue J	Suite D		Arlington	TX	76006	
I.M.S. Relocation		2005 McDaniel Drive	Ste 150		Carrollton	TX	75006	
IA Watch		PO Box 9407			Gaithersburg	MD	20897-9824	
IA Watch		100 Winners Circle, Ste 300	PO Box 5094		Brentwood	TN	37024-5094	
IAN FARRAND		Address on File						
IBM Websphere		1 New Orchard Road			Armonk	NY	10504-0000	
ICAA		1050 17th St, NW Ste 725			Washington	DC	20036-5503	
Ice Bro Promos		1007 East Levee			Dallas	TX	75207	
Ice Data Indices, LLC		PO Box 74008873			Chicago	IL	60693-8873	
ICE Data Pricing & Reference Data, LLC		PO Box 98616			Chicago	IL	60693	
ICE Systems, Inc.		PO Box 11126			Hauppauge	NY	11788-0934	
ICI Mutual Insurance Brokers, Inc.		1401 H Street NW	Suite 1000		Washington	DC	20005	
IDAHO STATE TAX COMMISSION	REVENUE OPERATIONS DIVISION	IDAHO STATE TAX COMMISSION	PO BOX 36		Boise	ID	83722-0410	
IDAHO STATE TAX COMMISSION		PO Box 83784			Boise	ID	83707-3784	
IDCSERVCO Business Services	Attn: Accounts Receivable	PO Box 1925			Culver City	CA	90232-1925	
iDiscover, LLC		2049 Century Park East, Ste 4370			Los Angeles	CA	90067	
IFG Project Resourcing		1560 Sawgrass Corporate Pkwy 4th Flr			Sunrise	FL	33323	
IFP Securities, LLC		3030 N Rocky Point Dr W	Suite 700		Tampa	FL	33607	
IHS Global Inc.		PO Box 847193			Dallas	TX	75284-7193	
IHS Markit	Michelle Searles	15 Inverness Way East			Englewood	CO	80112	
II Magazines	Absolute Return & Alpha	225 Park Ave - South			New York	NY	10003	
II News		PO Box 4009	Subscriptions		Chesterfield	MO	63006-4009	
IJC Partners LLC		PO Box 5018			Brentwood	TN	37024-9552	
Ikon Office Solutions		20 East 46th St	Suite 901		New York	NY	10017	
Ikon Office Solutions		DALLAS DISTRICT-DAT	PO BOX 676466		Dallas	TX	75267	
Ikon Office Solutions		Northeast District-NYG	PO BOX 827164		Philadelphia	PA	19182-7164	
Ikon Office Solutions		LDS Southeast District -FTL	PO Box 532545		Atlanta	GA	30353-2545	
Ikon Office Solutions		LDS DALLAS DISTRICT -DAL	PO BOX 676466		Dallas	TX	75267-6466	
Ikon Office Solutions		National Accounts	PO Box 676466		Dallas	TX	75267-6466	
ILLINOIS DEPARTMENT OF REVENUE		PO BOX 19009			SPRINGFIELD	IL	62794-9009	
ILLINOIS DEPARTMENT OF REVENUE		PO Box 19045			Springfield	IL	62794-9045	
Illinois Secretary of State		Department of Business Services			Springfield	IL	62756	
Illinois Securities Department		Securities Division	421 E. Capital Ave., 2nd Fl.		Springfield	IL	62701	
Illumant LLC		431 Florence Street	Suite 210		Palo Alto	CA	94301	

003272

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ImageMAKER Development, Inc		Suite 102-416, 6th St			New Westminster	BC	V3L 3B2	CANADA
ImageMAKER Development Inc		Ste 102,416 - 6th Street PO Box 613310			New Westminster	BC	V3L3B2	Canada
ImageNet		2633 McKinney Ave Address on File	Ste 130-377		Dallas	TX	75261-3310	
IMAMOTO, GREGG					Dallas	TX	75204	
IMCA	Attn Lara Davies	5619 DTC Pkwy, Suite 500 Address on File			Greenwood Village	CO	80111	
Imran Hussain		210 W PENNSYLVANIA AVE STE 700			TOWSON	MD	21204-4532	
IMRE		9137 Loma Vista Dr			Dallas	TX	75243	
In Time Communications INCORPORATING SERVICES, LTD		3500 S DUPONT HWY			Dover	DE	19901	
Independence Capital Co., Inc.		5579 Pearl Road	Suite 100		Parma	OH	44129	
Independent Financial Group LLC		12671 High Bluff Drive	Suite 200		San Diego	CA	92130	
Independent Petroleum Assoc. of America		1201 15th St, NW	Ste 300		Washington	DC	20005	
Independent Petroleum Assoc. of America		PO Box 79584			Baltimore	MD	21279-0584	
IndexUniverse LLC		201 Mission Street	Suite 720		San Francisco	CA	94105	
IndexUniverse LLC		353 Sacramento Street	Suite 1520		San Francisco	CA	94111	
INDIANA DEPARTMENT OF REVENUE		PO BOX 1028			Indianapolis	IN	46206-1028	
Indiana Securities Division		Securities Division	302 West Washington Street, Room E-111		Indianapolis	IN	46204	
Infinity Litigation		3141 Hood St, #103			Dallas	TX	75219	
Informa Investment Solutions		PO Box 416014			Boston	MA	02241-6014	
Informa Investment Solutions		4 Westchester Park Drive			White Plain	NY	10604-0000	
Informa UK Ltd.		PO Box 32794			Hartford	CT	06150-2794	
Information Management Network		225 Park Avenue South, 7th Fl			New York	NY	10003	
INFOTECH		92 CORPORATE PARK	STE C703		Irvine	CA	92606	
INNES, JOHN		Address on File						
Innovative Legal Solutions, Inc.		440 Louisiana, Suite 1100			Houston	TX	77002	
INSIDE CMS		PO BOX 7167	BEN FRANKLIN STATION		Washington	DC	20044-7167	
INSIDE HEALTH POLICY.COM		PO BOX 7167	BEN FRANKLIN STATION		Washington	DC	20044-7167	
Insider Score		254 Witherspoon St			Princeton	NJ	08542	
InsiderScore, LLC		254 Witherspoon Street			Princeton	NJ	08542	
InsiderScore, LLC		100 Thanet Circle	Suite 300		Princeton	NJ	08540-0000	
Insight		PO Box 78825			Phoenix	AZ	78825	
Insight Direct USA, Inc.		PO Box 731069			Dallas	TX	75373	
Insight Investments		611 Anton Blvd	Suite 700		Costa Mesa	CA	92626	
Instant Technologies		54 Ross Road			Durham	NH	03824	

003273

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Institute for International Research		PO BOX 3685			Boston	MA	02241-3685	
Institute for Portfolio Alternatives		PO Box 480			Ellicott City	MD	21041-0480	
Institute for Private Investors		17 State Street	5th Floor		New York	NY	10004	
Institutional Investor News	Attn Andrew Levin	225 Park Ave South, 8th Flr			New York	NY	10003	
Institutional Investor News	ATTN Jeff Schilling	225 Park Ave. South	7th Floor		New York	NY	10003	
Institutional Investor News	Attn Mutual Fund Industry Awards	PO Box 1575			New York	NY	10008	
Institutional Investor News		PO BOX 5034			Brentwood	TN	37024	
Institutional Investor News		PO Box 417611			Boston	MA	02241-7611	
Institutional Investor News		PO BOX 1575			New York	NY	10008-1575	
Institutional Investor News		PO Box 4009			Chesterfield	MO	63003-4009	
Institutional Investor Newsletters		PO BOX 5016			Brentwood	TN	37024-9549	
Institutional Investor Newsletters		PO Box 5018			Brentwood	TN	37024-9552	
Institutional Investor Newsletters		PO BOX 5030			Brentwood	TN	37024-9555	
Institutional Investor, LLC		PO Box 417611			Boston	MA	02241-7611	
Institutional Recovery Solutions, Inc.		626 RXR Plaza			Uniondale	NY	11556	
Insurance Commissioner of Iowa		Securities Bureau	601 Locust Street, 4th Floor		Des Moines	IA	50309-3738	
INSYNC ELECTRONIC MEDIA DESIGN, LLC		33 FELWAY DR			Coram	NY	11727	
Integra FEC LLC		1801 Lavaca Street, Suite 101			Austin	TX	78701	
Integrated Financial Associates, Inc.		265 E. Warm Springs Road, Suite 1-7			Las Vegas	NV	89119	
Integrated Financial Associates, Inc.	Carlyon Cica Chtd	3111 S. Rainbow Blvd., Suite 209			Las Vegas	NV	89146	
Integrated Solutions		425 Gotham Pkwy			Carlstadt	NJ	07072	
Interactive Data Pricing & Reference		PO BOX 98616			Chicago	IL	60693	
Interactive Data Pricing and Reference D		32 Crosby Drive			Bedford	MA	01730-0000	
InterDyn BMI		3001 Broadway St NE, #320			Minneapolis	MN	55413	
Interfor		575 Madison Avenue, Suite 1006			New York	NY	10022	
Internal Revenue Service	Attn Insolvency	1352 Marrows Road, 2nd Floor			Newark	DE	19711-5445	
Internal Revenue Service	Attn Linda Yao	4050 Alpha Road	MC 4505 NDAL		Farmers Branch	TX	75244	
Internal Revenue Service	Faye Copple, Bankruptcy Specialist	1100 Commerce St	M/S MC5027DAL		Dallas	TX	75242	
Internal Revenue Service		P.O. BOX 21126			Philadelphia	PA	19114	
Internal Revenue Service		STOP 5107 NWSAT	4050 ALPHA RD		Farmers Branch	TX	75244-4201	
Internal Revenue Service		Ogden			Ogden	UT	84201-0039	
International Assets Advisory, LLC		390 North Orange Ave	Ste 750		Orlando	FL	32801	

003274

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
International Bar Association		10th Flr 1 Stephen St			London		W1T 1AT	United Kingdom
International Foundation		18700 W. Bluemound Rd	PO Box 69		Brookfield	WI	53008-0069	
Intertrust		190 Elgin Ave	George Town		Grand Cayman		KY1-9000	Cayman Islands
Intex Solutions, Inc.	Accounts Receivable	110 A St			Needham	MA	02494-2807	
Intralinks		P.O. Box 10259			New York	NY	10259	
Intralinks Inc.		150 East 42nd St	8th floor		New York	NY	10017-0000	
Intuit		PO Box 30860			Los Angeles	CA	90030-0860	
Inventus		P.O. Box 130114			Dallas	TX	75313	
INVESHARE, Inc.		PO Box 568			Alpharetta	GA	30009-0568	
Investigative Management Group		825 Third Avenue	18th Floor		New York	NY	10022	
Investment Company Institute		PO Box 759456			Baltimore	MD	21275	
Investment Company Institute		Dept. 3077			Washington	DC	20061-3077	
Investment Management Advisors, LLC		3131 Maple Ave., Suite 7E			Dallas	TX	75201	
Investment Management Institute		123 Mason St			Greenwich	CT	06830	
Investment Management Institute		165 W. Putnam Avenue	2nd Floor		Greenwich	CT	06830	
Investment Planners, Inc.		PO Box 170			Decatur	IL	62525-0170	
Investment Professionals Conference	Attn Rachel Christensen	470 Tanner Building			Provo	UT	84602	
Investment Program Association		PO Box 480			Ellicott City	MD	21042-0480	
InvestmentWires, Inc.		14 Wall Street	20th Floor		New York	NY	10005	
Investor Force, Inc.		Lockbox # 415926			Boston	MA	02241-5926	
Investors Bank & Trust Company		200 Clarendon Street	Mail Code EUC 108		Boston	MA	02116	
Investors Business Daily		12655 Beatrice St.			Los Angeles	CA	90066	
IPC Information Systems, Inc.		PO Box 26644			New York	NY	10087	
IPC Network Services, Inc.	Harborside Financial Center	1500 Plaza 10	15th Floor		Jersey City	NJ	07311	
Ipitomi Limited		3rd Floor	125 Wood Street		London		EC2V 7AN	United Kingdom
Ipreo Data Inc.		421 Fayetteville Street	Suite 900		Raleigh	NC	27601	
IRELL & MANELLA LLP		840 NEWPORT CENTER DR	STE 450		Newport Beach	CA	92660-6324	
IRENE KUBERT	LASC	600 SOUTH COMMONWEALTH AVE, DEPT 316			Los Angeles	CA	90005	
Iron Mountain - Off-Site Data Protection		PO Box 915026			Dallas	TX	75391-5026	
Iron Mountain Records Management	Whitelaw House	Alderstone House Business Park	MacMillan Rd		Livington		EH54 7DF	United Kingdom
Iron Mountain Records Management		PO Box 915004			Dallas	TX	75391-5004	

003275

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Ironwood Legal Solutions		Level 8, South Wing			Colombo	NV	2	Sri Lanka
IRR - Las Vegas		Millennium House, 46/58, Nawam Mawatha	Suite 100		Las Vegas	NV	89147	
IRS		Earle Cabell Federal Building	1100 Commerce St #121		Dallas	TX	75242	
Irving ISD	Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
Irving, Katie		Address on File						
Isaac D. Leventon	c/o David Neier	Winston Strawn LLP	200 Park Avenue		New York	NY	10166	
Isaac Leventon	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue		New York	NY	10018	
Isaac Leventon	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Island Love Rebuilding Fund		PO Box 53412			Lafayette	LA	70505-3412	
Itch Inc.		6230 Wilshire Blvd, # 145			Los Angeles	CA	90048	
ITG Investment Research, Inc.	Attn Chris Stilo	380 Madison Ave			New York	NY	10017	
ITG Investment Research, Inc.		1270 Avenue of the Americas			New York	NY	10020	
ITG Investment Research, Inc.		PO Box 30270			New York	NY	10087-0270	
Ivanti Security		698 West 10000 South			Jordan	UT	84095-0000	
Ivins, Phillips & Barker Chartered		1700 Pennsylvania Avenue, NW			Washington	DC	20006	
J Gregory Stone		Address on File						
J. Sagar Associates		Vakil's House	18 Sprott Road	Ballard Estate	Mumbai	India	400 001	
J.C. Trident, Inc.		9035 Orlando Ave			Navarre	FL	32566	
Jack Boles Parking		PO Box 190326			Dallas	TX	75219-0326	
Jack Takacs		Address on File						
JACK YANG		Address on File						
Jackson Walker		PO Box 130989			Dallas	TX	75313-0989	
Jackson Walker LLP	Michael S. Held	2323 Ross Ave., Suite 600			Dallas	TX	75201	
Jackson Walker LLP		PO BOX 130989			Dallas	TX	75313-0989	
Jackson, Jesse		Address on File						
JACOBS ENGINEERING GROUP		PO BOX 651063			Charlotte	NC	28265	
JAGADEESH REDDY		Address on File						
Jain, Ajit		Address on File						
Jain, Ajit		Address on File						
Jain, Bhawika		Address on File						
Jain, Bhawika		Address on File						
JAKE AMBROSE		Address on File						
Jake Isnick		Address on File						
JAMAL CARTY		Address on File						
James A Shilkett		Address on File						
James C. Merrill & Associates, Inc.		Address on File						
James D. Calver		14677 Midway Rd, Ste 203			Addison	TX	75001	
James D. Dondero		Address on File						
James D. Dondero	D. Michael Lynn	Address on File						
James D. Dondero		Address on File						

003276

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
James Dondero, as the successor-in-interest to the Canis Major Trust	James D. Dondero	D. Michael Lynn Address on File	420 Throckmorton Street, Suite 1000		Fort Worth	TX	76102	
James Edward		Address on File						
James Klein		Address on File						
James Lamar		Address on File						
James Love		Address on File						
James Mathis Consulting LLC		3701 Braewood Circle Bank of Marshall Islands Building, 2nd Floor, PO Box 509			Plano	TX	75093	Marshall Islands
James McCaffrey		Address on File						
JAMES PAGLIAROLI		Address on File						
James Palmer		Address on File						
James Peterson		Address on File						
James R. Thompson		Address on File						
James T. Bentley	Schulte Roth & Zabel LLP	919 Third Avenue			New York	NY	10022	
James, Carter & Coulter, P.L.C.		500 Broadway	Suite 400		Little Rock	AR	72203	
JAMESON, MATTHEW		Address on File						
JAMS, Inc.		PO Box 512850			Los Angeles	CA	90051-0850	
Jane Rose Reporting Inc.		2547 State Hwy. 35	Suites 1&2		Luck	WI	54853	
Janet McGreal		Address on File						
JANIS ROGERS & ASSOCIATES		1545 W MOCKINGBIRD LN	STE 1032		Dallas	TX	75235	
Jansen & Palmer, LLC		4746 Elliot Avenue South			Minneapolis	MN	55407	
JANULESKI, GEOFFREY J		Address on File						
Japan Alternative Investment Co Ltd		19th Floor, KDDI Otemachi Bldg	1-8-1 Otemachi, Chiyoda-ku		Tokyo		100-0004	JAPAN
Japanese Evangelical Missionary Society		948 East Second St			Los Angeles	CA	90012-4382	
Jardine, Jeffrey		Address on File						
Jardine, Jordan		Address on File						
Jaron Stern		Address on File						
Jason Chang		Address on File						
Jason Goldsmith		Address on File						
Jason Hoarell		Address on File						
Jason Kathman		Address on File						
JASON KIRSCHNER		Address on File						
Jason L. Janik		Address on File						
Jason Post		Address on File						
Jason Rothstein	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
JASON SANTAMARIA		Address on File						
Jason Vanacour		Address on File						
Jasper CLO Ltd MMP-5 Funding, LLC and IXIS Financial Products Inc.	Jasper CLO Ltd.	PO Box 1234 Queengate House	South Church Street	The Directors	Grand Cayman			Cayman Islands

003277



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Jasper CLO Ltd.	JPMorgan Chase Bank	600 Travis Street	50th Floor	Worldwide Securities Services - Jasper CLO Ltd.	Houston	TX	77002	
Jasper CLO Ltd.	Jasper CLO Ltd.	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Jasper CLO Ltd. JPMorgan Chase Bank, National Association	Jasper CLO Ltd. c/o Maples Finance Limited	Queensgate House, South Church Street, George Town	Queensgate House, South Church Street	P. O. Box 1093GT	Grand Cayman			Cayman Islands
Jasper CLO, Ltd.	c/o Ogier Fiduciary Services (Cayman) Limited	PO Box 1234			Grand Cayman			Cayman Islands
Jay Angotti		Address on File						
Jay Borikar		Address on File						
Jay Gierak		Address on File						
Jay M Cohen, PA		PO Box 2210			Winter Park	FL	32790	
Jay Sluis		Address on File						
Jay Steigenwald		Address on File						
JB Sigmon		Address on File						
JDRF Greater Dallas Chapter	Baker & McKenzie LLP	9400 N Central Expressway	Suite 1201		Dallas	TX	75231	
Jean Paul Sevilla	c/o David Neier, Winston Strawn LLP	Debra A. Dandeneau	452 Fifth Avenue		New York	NY	10018	
Jean Paul Sevilla		200 Park Avenue	1900 North Pearl, Suite 1500		New York	NY	10166	
Jean Paul Sevilla	Michelle Hartmann	Baker & McKenzie LLP			Dallas	TX	75201	
Jean Paul Sevilla		Address on File						
Jean-Francois Lemay		Address on File						
Jeff Cohen		Address on File						
Jeff Damec		Address on File						
Jeff Gilbert		Address on File						
Jeff Graham		Address on File						
Jeff Habicht		Address on File						
Jeff Seaver		Address on File						
Jeff Turner		Address on File						
Jefferies	Ronald Wong	101 California Street	Suite 3100		San Francisco	CA	94111	
Jefferies LLC	Attn Casey Doherty	c/o Dentons US LLP	1221 McKinney Street, Suite 1900		Houston	TX	77010-2006	
Jefferies LLC	Attn Christopher Bianchi	Prime Brokerage Services	520 Madison Avenue		New York	NY	10022	
Jefferies LLC	Christopher Bianchi	520 Madison Avenue, 2nd Floor			New York	NY	10022	
Jefferies LLC	Dentons US LLP	Attn Lauren Macksoud, Esq. and Patrick Maxcy, Esq.	1221 Avenue of the Americas		New York	NY	10020	
Jefferies LLC		520 Madison Avenue, 12th Floor			New York	NY	10022	
Jeffrey Dutton		Address on File						
Jeffrey Rose		Address on File						
Jehyun Law		11st Floor, Samsung Life East Yeouido Bldg, 25	Yeouido-Dong	2Gil 17, International Financial-Ro	Yeongdeungpo-Gu	Seoul	150-878	South Korea
JEMS		948 EAST 2ND ST			Los Angeles	CA	90012-4317	
Jenifer Jurrius		Address on File						
JENKINS, AMY		Address on File						
JENNA BRIDGES		Address on File						

003278

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
JENNER & BLOCK LLP		353 N CLARK ST			Chicago	IL	60654-3456	
Jenni Logan		Address on File						
Jennifer Buntz		Address on File						
JENNIFER LYNN HUNTSMAN TRUST	ATTN BRIAN SHRUM	1 S MAIN ST 12TH FLR			Salt Lake City	UT	84111-1904	
Jennifer Ricci		Address on File						
Jennifer Wooton		Address on File						
JENSEN, ASTRID		Address on File						
JENSEN, MARTY		Address on File						
Jeong, Sang K.		Address on File						
Jeremy Kross		Address on File						
Jeremy Simpson		Address on File						
JERICO SERVICES		2571 MERRELL RD			Dallas	TX	75229	
Jerome Carter	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76012-4135	
Jessica Gimbel		Address on File						
Jessica Hoskings		Address on File						
Jessica Nalder		Address on File						
Jessica Ogle		Address on File						
Jessup Holdings LLC	Attn John Mandler	c/o Mandel, Katz and Brosnan LLP	100 Dutch Hill Road, Suite 390		Orangeburg	NY	10962	
Jesuit Alumni Homecoming		12345 Inwood Rd			Dallas	TX	75244	
Jetti, Vikram		Address on File						
JEWISH FEDERATION OF GREATER DALLAS	ATTN KAREN HANEY	JACOB FELDMAN BUILDING	7800 NORTHAVEN RD		Dallas	TX	75230	
JHAWER, SHANTANU		Address on File						
JHT Holdings, Inc.	Attn Christopher Reehl	10801 Corporate Drive	PO Box 581025		Pleasant Prairie	WI	53158	
Jillian Ashenbrenner		Address on File						
Jim Pagliaroli		Address on File						
Jinny Cha		Address on File						
JJB Hilliard, WL Lyons LLC	Attn Mac Thomas	500 West Jefferson Street			Louisville	KY	40202	
JOCELYN FRANK FABIANCIC		Address on File						
Jocoy, Laura C.		Address on File						
JOE DOUGHERTY		Address on File						
JOE DOUGHERTY		Address on File						
JOE EMMANUEL		Address on File						
Joe Farach		Address on File						
Joe Foster Company LLC		25 Highland Park Village	Suite 100-880		Dallas	TX	75205	
Joe Joyner		Address on File						
Joe Kingsley		Address on File						
Joe Leganza		Address on File						
Joe Norton		Address on File						
Joe Scanlon		CRT Capital Holdings LLC	262 Harbor Drive		Stamford	CT	06902	
JOEL ESHBAUGH		Address on File						
Joel Zeff Creative		PO Box 979			Coppell	TX	75019	
Johanna McBroom		Address on File						
JOHN A TOWNSEND, IOLTA	TAX PROCEDURE GROUP	5615 KIRBY DR, STE 830			Houston	TX	77005	
John Burer		Address on File						

003279

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
John Caron		Address on File						
John Chant		Address on File						
John Crocker		Address on File						
John Duval Associates		400 East 56th St Ste 10-S			New York	NY	10022	
John Duval Associates		446 Milan Hill Rd			Red Hook	NY	12571	
John F Yang	KLS Financial Advisors	127 Main Street, Suite A			Chatham	NJ	07928	
John F. Jack Yang	Daniel P Winikka	Loewinsohn Flegle Deary Simon LLP	12377 Merit Drive, Suite 900		Dallas	TX	75251	
John F. Jack Yang		Address on File						
John F. Warren, Dallas County Clerk	Attn Central Records	600 Commerce St--B1			Dallas	TX	75202	
John Fink		Address on File						
JOHN FRUSHA		Address on File						
JOHN GALANTE		Address on File						
John Gavin		Address on File						
John Guagliardo		Address on File						
John Hancock Life Insurance		PO Box 894764			Los Angeles	CA	90189-4764	
John Hare		Address on File						
JOHN HENNEGAN		Address on File						
John Holmes		Address on File						
John Honis		Address on File						
John Howard		Address on File						
JOHN HUNTINGTON		Address on File						
John Ly		Address on File						
John Martin		Address on File						
JOHN MELTON		Address on File						
John Morgan		Address on File						
JOHN MORRIS		Address on File						
John Partchenko		Address on File						
John Paul Rafflo		Address on File						
John Perkins		Address on File						
John R Ames, CTA		Records Bldg, 500 Elm St	PO Box 139033		Dallas	TX	75313-9033	
John R Ames, CTA		PO Box 139066			Dallas	TX	75313-9066	
John R. Watkins		Address on File						
John Reineberg		Address on File						
John Seng		Address on File						
John Yang		Address on File						
JOHN, KYLE		Address on File						
Johnston Tobey Baruch, P.C.		3308 Oak Grove Avenue			Dallas	TX	75204	
Jolles Associates, Inc.		PO Box 930			Great Falls	VA	22066	
JON BURKE		Address on File						
JON MARTIN		Address on File						
JON TAYLOR		Address on File						
Jones Day		Address on File						
Jones Reporting Company Inc		Two Oliver Street			Boston	MA	02109	
Jones Roach & Caringella, Inc.		10920 Via Frontera Ste 440			San Diego	CA	92127-1732	
JONES, DAVID		Address on File						

003280

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Jones, Michael		Address on File						
Jones, Owen		Address on File						
JONES, ROBERT		Address on File						
Jones, Terrence O.		Address on File						
Jordan Fraker Photography		8806 San Fernando Way			Dallas	TX	75218	
Jordan Kahn Music Company		3941 Legacy Drive	#204 A-225		Plano	TX	75023	
Jordan Malouf		Address on File						
Jordan Thompson		Address on File						
Jordan, Hyden, Womble & Culbreth P.C.		500 N Shoreline, Ste 900N			Corpus Christi	TX	78471	
Jordan, Micah		Address on File						
JORDEN BURT		Address on File						
JORGE JARAMILLO		Address on File						
Jose Antonio Blanco & Asociados		Valentin Vergara 1675	1602 Florida		Buenos Aires			ARGENTINA
Jose Ontiveros		Address on File						
Josef Yehia		Address on File						
JOSEPH BIDJOKA		Address on File						
Joseph Kevin Ciavarra		Address on File						
Joseph R Pinkston III		Address on File						
Josh Bock		Address on File						
Josh Phillips		Address on File						
Josh Terry	Attn Rakhee V. Patel, Winstead PC	Address on File						
Josh Terry		Address on File						
Joshua & Jennifer Terry	c/o Brian P. Shaw, Esq.	Rogge Dunn Group, PC	500 N. Akard Street, Suite 1900		Dallas	TX	75201	
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan	Brian P. Shaw	500 N. Akard St. Suite 1900			Dallas	TX	75201	
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan		Address on File						
Joshua Tree Feeding Program Inc		1601 W Indian School Rd			Phoenix	AZ	85015	
Joy Squad Dallas		1725 Prescott Drive			Flower Mound	TX	75028	
JP Morgan		WSS GLOBAL FEE BILLING	PO BOX 26040		New York	NY	10087-6040	
JP Morgan		ITS Fee Billing	PO Box 911953		Dallas	TX	75391-1953	
JP MORGAN HEDGE FUND SERVICES		ONE BEACON ST, 19TH FLR			Boston	MA	02108	
JP Sevilla		Address on File						
JP Morgan Chase Bank	Worldwide Securities Services	600 Travis Street, 50th Floor			Houston	TX	77002	
JP Morgan Clearing Corp	ATTN Metrotech Center North	1 MetroTech Center # 1			Brooklyn	NY	11201	

003281

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
JPMORGAN FCS		13455 Noel Rd, Ste 1150			Dallas	TX	75240	
JPMORGAN FCS		WSS GLOBAL FEE BILLING	PO BOX 26040		New York	NY	10087-6040	
JT Magen & Company Inc		44 West 28th Street	11 th floor		New York	NY	10001	
Judy Chamberlin		2604 Medline Ct			Southlake	TX	76092	
Entertainment		PO Box 8789			St Petersburg	FL	33738-8789	
Jumpline, Inc. Web Hosting		Address on File						
JUN HONG HENG		Address on File						
JUNG, KEVIN		Address on File						
Junior Achievement of Dallas	Athn Shelley Strickland	1201 W Executive Dr			Richardson	TX	75081	
JUNIOR LEAGUE OF DALLAS		8003 INWOOD RD			Dallas	TX	75209	
Justin Carfora		Address on File						
Justin Gould		Address on File						
Justin Nabours		Address on File						
Justin Smith		Address on File						
Juvenile Diabetes Research Foundation		200 Vesey St Frnt			New York	NY	10281-8000	
JW Cole Financial, Inc.		11811 N. Tatum Blvd	Ste 3055		Phoenix	AZ	85028	
JW Marriott Essex House NY		160 Central Park South			New York	NY	10019	
K & L Gates LLP		Suite 2800	1717 Main Street		Dallas	TX	75201	
K&L Gates LLP	A. Lee Hogewood, III	4350 Lassiter at North Hills Ave., Suite 300			Raleigh	NC	27609	
K&L Gates LLP	Athn Artoush Varshosaz	1717 Main Street, Suite 2800			Dallas	TX	75201	
K&L Gates LLP	James A. Wright III	State Street Financial Center	One Lincoln Street		Boston	MA	02111-2950	
K&L Gates LLP	Stephen G. Topetzes	1601 K Street, NW			Washington	DC	20006	
Kadleck & Associates		555 Republic Dr, suite 115			Plano	TX	75074	
KAHR REAL ESTATE SERVICES LLC		139 FULTON ST	STE 319		New York	NY	10038	
KAI CHEN		Address on File						
Kane Environmental Engineering, Inc.		8816 Big View Dr			Austin	TX	78730	
KANE RUSSELL COLEMAN & LOGAN PC		901 MAIN ST STE 5200			DALLAS	TX	75202-3705	
Kansas Corporate Tax Association		Department of Revenue	915 SW Harrison Street		Topeka	KS	66612-1588	
Kapil Mathur		229 E. William	Suite 211		Wichita	KS	67202-4027	
Kaplan Voekler Cunningham & Frank PLC		Address on File						
KAREL, TRAVIS		PO Box 2470			Richmond	VA	23218-2470	
Karen Weiss		Address on File						
Karl Kovelan	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Karl Eisleben		Address on File						
KARL FARMER		Address on File						
Karthik Bhavaraju		Address on File						
Kase Kinney		Address on File						
kasina, LLC		581 Avenue of the Americas	5th Floor		New York	NY	10011	

003282

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP		1633 BROADWAY PO BOX 75160			New York Baltimore	NY MD	10019-6799 21275-5160	
Kastle Systems Kathryn Plouff		Address on File 600 Madison Avenue, 17th Floor			New York Chicago	NY IL	10022 60661-3693	
Katten Muchin Rosenman LLP KattenMuchinRosenman LLP		525 W Monroe St Address on File						
Kaathik Bhavaraju KAUFFMAN, PAUL Kaufman County		Address on File 2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Kaufman County	Attn Elizabeth Weller c/o Laurie A. Spindler, Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
Kavita Naik KCD Financial, Inc.	Attn Vicki Berger	Address on File 3061 Allied St, Ste B	Suite B		Green Bay Green Bay	WI WI	54304 54304	
KEARNEY, JOSEPH KEITH BECKMAN		Address on File Address on File						
Keith Bowers Keith Dunlap Keith Gorman Keith Schneider Kelan Advisors Keller Williams		Address on File Address on File Address on File Address on File Address on File PO Box 122			Lexington	MA	02420	
Kellie Stevens	c/o Paula Barbee Michael P. Hutchens, Esq.	Address on File Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
KELLOGG Kellogg Huber Hansen Todd Evans Kelly Bennett Kelly Correll		KELLOGG ALUMNI CLUB 1615 M Street N.W. Address on File Address on File	7040 BROOKSHIRE DR. Ste 400		Dallas Washington	TX DC	75230 20036-3209	
Kelly Hart & Hallman Kelly Hart & Pitre Kelly Hart Pitre	Hugh G. Connor II, Michael D. Anderson and Katherine T. Hopkins Louis M. Phillips	201 Main Street, Suite 2500 301 Main Street, Suite 1600			Fort Worth Baton Rouge New Orleans	TX LA LA	76102 70801 70130	
Kelsey Ellenberg KEN KUNIMOTO Ken Owen & Associates Ken Paxton Campaign Kendall + Landscape Architecture		400 Poydras Street, Suite 1812 17510 West Grand Parkway South Address on File 801 West Ave 1505 Elm Street, #1601 6976 Santa Barbara Dr	Suite 510		Sugarland Austin Dallas Dallas	TX TX TX TX	77479 78701-2207 75201 75214-2561	
Kendall Best Kennecott Funding Ltd Kennedy DMC Austin KENNETH BELLAIRE		Address on File 330 Madison Ave, 11th Floor 5810 Trade Center Dr Address on File	Suite 500		New York Austin	NY TX	10017 78744	

003283

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kenneth Daewoo Park		Address on File						
Kenneth L Maun	Tax Assessor Collector	Collin County	PO Box 8046		McKinney	TX	75070	
Kenneth L. Maun		PO Box 8046			McKinney	TX	75070-8046	
Kenneth Tharp		Address on File						
Kenny Juarez		Address on File						
Kensho Technologies, Inc.		17 Dunster St	Suite 300		Cambridge	MA	02138	
KENT CAPPS		Address on File						
Kent Gatzki		Address on File						
Kentucky State Treasurer	Division of Securities	1025 Capital Center Drive, Suite 200			Frankfort	KY	40601	
KERA		3000 Harry Hines Blvd			Dallas	TX	75201	
Kercsmar & Feltus PLLC		6263 N. Scottsdale Rd.	Suite 320		Scottsdale	AZ	85250	
Kerns, Brian		Address on File						
Kerri Kearney		Address on File						
KEVIN CLEARY		Address on File						
Kevin Dowd		Address on File						
Kevin Dunwoodie		Address on File						
KEVIN ETHRIDGE		Address on File						
KEVIN LATIMER		Address on File						
Kevin Messerle		Address on File						
Kevin Potts		Address on File						
Kevin Price		Address on File						
KEVIN SHAHBAZ		Address on File						
KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110	
KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114	
Keybank National Association KFORCE PROFESSIONAL STAFFING	ATTN KREC Loan Services	4910 Tiedman Road	3rd Floor		Brooklyn	OH	44144	
KidLInks		PO BOX 2277997			Atlanta	GA	30384-7997	
KidLInks Foundation		6387B Camp Bowie Blvd	#278		Fort Worth	TX	76116	
Kiely, Thomas		5485 Belt Line Rd	Suite 400		Dallas	TX	75254-7604	
Kilcullen & Company		Address on File						
KILLEBREW, MATT		150 N. Radnor Chester Rd.	Suite C210		Radnor	PA	19087	
Kim & Chang		Address on File						
Kim Dawson Agency		Seyang Building, 223 Naeja- dong	Jongno-gu Suite #B		Seoul		110-720	South Korea
Kim Leslie Shafer		1645 Stemmons Freeway			Dallas	TX	75207	
Kim R. Kunz		Address on File						
Kim, Austen		Address on File						
KIM, HELEN		Address on File						
Kinder, Travis		Address on File						
KING & SPALDING LLP		1180 Peachtree St NE			Atlanta	GA	30309-3521	
KING & SPALDING LLP		PO Box 116133			Atlanta	GA	30368-6133	United Kingdom
King & Wood Mallesons LLP		10 Queen Street Place			London		EC4R 1BE	
Kingwood Administrative Services		15 Golf Linds Ct			Kinwood	TX	77339	



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kingwood Forestry Service, Inc		PO Box 1290			Monticello	AR	71657	
Kingwood Forestry Services, Inc		145 Greenfield Drive			Monticello	AR	71655	
Kimney Recruiting LP		106 E 6th St Ste 300			Austin	TX	78701	
Kinsley & Associates, LLC		6732 West Coal Mine Avenue	#500		Littleton	CO	80123	
Kirkland & Ellis		777 S Figueroa St Ste 3700			Los Angeles	CA	90017	
Kirkland & Ellis		153 E 53RD ST	CITIGROUP CENTER		New York	NY	10022-4611	
Kirkpatrick Lockhart Preston		SUITE 2800	1717 MAIN ST		Dallas	TX	75201	
Gates Ellis		1601 K Street NW			Washington	DC	20006-1600	
Gates Ellis		2121 Ave of the Stars, Flr 33			Los Angeles	CA	90067	
Klee, Tuchin, Bogdanoff & Stern		551 Fifth Ave 18th Flr			New York	NY	10176	
Kleinberg, Kaplan, Wolff & Cohen	Attn Megan Slater	8117 Preston Rd, Ste 300			Dallas	TX	75225	
Kline & Kline		Address on File						
Klisares, Michael		Address on File						
KLOS, DAVID		61 Heather Lane			Williston	VT	05495	
Klostera Trading Corporation								
KMS Financial Services, Inc.		2001 Sixth Avenue, Suite 280			Seattle	WA	98121-9833	
Knect365 US, Inc.		PO Box 3685			Boston	MA	02241-3685	
KNIGHT ELECTRICAL SERVICES CORP		599 11th Avenue			New York	NY	10036	
KNIGHT ELECTRICAL SERVICES CORP		111 8TH AVE	STE 526		New York	NY	10011-5298	
Knights of Columbus		2280 Springlake Road			Dallas	TX	75234	
Knott, Brandon		Address on File						
Knott, Brandon		Address on File						
Knox, Haley		Address on File						
KNUTSON, DEREK		Address on File						
Koch Companies Public Sector, LLC		PO Box 93901			Chicago	IL	60673	
Kody Krause		Address on File						
Komen Dallas Race for the Cure	ATTN GARI PHILLIPS	12820 HILLCREST	STE C105		Dallas	TX	75230	
Komen Dallas Race for the Cure		765 NorthPark Center			Dallas	TX	75225	
Korea Chonha Translation Co., Ltd.		1024 Manhattan Bldg. 36-2	Yeungdeungpo-gu		Seoul		150-746	South Korea
Korea Standard Transl Center Co. Ltd.		S-701, Garden 5 Works	Munjeong-dong Songpa-gu		Seoul		138-200	South Korea
KORNGUT, BRYAN		Address on File						
KORTLANDER, MATTHEW		Address on File						
KORTLANDER, MATTHEW A.		Address on File						
Kouzmenko, Svetlana		Address on File						
Kovack Securities Inc.		6451 N. Federal Hwy	Suite 1201		Ft. Lauderdale	FL	33308	

003285

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kovelan, Kari		Address on File			Monvale	NJ	07645	
KPMG LLP		3 Chesnut Ridge Rd						
KRAMER LEVIN NAFTALIS & FRANKEL LLP		1177 AVENUE OF THE AMERICAS			New York	NY	10036-2714	
Krishnan, Prasad		Address on File						
Kroll Associates, Inc.		475 Sansome Street	Suite 510		San Francisco	CA	94104	DENMARK
Kromann Reurnert		Sundkrogsgade 5			Copenhagen		DK-2100	
Kruse & Associates, Ltd.		180 North LaSalle Street, Ste 3700			Chicago	IL	60601	
Krytzer, Damon		Address on File						
KUCHLER, TOM		Address on File						
Kuehn, Richard		Address on File						
KULWICH, STEPHANIE		Address on File						
Kuperman, Orr & Albers PC		2801 Via Fortuna	Suite 430		Austin	TX	78746	
KURATTI, MOHAN		Address on File						
KURT DAUM		Address on File						
KURT DAUM		Address on File						
KURT PLUMER		Address on File						
Kurtis Plumer		Address on File						
Kurtosys Systems Inc.		134 5th Ave	3rd Floor		New York	NY	10011	
KWOK, NAM		Address on File						
L.A. Fuess Partners		3333 Lee Pkwy, Ste 300			Dallas	TX	75219	
L.C. Kirk & Co		101 W Argonne	Ste 16		Saint Louis	MO	63122	
LABADIE, MICHAEL		Address on File						
Lackey Hershman LLP	Paul Lackey, Esq.	Stinson LLP	3102 Oak Lawn Avenue, Ste 777		Dallas	TX	75219	
Lackey Hershman LLP		3102 Oak Lawn, Ste 777			Dallas	TX	75219-4241	
LAFFER ASSOCIATES		103 Murphy Court			Nashville	TN	37203	
LAH Investments, LLC		4 Circle Drive			Rumson	NJ	07660	
Lamba, Menka		Address on File						
LAMENDORF, JONATHAN		Address on File						
Lamplighters Parents Association		Address on File						
Landmark Graphics Corp		11611 Inwood Road			Dallas	TX	75229	
Landmark Graphics Corp		PO Box 301341			Dallas	TX	75303-1341	
Landmark Graphics Corporation		2107 CityWest Blvd	Building 2		Houston	TX	77042-2827	
Landon Patterson		10200 Bellaire Blvd			Houston	TX	77072-5299	
Landpro Corporation		Address on File						
Landry, John		21755 I-45 North	Building 7		Spring	TX	77388	
Lanier Worldwide, Inc.		Address on File						
Larkin, William		PO Box 105533			Atlanta	GA	30348-5533	
LAROCHE PETROLEUM CONSULTANTS, LTD		Address on File						
LaRoche Petroleum Consultants, Ltd.		4600 GREENVILLE AVE	STE 160		Dallas	TX	75206	
LARRY LINDSEY		Address on File						
Lars Enstrom		2435 N. Central Expwy	Suite 1500		Richardson	TX	75080	
LARSEN, JESS S.		Address on File						
LARSON & MCGOWIN INC.		Address on File	PO BOX 2143		Mobile	AL	36652	

003286

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Laser App		222 Valley Creek Blvd, Ste 300			Exton	PA	19341	
Laser App		3190 Shelby Street	Suite D-100		Ontario	CA	91764	
LATENTZERO INC		160 Federal Street	16 th Floor		Boston	MA	02110	
LATENTZERO INC		PO BOX 415437	16TH FLR		Boston	MA	02241	
Lateral Group NA, LLC		Dept CH 16755			Palatine	IL	60055-6755	
		5516 Collection Cir Drive			Chicago	IL	60693	
Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000			Washington	DC	20004	
Latham & Watkins LLP	Jamie Wine	885 Third Ave.			New York	NY	10022-4834	
Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100			Los Angeles	CA	90071	
LATHAM & WATKINS LLP		PO BOX 7247-8181			Philadelphia	PA	19170-8181	
Latham and Watkins LLP	Asif Attarwala	330 North Wabash Ave. Suite 2800			Chicago	IL	60611	
LATIMER, KEVIN		Address on File						
Latin Markets		10 W. 37th St	7th Floor		New York	NY	10018	
LatinFinance		Subscriptions	PO Box 4009		Chesterfield	MO	63006-4009	
Lattig, Larry		Address on File						
Lauren A. Coleman		Address on File						
Lauren Brady		Address on File						
LAUREN HOLLAND		Address on File						
Lauren Powell		Address on File						
Lauren Roche		Address on File						
Lauren Sekerke		Address on File						
Lauren Selevan		Address on File						
Lauren Thedford	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	United Kingdom
Law Debenture Corporate Services Limited		Fifth Floor	100 Wood Street		London		EC2V 7EX	
LAW JOURNAL PRESS		PO BOX 18105			Newark	NJ	07191-8105	
Law Office of Michael R. Boling		2305 W. Parker Rd	Suite 203		Plano	TX	75023	
Law Office of Sean F. Oshea		90 Park Ave, 20th Flr			New York	NY	10016	
Law Offices of Art Brender		600 Eighth Avenue			Ft. Worth	TX	76104	
LAW OFFICES OF CHAPMAN & CUTLER		PO BOX 71291			Chicago	IL	60694	
Law Offices of Charles Renfrew		710 Sansome St			San Francisco	CA	94111-1704	
LAW OFFICES OF CHRISTOPHER NOLLAND		1717 MAIN ST	STE 5550 LB 39		Dallas	TX	75201	
LAWLER, TIMOTHY		Address on File						
Lawrence A. Hamermesh		Address on File						
Lawrence Labanowski		Address on File						
LAWRENCE, SUZANNE		Address on File						
Lawyers Title of Arizona, Inc.		3131 E. Camelback Rd	Suite 220		Phoenix	AZ	85016	
LB GROUP, LLC	ATTN J LYONS BREWER	274 RIVERSIDE AVE			Westport	CT	06880	
LE, ELI		Address on File						
LEAK, ELIZABETH		Address on File						
LEAP Foundation		9101 N Central Expressway	Suite 600		Dallas	TX	75231	

003287

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
LED ENTERPRISES, INC.		11131 SHADY TRAIL			Dallas	TX	75229	
LEDERMAN, SHAWN		Address on File						
Lee Lord		Address on File						
Lee Park and Arlington Hall Conservancy		3333 Turtle Creek Blvd.			Dallas	TX	75219	
Lee, Dylan		Address on File						
Lee, Jae		Address on File						
LEE, JEFFREY		Address on File						
Lee, Shawn		Address on File						
Lee, Woenjun		Address on File						
Legal Concierge, Inc.		3975 McCreary Road			Parker	TX	75002	
LegalLink Dallas		PO Box 277951			Atlanta	GA	30384	
LegalLink Dallas		PO Box 538481			Atlanta	GA	30353-8481	
Legalpeople LLC		134 N. LaSalle Street, Ste 800			Chicago	IL	60602	
LegalSource LS, LLC		601 West 5th St, Ste 240			Los Angeles	CA	90071	
LEGG, BRIAN		Address on File						
Leif M Clark Consulting PLLC		PO Box 2676			San Antonio	TX	78299	
LEMME, MATTHEW		Address on File						
LEMUS, LUIS		Address on File						
LEMUS, LUIS C.		Address on File						
LENCE, ANDREW		Address on File						
Lenz & Staehelin		Route de Chene 30	CH-1211		Geneva		6	Switzerland
LEO, EDWARD		Address on File						
Leonard Budyonny		Address on File						
LESIE GILB TAPLIN LIVING TRUST		Address on File						
Leslie Kwang		Address on File						
Leung, Timothy		Address on File						
LEVENTON, ISAAC		Address on File						
Levinger PC		1445 Ross Avenue	Suite 2500		Dallas	TX	75202	
Levinger PC		1700 Pacific Ave Ste 2390			Dallas	TX	75201-7371	
Levy & Salomao Advogados		AV. Brog.Faria Lima, 2601- 12oAndar	CEP 01452-924		Sao Paulo-SP			BRAZIL
Lewis J. Shuster		Address on File						
Lewis Silkin LLP		5 Chancery Lane	Cliffords Inn		London		EC4A 1BL	United Kingdom
Lewis, Rice & Fingersh, L.C.		500 N Broadway, Ste 2000			Saint Louis	MO	63102-2147	
Lexecon		332 S. Michigan Ave.			Chicago	IL	60604-4397	
LexisNexis		PO Box 733106			Dallas	TX	75373-3106	
Lexitas		P.O. Box 734298	Dept. 2012		Dallas	TX	75373-4298	
LHWL		PO Box 38011			Dallas	TX	75238	
Li, Chaoyi		Address on File						
Liberty CLO Ltd.	JPMorgan Chase Bank	600 Travis Street	50th Floor	Worldwide Securities Services-Liberty CLO, Ltd.	Houston	TX	77002	
Liberty CLO Ltd.	Liberty CLO, Ltd. c/o Walkers SPV Limited	Walker House, PO Box 908GT, Mary Street	George Town, Grand Cayman	The Directors	Grand Cayman			Cayman Islands

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Liberty CLO Ltd.		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Liberty Life Assurance Co of Boston		Group Benefits	PO Box 2658		Carol Stream	IL	60132-2658	
Liberty Life Assurance Company of Boston		100 Liberty Way			Dover	NH	03821-0000	
Liberty Mutual Insurance Company		175 Berkley St			Boston	MA	02116-0000	
LIDDLE, BRIANNE		Address on File			Coppell	TX	75019	
Life Fitness		156 Oak Trail						
LIFE INSURANCE COMPANY OF NORTH AMERICA		PO BOX 13701			Philadelphia	PA	19101-3701	
Lighthouse Document Solutions		723 Main St	Suite 430		Houston	TX	77002	
Lighthouse Document Solutions		2520 Caroline			Houston	TX	77004	
Lightpath Capital, Inc.		1453 Third Street Promenade	Suite 315		Los Angeles	CA	90401	
Lincoln Discovery Services, Inc.		42 Nevada Ave			Long Beach	NY	15161	
Lincoln Financial Advisors Corp.	Attn Trish Kendregan, FBO David Chazin	1300 S. Clinton Street, 1H-53			Fort Wayne	IN	46802	
Lincoln Financial Advisors Corp.		1 Independent Drive	Suite 2901		Jacksonville	FL	32202	
Lincoln Financial Advisors Corp.		Trish Kendregan	1300 S. Clinton St, IH-53		Fort Wayne	IN	46802	
Lincoln Financial Advisors Corp.		18400 Von Karman, Ste 400			Irvine	CA	92612	
LINDEN, RICHARD		Address on File						
Lindsey McCully		Address on File						
Lindsey Norman		Address on File						
Linear Technologies		259 West 30th Street	Suite 201		New York	NY	10001	
Linear Technologies, Inc.		259 West 30th Street, Suite 201			New York	NY	10001	
LinkedIn Corporation		62228 Collections Center Drive			Chicago	IL	60693-0622	
LinkedIn Corporation		1000 West Maude Avenue			Sunnyvale	CA	94085-0000	
Linsco/Private Ledger		9785 Towne Centre Dr			San Diego	CA	92121-1968	
LINVEL, SHANNON		Address on File						
Lipper Inc		PO Box 417148			Boston	MA	02241	
LiquidFiles		PO Box 2403			North Parramatta	NSW	01750	AUSTRALIA
Lisa Bock		Address on File						
Lisa Joseph		Address on File						
LISA RIDLEY		Address on File						
Litigation Paralegals, LLC		1717 McKinney Avenue	Suite 700		Dallas	TX	75202	
Litigation Research		15 Golf Links Court			Kingwood	TX	77339-5335	
Litigation Solution, Inc.		901 Main St Concourse 121			Dallas	TX	75202	
Litigation Research	ATTN Litigation Research	15 Gif Lknks Ct			Kingswood	TX	77339	
Little Forney Crossing, Ltd.	c/o Standridge Companies, Ltd	3008 E. Hebron Pkwy, Bldg 300			Carrollton	TX	75010	

003289

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Littler Mendelson, PC		PO Box 45547			San Francisco	CA	94145-0547	
LIU, JEFF		Address on File						
Live Healthy America		1300 Walnut Street	Suite 100		Des Moines	IA	50309	
LiveWire Technologies, Inc.		PO Box 550			Little Elm	TX	75068	
Lizarazo, Mireya		Address on File						
Llaughing Llama Productions	Attn Robert Briscoe	11 Moller St			Tenafly	NJ	07670	
LLOYD GROUP		PO BOX 1374 MIDTOWN STATION			New York	NY	10018	
LLOYD, ANDREA K.		Address on File						
LNR and Associates		9426 Chimney Corner Lane			Dallas	TX	75243	
Loan Syndications and Trading	Attn Alicia Sansone	366 Madison Ave, 15th Floor			New York	NY	10017	
Loan Syndications and Trading	ATTN LORENA DELUCA	360 MADISON AVE, 16TH FLR			New York	NY	10017	
Locke Liddell & Sapp LLP		PO Box 911541			Dallas	TX	75391-1541	
Lockton Companies of Dallas		PO Box #671195			Dallas	TX	75267-1195	
Loews Coronado Bay	Jessica Gaines	Loews Business Service Center	424 Church Street, Suite 300		Nashville	TN	37219	
Loews Coronado Bay	Loews Coronado Bay Hotel	4000 Coronado Bay Road			Coronado	CA	92118	
Loews Coronado Bay Resort		4000 Coronado Bay Road			Coronado	CA	92118	
Loews Las Vegas Resort		101 Montelago Blvd			Henderson	NV	89011	
Logan Allin		Address on File						
LogMelh, Inc.		PO Box 50264			Los Angeles	CA	90074-0264	
LogoLink		3001 LBJ Freeway Ste 103			Dallas	TX	75234	
LOHRDING, BRIAN		Address on File						
Loiben, Tara		Address on File						
LOMBARDI, CHRISTOPHER		Address on File						
London Stock Exchange		10 Paternoster Square			London		EC4M 7LS	United Kingdom
Longhorn Credit Funding, LLC	c/o Lord Securities Corp.	48 Wall Street, 27th Floor	Attn Secretary		New York	NY	10005	
Longhorn Credit Funding, LLC		874 Walker Rd, Ste C			Dover	DE	19904-0000	
Looper Reed & McGraw P.C.		1601 Elm St, Ste 4600			Dallas	TX	75201	
Loren Jackson, District Clerk	Att Civil/Family Post Trial	PO Box 4651			Houston	TX	77210-4651	
Lori Hosea		Address on File						
LOSEY, NICHOLAS		Address on File						
LOUGHLIN MEGHJI + COMPANY, INC.		148 MADISON AVE	8TH FLOOR		New York	NY	10016	
LOUGHLIN MEGHJI + COMPANY, INC.		220 West 42nd Street, 9th Floor			New York	NY	10036	
Louis Dessaint		Address on File						
LOVELACE, NAOMI		Address on File						
Lowenstein Sandler PC		65 Livingston Ave			Roseland	NJ	07068	
Loyal Source		3504 Lake Lynda Drive	Suite 175		Orlando	FL	32817	
Loyens Loeff		Address on File						
Loyola University- Barnett Professorship	ATTN Traci Wolff	Loyola University New Orleans	7214 St. Charles Ave., Campus Box 909		New Orleans	LA	70115	United Kingdom
LPGP Connect		98 Mereway Road			Twickenham		TW2 6RG	United Kingdom

003290

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
LPL Financial	Attn Accounts Receivable	PO Box 502308			San Diego	CA	92150-2308	
LPL Financial	Attn Client Comp Dept	4707 Executive Dr			San Diego	CA	92121-3091	
LPL Financial	Attn Comp Dept FBO Sid Lorio	4707 Executive Drive			San Diego	CA	92121-3091	
Lucas Associates, Inc.		PO Box 638364			Cincinnati	OH	45263-8364	
Lucas Group		PO Box 406672			Atlanta	GA	30384-6672	
LUCAS VOILES		Address on File						
LUCHEY, BRITTANY		Address on File						
LUCIDITY CONSULTING GROUP LP	ATTN ROBIN PARSONS	1300 LOOKOUT DRIVE	SUITE 225		Richardson	TX	75082	
Lucy Bannon	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
LUJ, VINCENT		Address on File						
Luis Gomez		Address on File						
Luis Lopez		Address on File			Denver	CO	80291-2806	
Lumension Security, Inc.		PO Box 912806						
Luna, Jose		Address on File						
LUNNEY, BRITTANY		Address on File						
Lutheran High School	c/o Hannah Culburtson	9531 Milltrail			Dallas	TX	75238	
Luu, Joye		Address on File						
LVOVICH, YARASLAV		Address on File						
Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	Lynn Pinker Cox & Hurst, LLP	2100 Ross Avenue, Ste 2700		Dallas	TX	75201	
LYNN, PHAM & ROSS, LLP		PO BOX 190466			Dallas	TX	75219-4129	
Lynne Fiske		Address on File						
Lynx Capital, LLC		10900 Wilshire Blvd Ste 300			Los Angeles	CA	90024	
Lyon Wealth Management Inc.		14646 N Kierland Blvd, Ste 125	HighTower Advisors		Scottsdale	AZ	85254	
LYON, RICHARD D.		Address on File						
Lyons Brewer Group		274 Riverside Ave			Westport	CT	06880	
LYRECO		DEER PARK - DONNINGTON WOOD			TELFORD SHROPSHIRE		TF2 7NB	United Kingdom
M Patrick McShan		Address on File						
M&M The Special Events Company		9500 W 55th St Ste A			Countryside	IL	60525-7125	
M&S Technologies		2727 LBJ Freeway	Suite 810		Dallas	TX	75234	
M/S Media Productions Inc		512 Main Street, Suite 1301			Fort Worth	TX	76102	
MA Division of Unemployment Assistance		Revenue Service			Boston	MA	02114-2566	
Mabry, Will		Address on File	19 StanifoRd St					
Macaulay LLC		300 Delaware Avenue	Suite 760		Wilmington	DE	19801	United Kingdom
Macfarlanes		10 Norwich St			London		EC4A 1BD	
MACKENZIE PARTNERS, INC		105 MADISON AVE			New York	NY	10016	
MacroMavens		180 W 20th Street	Suite 1700		New York	NY	10011-0000	
MacroMavens, LLC		180 W. 20th Street	Suite 1700		New York	NY	10011	
MADDEN, SAMUEL		Address on File						
MaddenSewell, LLP		1755 Wittington Place	Ste 300		Dallas	TX	75234	
MAH, JEFFERY		Address on File						



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
MAHMUD, GIBRAN		Address on File			Chicago	IA	60673-1258	
MailFinance		25881 Network Place						
Make-A-Wish Foundation of Metro New York		One Penn Plaza Ste 3600			New York	NY	10119	
MALCOLM M KNAPP, INC		46 E 92ND ST APT 5			NEW YORK	NY	10128-1371	
Malone Maxwell Borson Architects		718 North Buckner Blvd	Suite 400		Dallas	TX	75218	
Malwarebytes Corporation		10 Almaden Blvd, 10th Floor			San Jose	CA	95113	
Management Recruiters of Tallahassee		743 East Tennessee St			Tallahassee	FL	32308	
Management Search Inc		245 Peachtree Center Ave	suite 2500		Atlanta	GA	30303	
Manaswi Sharma		Address on File						
Manchester Grand Hyatt		PO Box 51914, Unit O			Los Angeles	CA	90051-6214	
MandateWire	ATTN Accounting	1430 Broadway, 12th Floor	Suite 1208		New York	NY	10018	
Manesh Shah		Address on File						
Mangia		50 West 57th Street			New York	NY	10019	
Mangin, Andrew		Address on File						
Manhattan Fire & Safety Corp.		242 West 30th Street	7th Floor		New York	NY	10001	
Manhattan Information Systems, Inc.		228 East 45th St			New York	NY	10017	
Manhattan Jewish Experience	Attn Danielle Yadaie	131 West 86th Street, Floor 11			New York	NY	10024	
Manian, Meagan		Address on File						
MANNING, ELLEN		Address on File						
MANO, JONATHAN		Address on File						
Manoor Kazi		Address on File						
Manuel Lopez		Address on File						
Manulife Financial		PO Box 894764			Los Angeles	CA	90189-4764	
MANZO, MARC C.		Address on File						
MapAnything		5200 77 Center Dr, Ste 400			Charlotte	NC	28217	
Maples and Calder		UGLAND HOUSE	PO BOX 309GT S	George Town	Grand Cayman			Cayman Islands
Maples Compliance Services (Cayman) Limi		PO Box 1093, Queensgate House	CHURCH ST					Cayman Islands
Maples Fiduciary Services (Delaware) Inc.		4001 Kennett Pike, Ste 302			Wilmington	DE	19807	
MAPLES FINANCE		PO BOX 1093GT, QUEENSGATE HOUSE	SOUTH CHURCH ST		GEORGE TOWN			Cayman Islands
MaplesFS	attn Peter Huber	Bounry Hall, Cricket Square	PO Box 1093		Grand Cayman			Cayman Islands
MaplesFS Service Company Limited		PO Box 1093	Boundary Hall		GRAND CAYMAN			Cayman Islands
Marble Care Unlimited		705 N. Bowser	#110		Richardson	TX	75081	
Marc Carlson		Address on File						
MARC FABER LIMITED		SUITE 3311-3313	TWO INTERNATIONAL FINANCE CENTER	8 FINANCE STREET	CENTRAL HONG KONG			HONG KONG
MARC KLYMAN		Address on File						
MARC MANZO		Address on File						
March of Dimes	attn Megan Fletcher	12660 Colt Road, Suite 200			Dallas	TX	75251	

003292

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Marco Consulting, LLC		913 Westminster Way			Southlake	TX	76092	
Marcus Evans Inc.		Address on File						
Margaret Peggy Boswell		Address on File						
Margarita Masters		906 Sunnyvale Dr			Arlington	TX	76010-2936	
Maricopa County Treasurer		301 West Jefferson St	Rm 100		Phoenix	AZ	85003	
Marion A. Patterson		Address on File						
Mark Badros		Address on File						
Mark Divine	Koa Kai, LLC	PO Box 232307			Leucadia	CA	92023	
Mark Drucker		Address on File						
Mark Gargiulo - CFO		Address on File						
MARK GELNAW		Address on File						
Mark K. Okada	Sullivan Cromwell LLP	Brian D. Glueckstein	125 Broad Street		New York	NY	10004	
Mark Kiniry		Address on File						
Mark Okada		Address on File						
Mark Patrick	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Mark Rywelski		Address on File						
Mark Schonfeld, Esq.	Regional Director	Securities & Exchange Commission	3 World Financial Center, Suite 400		New York	NY	10281-1022	
Mark Simmelkjaer		Address on File						
Mark Turner		Address on File						
MARKET AXESS CORPORATION		LOCKBOX # 30023, GENERAL POST OFC	PO BOX 30023		New York	NY	10087-0023	
Market Builders, Inc.		433 Begonia Ave.			Corona Del Mar	CA	92625	
Market76, Inc.		900 Grand Avenue	Suite A		New Haven	CT	06511	
MarketResearch		6101 Executive Blvd Ste 110			Rockville	MD	20852	
Markets Group		10 W. 37th St.	7th Floor		New York	NY	10018	
Markham Fine Jewelers		8355 Gaylord Pkwy			Frisco	TX	75034	
Markit	Attn John Taylor	IHS Markit Legal Department	IHS Markit, 450 West 33rd St,	5th Floor	New York	NY	10001	
Markit Equities Limited	c.o Market Group Limited, Level 4	Ropemaker Place, 25 Ropemaker Street			London		EC2Y9LY	United Kingdom
Markit Group Limited		4th Fir Ropemaker Place	25 Ropemaker St		London		EC2Y9LY	United Kingdom
Markit Group Limited		Level 5	2 More London Riverside		London		SE1 2AP	United Kingdom
Markit Group Limited / Markit North Amer		2 More London Riverside	35th floor		London		SE12AP	United Kingdom
Markit North America Inc.		620 8th Ave			New York	NY	10018	
Markit Valuations Ltd		level 5	2 More London Riverside		London		SE1 2AP	United Kingdom
Markit WSO Corp	Kendra Montoya	15 Inverness Way East			Englewood	CO	80112	
MARKIT WSO CORPORATION		Three Lincoln Centre	5430 LBJ Frwy, Ste 800		Dallas	TX	75240	
MarksADR, LLC		4833 Rugby Ave, Ste 301			Bethesda	MD	20814	
MARQUESS & ASSOCIATES		15441 KNOLL TRAIL	STE 280 LB1		Dallas	TX	75248	
Marriott Business Services		PO Box 402642			Atlanta	GA	30384-2642	
Mars Printing		17426 Studebaker Rd			Cerritos	CA	90703	
MARSHALL HESS		Address on File						

003293

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Marson, Stacy		Address on File						
Martin G. Salazar		Address on File						
Martin Podorsky		Address on File						
Martin, Andrew		Address on File						
Martin, Carla		Address on File						
MARTIN, DANIEL G.		Address on File						
MARTIN, WILLIAM		Address on File						
MARTINSON, MARK		Address on File						
Marty Mooney		Address on File						
Marval & OFarrell		Av. Leandro N. Alem 928			Buenos Aires		01001	ARGENTINA
Mary Irving	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Mary Zappone		Address on File						
Maryam Rusch		Address on File						
Maryland Office of the Attorney General	Division of Securities	200 Saint Paul Place			Baltimore	MD	21202	
Marzullo Reporting Agency		345 North LaSalle	No 1605		Chicago	IL	60654	
MASON, DEANA		Address on File						
MASON, FREDERIC		Address on File						
MASON, FREDERIC		Address on File						
Mass. Dept. of Revenue	Attn Bankruptcy Unit	PO Box 9564			Boston	MA	02114	
MASSACHUSETTS DEPARTMENT OF REVENUE		PO Box 7025			Boston	MA	02204	
MASSACHUSETTS DEPARTMENT OF REVENUE		PO BOX 7065			Boston	MA	02204-7065	
Massachusetts Mutual Life Insurance Co		1295 State Street			Springfield	MA	01111	
Massand Capital, INC		130 East 18th Street #1P			New York	NY	10003	United Kingdom
MASSEYS LLP		Hilgate House	26 Old Bailey		London		EC4M 7QH	
MassMutual Financial Group		100 Bright Meadow Blvd			Enfield	CT	06082	
MassMutual Life Insurance Company		1000 N Central Expwy Ste 1000			Dallas	TX	75231-4177	
Massoud Karimzadeh		Address on File						
Mateo Hix		Address on File						
MATRIX RESOURCES INC.		PO BOX 101177			Atlanta	GA	30392	
Matt Culler		Address on File						
MATT DUNHAM		Address on File						
Matt Hurd		Address on File						
Matt McEligott		Address on File						
Matt McEligott Photography		1409 E. Windsor Drive			Denton	TX	76209	
MATTHEW BENDER & CO, INC		PO BOX 7247-0178			Philadelphia	PA	19170-0178	
Matthew Berry, Esq.	Office of General Counsel	Federal Communications Commission	445 12th Street, S.W.		Washington	DC	20554	
Matthew DiOrto	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Matthew Garrett		Address on File						

003294

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Matthew Gould		Address on File						
Matthew Kirst		Address on File						
Matthew Murphy		Address on File						
MATTHEW SCHINABEL		Address on File						
Matthew Selman		Address on File						
MATTHEW WHITLEY		Address on File						
Mattos Filho Veiga Filho Marry Jr.		Address on File						
Maurice Robinson & Associates LLC		880 Apollo St Suite 125			El Segundo	CA	90245	
Maurice Robinson & Associates LLC		28 Dover Place			Manhattan Beach	CA	90266	
Mauricio Chavarriaga	c/o Highland Capital Mgmt.	245 Park Ave, 24th Fir			New York	NY	10167	
Mauricio Chavarriaga		Address on File						
Mauricio Delgado		Address on File						
MAWN, CHRISTOPHER		Address on File						
Max Russell Phinney		Address on File						
Maxim Group, LLC		405 Lexington Ave #2			New York	NY	10174	
MAY, DERRICK		Address on File						
MAYER BROWN LLP		2027 COLLECTION CENTER DR			Chicago	IL	60693-0020	
Mayer, Brown, Rowe & Maw LLP		1675 Broadway			New York	NY	10019-5820	
Mayeron, John		Address on File						
Mayo, Christopher L.		Address on File						
Mayors Intern Fellows Fund		The Dallas Foundation	3963 Maple Ave, Suite 390		Dallas	TX	75219	
Mazzeo Song & Bradham LLP		708 Third Ave, 19th Fl			New York	NY	10017	
MBA Reporting Services, Inc		555 Republic Drive	2nd Floor		Plano	TX	75074	
MBM Advisors, Inc.		440 Louisiana #2600			Houston	TX	77002	
McCafferty, Christopher		Address on File						
McCague Borlack LLP		130 King St. West Suite 2700			Toronto	ON	M5X1C7	CANADA
McClung, Elizabeth B.		Address on File						
McCormick, Robert		Address on File						
McCormick, Robert		Address on File						
McDaniel, Patrick		Address on File						
McDermott, Bonner		Address on File						
McDermott Investment Services, LLC		44 E Broad St, FL 2			Bethlehem	PA	18018	
McDermott Will & Emery LLP		Lockbox - New York PO Box 7247-6755			Philadelphia	PA	19170-6755	
McDermott Will & Emery LLP		PO BOX 2995			Carol Stream	IL	60132-2995	
McDermott Will & Emery LLP		227 West Monroe Street			Chicago	IL	60606-5096	
McDermott Will & Emery LLP		P.O. Box 6043			Chicago	IL	60680-6043	
McElroy & Company P.C.		16415 Addison Road	Suite 800		Chicago Addison	TX	75001	

003295

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
McFARLANE, PETER A		Address on File						
McFARLING, BRANDON		Address on File						
McGRANER, MATTHEW		Address on File						
McGraner, Matthew		Address on File						
MCGREGOR, MICHELLE		Address on File						
McGuireWoods LLP		800 E. Canal Street			Richmond	VA	23219-3916	
McIntosh Search Incorporated		6310 Lemmon Ave Ste 202			Dallas	TX	75209	
McKay, Brad		Address on File						
MCKEE NELSON LLP		ONE BATTERY PARK PLAZA			New York	NY	10004	
McKool Smith		300 Crescent Court		34TH FLR Suite 1500	Dallas	TX	75201	
McKool Smith P.C.	c/o Travis DeArman	300 Crescent Court Ste 1500			Dallas	TX	75201	
McKool Smith, P.C.	Gary Cruciani, Esq.	McKool Smith		300 Crescent Court, Suite 1500	Dallas	TX	75201	
McLagan Partners		PO Box 905188			Charlotte	NC	28290-5188	
McLagan Partners		PO Box 100137			Pasadena	CA	91189-0137	
McLagan Partners Inc (Aon McLagan)		1600 Summer Street			Stamford	CT	06905-0000	
McLagan Partners, Inc.	Stephen Reuther	4 Overlook Point		Ste 601	Lincolnshire	IL	60069	
MCCLOHLIN, MICHAEL		Address on File						
McCLOHLIN, MICHAEL P.		Address on File						
McMains, Aubree		Address on File						
McMillan Binch Mendelsohn		Brookfield Place Suite 4400		Bay Wellington Tower	Toronto	ON	M5J2T3	CANADA
McNamara, John		Address on File						
McRedmond, Edward		Address on File						
MCS Capital LLC c/o STC, Inc.		233 North Prospect St., Ste. 202			Hagerstown	MD	21740	
Meadows Collier Reed Cousins & Biau LLP		901 Main St. Suite 3700			Dallas	TX	75202	
MEANS, BRADLEY		Address on File						
Medanich, Michael		Address on File						
Mediant Communications Inc.	Mediant Communications	400 Regency Forest Drive, Suite 200			Cary	NC	27518	
Mediant Communications LLC		PO Box 29976			New York	NY	10087-9976	
MedPost Urgent Care-East Dallas		9540 Garland Rd		Suite C408	Dallas	TX	75218-5004	
Meeks, Lucas		Address on File						
MEETINGZONE LTD		OXFORD HOUSE		OXFORD ROAD	Thame		OX9 2AH	United Kingdom
MEGAN MCGEE		Address on File						
Meister Seelig & Fein LLP		125 Park Avenue		7th Floor	New York	NY	10017	
MELENDEZ, HELDER		Address on File						
MELISSA LOPEZ		Address on File						
Melody Po		Address on File						
Mendelsohn, Rosentzveig, Shact		1000 Sherbrooke St West, 27th Flr			Montreal	QC	H3A 3G4	CANADA
Mendenhall, Brad		Address on File						
MERCER (US) INC.	John Dempsey	1166 Avenue of the Americas			New York	NY	10036	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Mercer Consumer	Attn DV1 Fin	PO Box 310293			Des Moines	IA	50331-0293	
Mercer Consumer	Wells Fargo Bank	c/o Regulus Lockbox Services 310293	666 Walnut Street		Des Moines	IA	50309	
Merchants Automotive Group, Inc.		1278 Hooksett Road			Hooksett	NH	03106	
Merchants Automotive Group, Inc.		PO Box 16415			Hooksett	NH	03106-6415	
Mercy Corps		P.O. Box 2669, Dept W			Portland	OR	97208-2669	
MEREDITH HERZFELD		Address on File						
Mergent, Inc.		PO Box 403123			Atlanta	GA	30384-3123	
Mergermarket		895 Broadway	4th Floor		New York	NY	10003	
Mergermarket (US) Limited (trading as Xt		1501 Broadway	Suite 801		New York	NY	10036-0000	
MERGERMARKET LTD		11 West 19th Street	2nd Floor		New York	NY	10011	
MERGERMARKET LTD		3 E 28th ST	4th FLR		New York	NY	10016	
Merit Court Reporters		307 W 7th Street	Ste 1350		Fort Worth	TX	76102	
Merope Pentogenis		Address on File						
Merrill Communications LLC		One Merrill Circle			Saint Paul	MN	55108	
Merrill Communications LLC		CM-9638			Saint Paul	MN	55170-9638	
MERRILL CORPORATION		CM-9638			Saint Paul	MN	55170	
MERRILL LYNCH	Attn Blake Bollinger	569 Brookwood Village	Ste 501		Birmingham	AL	35209	
MERRILL LYNCH	Attn Chad Kulm	110 S Phillips Ave, Ste 101			Sioux Falls	SD	57104	
MERRILL LYNCH	Attn Jason Aversa	3100 Hingston Ave			Egg Harbor Township	NJ	08234	
MERRILL LYNCH	Attn Lynae Carr	1221 McKinney Street, Ste 3900			Houston	TX	77010	
MERRILL LYNCH	Attn Megan Arnold	13355 Noel Rd, 7th Floor			Dallas	TX	75240	
MERRILL LYNCH	Attn Monty Willhite	60 E S Outh Temple St, #200-61			Salt Lake City	UT	84111	
MERRILL LYNCH	Attn Robert Luther	1100 Canal Street			The Villages	FL	32162	
MERRILL LYNCH	Attn Tiffany Contreras	17225 El Camino Real, Ste 200			Houston	TX	77058	
MERRILL LYNCH	C/O Girard Kovarik & Assoc	101 N. Clematis St, Ste 200			West Palm Beach	FL	33401	
MERRILL LYNCH		185 Asylum Street	City Place II, 14th Flr		Hartford	CT	06103	
MERRILL LYNCH		NJ-140-02-01	1400 Merrill Lynch Drive		Pennington	NJ	08534	
MERRILL LYNCH		4802 Deer Lake Dr E	CMS CBRU FL9-801-01-02		Jacksonville	FL	32246	
MERRILL LYNCH		CMS CBRU FL9-801-01-02	4802 Deer Lake Dr E		Jacksonville	FL	32246	
MERRILL LYNCH		21805 FIELD PARKWAY STE 220			DEER PARK	IL	60010	
Merrill Lynch Valuations LLC	Attn Richard Eimbinder	15514 Collections Center Drive			Chicago	IL	60693	
Merry Phengvath		450 E 4th Street			Brooklyn	NY	11218	
MERS Educational Conference	ATTN Bob Rust	Municipal Empee Retirement Syst of LA	7937 Office Park Blvd		Baton Rouge	LA	70809	
MESERVE, NICHOLAS		Address on File						
Meta-e Discovery LLC	Paul McVoy	Meta-e Discovery	Six Landmark Square, 4th Floor		Stamford	CT	06901	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Meta-e Discovery, LLC	Attn Paul H. McVoy	93 River Street			Milford	CT	06460	
Meta-e Discovery, LLC	Morrison Cohen LLP	Attn Joseph T. Moldovan and Sally Siconolfi	909 Third Avenue		New York	NY	10022	
Metalogix International		PO Box 83304			Pittsburgh	PA	15250	
METHVIN, JAMES		Address on File						
Metlife	Attn Placings Unit	1300 Hall Blvd.			Bloomfield	CT	06002	
Metlife	Attn Retail Life & DI Operations	18210 Crane Nest Dr, 5th Floor	Placings Unit		Tampa	FL	33647	
Metlife		PO BOX 371487			Pittsburgh	PA	15250-7487	
MetLife Investors USA Insurance Company		PO Box 13863			Philadelphia	PA	19101-0000	
MetLife SBC		5400 LBJ Freeway	Suite 1100		Dallas	TX	75240	
MetLife SBC		PO Box 804466			Kansas City	MO	64180-4466	
Metro Attorney Service Inc.		305 Broadway, 14th Flr			New York	NY	10007	
Metro-Repro, Inc.		PO Box 560092			Dallas	TX	75356-0092	
METT	Attn Jana Clemans	Pioneer Natural Resources	5205 N. OConnor Blvd, Suite 200		Irving	TX	75039-3746	
Meunier, Marc		Address on File						
MGL Consulting Corp.		10077 Grogans Mills Rd Ste 300			The Woodlands	TX	77380	
MHA Petroleum Consultants LLC		730 17th Street	Suite 410		Denver	CO	80202	
MIAO, EUGENE		Address on File						
MICHAEL & TERESA OLSON TRUST		Address on File						
Michael Blackburn		Address on File						
MICHAEL COLVIN		Address on File						
Michael Cummings		Address on File						
MICHAEL DEVICO		Address on File						
Michael Hasenauer		Address on File						
Michael Jeong		Address on File						
MICHAEL KELLY		Address on File						
MICHAEL LANE CUISINE, INC		8409 PICKWICK # 112			Dallas	TX	75225	
MICHAEL LATHAM		Address on File						
Michael Ly		Address on File						
Michael Malone Architects, Inc		5646 Milton St Suite 705			Dallas	TX	75206	
Michael Morris		Address on File						
Michael P Zarrilli		Address on File						
MICHAEL PAGE INTERNATIONAL		8 BATIN RD			Slough Berkshire		SL 1 3SA	United Kingdom
MICHAEL PASSMORE		Address on File						
MICHAEL PETERSON		Address on File						
Michael Phillips		Address on File						
Michael R. Coker Company		2700 Swiss Ave Suite 100			Dallas	TX	75204	
Michael Radovan		Address on File						
Michael S. Held		Address on File						
MICHAEL SHERIDAN		Address on File						
Michael Sorell		Address on File						

003298



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
MICHAEL SZKODZINSKI		Address on File						
MICHAEL T DALBY IRA		Address on File						
Michael Teplitsky		Address on File						
MICHAEL WANG		Address on File						
MICHAEL WILCHER		Address on File						
Michael Paul Donaldson		Address on File						
Michelle French, Tax A/C		Address on File						
Michigan Department of Treasury		Address on File						
Mick Law P.C.		PO Box 30774			Lansing	MI	48909-8274	
Microsoft Corporation		816 South 169th Street			Omaha	NE	68118	
Microsoft Corporation and Subsidiary of Microsoft Corporation		1950 N Stemmons Fwy	Suite 5010		Dallas	TX	75207	
Microsoft Corporation and Subsidiary of Microsoft Corporation	David P. Papiez	Fox Rothschild LLP	1001 4th Ave, Suite 4500		Seattle	WA	98154	
Microsoft Licensing GP, a Subsidiary of Microsoft Corporation		Amber Brazier, Associate Paralegal	One Microsoft Way		Redmond	WA	98052	
Microsoft Services		One Microsoft Way			Redmond	WA	98052	
Microsoft Services		PO Box 844510			Dallas	TX	75284-4510	
MICRO-TEL		3700 Holcomb Bridge Rd	Suite 5		Peachtree Corners	GA	30092	
Mike Brennan		Address on File						
Mike Brohm		Address on File						
Mike Doyle		Address on File						
Mike Hurley		Address on File						
Mike Sharkey		Address on File						
Mike Wolbert		Address on File						
Milbank, Tweed, Hadley & McCloy LLP		1 CHASE MANHATTAN PLAZA			New York	NY	10005-1413	
Miles Littlefield		One Pennsylvania Plaza	49th Floor		New York	NY	10119	
Miller & Chevalier Chartered		Address on File						
Miller Buckfire & Co, LLC		P.O. Box 758604			Baltimore	MD	21275-8604	
Miller Korzenik Sommers Rayman LLP		601 Lexington Ave			New York	NY	10022	
MILLER, DEBORAH		1501 Broadway Ste 2015			New York	NY	10036-5600	
Miller, Egan, Molter & Nelson LLP		Address on File						
Miller, Egan, Molter & Nelson LLP		4514 Cole Avenue	Suite 1200		Dallas	TX	75205	
MILLMAN CONSULTANTS AND ACTUARIES		1402 San Antonio St.	Suite 100		Austin	TX	78701	
Mills, James		1550 LIBERTY RIDGE DR	STE 200		WAYNE	PA	19087-5572	
MILTENBERGER, WILLIAM		Address on File						
Mindy Billinghurst		Address on File						
Miner, Christopher		Address on File						
Minnesota Revenue		Mail Station 1260			Saint Paul	MN	55145-1260	

003299

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Minnesota State Treasurer		Minnesota Department of Commerce	85 7th Place East, Suite 500		Saint Paul	MN	55101	
Miramor OSC	Attn Leslie Henger	11763 Ashlock Way			San Diego	CA	92131	
Mirani, Parth		Address on File						
MISLAV TOLUSIC		Address on File						
Mississippi Secretary of State	Business Regulation & Enforcement Div	125 S. Congress Street			Jackson	MS	39201	
MISSISSIPPI STATE TAX COMMISSION		PO BOX 1033			Jackson	MS	39215	
Missouri Department of Revenue		PO Box 3020			Jefferson City	MO	65105-3020	
MISSOURI DIRECTOR OF REVENUE	TAXATION BUREAU	PO BOX 3365 (573)751-4541			Jefferson City	MO	65105-3365	
Missouri Secretary of State		Securities Division	600 West Main Street, 2nd Floor		Jefferson City	MO	65101	
Mitchell A. Harwood & Partners		791 Park Ave Ste 4B			New York	NY	10021	
Mitchell, Krysta		Address on File						
Mitchener Turnipseed		Address on File						
MITTS, BRIAN		Address on File						
MJL ENTERPRISE		PO BOX 852563			Richardson	TX	75085	
MLF Lex Serv LP		4350 East West Highway			Bethesda	MD	20814	
MODERN HEAL THCARES DAILY DOSE		CIRCULATION DEPT	1155 GRATIOT AVE		Detroit	MI	48207-2912	
Mohring, Christopher		Address on File						
Molecular Insights		160 Second Street			Cambridge	MA	02142	
Moloney Securities		13537 Barrett Parkway Drive	Suite 300		Manchester	TX	63021	
Monarch Investigation Inc		PO Box 292265			Lewisville	TX	75029-2265	
Money-Media, Inc.	Attn Accounting	330 Hudson Street	7th Floor		New York	NY	10013	
Monster, Inc.		PO Box 90364			Chicago	IL	60696-0364	
MONSTERTRAK		14372 COLLECTIONS CENTER DR			Chicago	IL	60693	
Moody's Analytics		395 Oyster Point Blvd	Suite 215		South San Francisco	CA	94080	
Moody's Analytics		PO BOX 102597			Atlanta	GA	30368-0597	
Moody's Analytics		PO BOX 116714			Atlanta	GA	30368-0597	
Moody's Analytics		PO Box 116647			Atlanta	GA	30368-6647	
Moody's Analytics, Inc.	Attn Christopher R. Belmonte and Pamela A. Bosswick	c/o Duane Morris LLP	230 Park Avenue, Suite 1130		New York	NY	10169	
Moody's Analytics, Inc.	Sue McGeehan	7 World Trade Center	250 Greenwich Street		New York	NY	10007	
Moody's Analytics, Inc.		7 World Trade Center			New York	NY	10007-0000	
Moody's Investor Service		PO Box 102597			Atlanta	GA	30368-0597	
Moody's Investors Service, Inc.	Attn Christopher R. Belmonte and Pamela A. Bosswick	c/o Duane Morris LLP	230 Park Avenue, Suite 1130		New York	NY	10169	
Moody's Investors Service, Inc.	Sue McGeehan	7 World Trade Center	250 Greenwich Street		New York	NY	10007	

003300

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Moody Investors Service, Inc.	Sue McGeehan	VP, Collections, Finance Dept.	7 World Trade Center at 250 Greenwich Street		New York	NY	10007	
MOORE & VAN ALLEN PLLC		100 NORTH TRYON ST	STE 4700		Charlotte	NC	28202-4003	
MOORE, CALEB		Address on File						
MOORE, WILLIAM C.		Address on File						
Morgan Lewis & Bockius LLP		PO Box 8500 S-6050			Philadelphia	PA	19178-6050	
Morgan Stanley	Attn Accounts Receivable	PO Box 860			New York	NY	10008-0860	
Morgan Stanley	Attn Adam Razov	855 Franklin Ave.			Garden City	NY	11530	
Morgan Stanley	Attn Diana Sigona	1585 Broadway, 23rd Flr			New York	NY	10036	
Morgan Stanley	Attn Jonathan Cantler	10960 Wilshire Blvd, Ste 2000			Los Angeles	CA	90024	
Morgan Stanley	Attn Margaret Oshea-NW Managers Mtg	1585 Broadway, 23rd Floor			New York	NY	10036	
Morgan Stanley	Attn MF Billing Dept	1300 Thames St, 4th Flr			Baltimore	MD	21231	
Morgan Stanley	Attn Michael Lawrence	6037 La Flocha			Rancho Santa Fe	CA	92067	
Morgan Stanley	Attn Michelle Dolan	2 Jericho Plaza			Jericho	NY	11753	
Morgan Stanley	Attn Robyn Owens	370 17th Street, Suite 2800			Denver	CO	80202	
Morgan Stanley		111 S. Pflingsten Road			Deerfield	IL	60015	
Morgan Stanley		200 Crescent Court			Dallas	TX	75201	
Morgan Stanley		14850 N Scottsdale Rd			Scottsdale	AZ	85254	
Morgan Stanley		733 Bishop Street			Honolulu	HI	96813	
MORGAN, JOHN		Address on File						
MORGANS, JONATHAN		Address on File						
MORLEY CAMPBELL		Address on File						
Morningstar Inc.		22 W Washington St			Chicago	IL	60602-0000	
Morningstar, Inc.		2668 PAYSphere Circle			Chicago	IL	60674	
Morningstar, Inc.		135 South LaSalle St Dept. 2668			Chicago	IL	60674-2668	
Morningstar, Inc.		5133 Innovation Way			Chicago	IL	60682-0051	
Morris James LLP		500 Delaware Avenue	Suite 1500	PO Box 2306	Wilmington	DE	19899-2306	
Morris, Manning, & Martin LLP		1600 Atlanta Financial Center	3343 Peachtree Road, NE		Atlanta	GA	30326-1044	
MORRIS, NICHOLS, ARSHT & TUNNELL LLP		1201 NORTH MARKET ST	PO BOX 1347		Wilmington	DE	19899-1347	
MORRIS, NICHOLS, ARSHT & TUNNELL LLP	William M. Lafferty	Kevin M. Coen	1201 N. Market Street		Wilmington	DE	19801	
Morrison & Foerster		1290 Ave of the Americas			New York	NY	10104-0050	
Morrison Cohen LLP	Attn Joseph T. Moldovan and Sally Siconolfi	909 Third Avenue			New York	NY	10022	
Morstad		79 East Putnam Ave	Outdoor Traders Building		Greenwich	CT	06830	
Mortensen, Christopher		Address on File						
Morton, David C.		Address on File						
MOSTLY SMOKED		VITTORIA HOUSE	2A TOWCESTER RD		BOW London		E3 3ND	United Kingdom
Motus Red LLC		7018 Hursey			Dallas	TX	75205	
Mourant Ozannes		Address on File						

003301

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Move Solutions, Ltd.		1473 Terre Colony Ct, Dept DA			Dallas	TX	75212	
MoveWorks, Inc.		4945 Sharp Street			Dallas	TX	75247	
MP Advisory		43 Vila Nova Pauliceia			Sao Paulo-SP			BRAZIL
MPulse Maintenance Software		PO Box 22906			Eugene	OR	22906	
MQ Services Ltd.		Chancery Hall	52 Reid St		Hamilton		HM 12	BERMUDA
MQ Services Ltd.		PO Box HM 1737			Hamilton		HM GX	BERMUDA
MQ Services Ltd.		PO BOX HM 809			Hamilton		HM GX	BERMUDA
MRB Research Partners Inc.		122 East 42nd Street	Suite 2310		New York	NY	10168	
MRI Contract Staffing		5151 Bellline Rd	Suite 550		Dallas	TX	75254	
MRI Contract Staffing		88276 Expedite Way			Chicago	IL	60695-0001	
MS Society of Long Island		40 Marcus Dr.	Suite 100		Melville	NY	11747	
MSCI Inc.		PO Box 414631			Boston	MA	02241-4631	
MSCI Inc.		7 World Trade Center	250 Greenwich St, 49th floor		New York	NY	10007-0000	
MT State Auditor, Securities Comm.		840 Helena Avenue			Helena	MT	59601	
MTV Staying Alive Foundation		1305 Wycliff Ave	Suite 120		Dallas	TX	75207	
Muck Holdings LLC	Attn Paul Haskel	c/o Crowell & Moring LLP	590 Madison Avenue		New York	NY	10022	
MULLER, MARY		Address on File						
Multichannel News		PO Box 5667			Harlan	IA	51593-1167	
MUNDASSERY, APPU		Address on File						
Munger Toiles & Olson LLP		355 South Grand Ave			Los Angeles	CA	90071-1560	
Munsch Hardt Kopf & Harr, P.C.	Davor Rukavina, Esq., Thomas D. Berghman, Esq., Julian P. Vasek, Esq.,	500 N. Akard St., Ste. 3800			Dallas	TX	75201	
Munsch Hardt Kopf & Harr, P.C.	Davor Rukavina, Julian P. Vasek	3800 Ross Tower	500 N. Akard Street		Dallas	TX	75202-2790	
Murano Connect LP		252 West 38th Street	Suite 402		New York	NY	10018	
Murder Mystery Texas		6304 Innsbrooke Dr			Arlington	TX	76016	
Murphy, George		Address on File						
MURPHY, MATTHEW		Address on File						
MURRAY HILL CENTER		14185 Dallas Parkway Suite 1200			Dallas	TX	75254	
SOUTHWEST INC		Address on File						
MURRAY, ANDREW		Address on File						
Murray, Mason		Address on File						
Murray, Wesley		Address on File						
Muscular Dystrophy Association	Attn Janice	PO Box 38			Terrell	TX	75160	
Musser, Carley		Address on File						
Muthu Dorai		Address on File						
Mxtoolbox		12710 Research Blvd	Ste 225		Austin	TX	78759	
MY HOUSE OF FINE EATS & CATERING		2025 PROMENADE CENTER			Richardson	TX	75080	
Myers Bigel Sibley & Sajovec, P.A.		PO Box 37428			Raleigh	NC	27627	
Myers Park Country Club		2415 Roswell Avenue			Charlotte	NC	28209	
Myron Corp.		PO Box 660888			Dallas	TX	75266-0888	

003302

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
N.C. DEPARTMENT OF REVENUE		PO BOX 25000			Raleigh	NC	27640-0002	
N9NE Group Dallas-Ghostbar		2440 Victory Park Ln, 33rd Floor			Dallas	TX	75219	
NAI OLYMPIA PARTNERS		320 NORTH MERIDIAN ST	STE 400		Indianapolis	IN	46204	
NAIFA - Greater Washington DC		600 State Street	Suite A		Cedar Falls	IA	50613	
Nalin Yogasundram		Address on File			Rhinebeck	NY	12572	
Namaro Graphics Designs		PO Box 148			South Pasadena	CA	91031	
NANCY SMITH-WELLS, CSR		PO BOX 1284			Dallas	TX	75222	
NAPE Expo, LP		PO Box 224531						
NAPONIC, JILL		Address on File						
NARAYAN HEGDE		Address on File						
NARY RADHAKRISHNAN		Address on File						
NASD Regulation, Inc.		701 Market St	W8705 c/o Mellon Bank, Rm 3490		Philadelphia	PA	19106	
NASD, CRD-IARD		PO Box 7777-W8705			Philadelphia	PA	19175-8705	
NASD, CRD-IARD		PO BOX 7777-W9995			Philadelphia	PA	19175-9995	
Nasdaq Information, LLC		LBX# 80200	PO Box 780200		Philadelphia	PA	19178-0200	
Nasdaq OMX	C/O Wachovia Bank	#90200	PO Box 8500		Philadelphia	PA	19178-0200	
NASDAQ Stock Market		PO Box 7777 W1555			Philadelphia	PA	19106	
NASH, CLARISSA		Address on File			Dallas	TX	75201	
Nasher Sculpture Center		2001 Flora Street						
NASKAR, ANJALI		Address on File						
NASKAR, ANJALI		Address on File						
NASP	Attn Michelle	727 15th Street, NW	Suite 750		Washington	DC	20005	
Natalie Uto		Address on File						
Nathan Brooks		Address on File						
Nathan Burns		Address on File						
Nathan Hall		Address on File						
Nathan Hukill		Address on File						
NATHAN SPEICHER		Address on File						
NATHAN ZANG		Address on File						
NATIONAL COMPLIANCE SERVICES, INC.		355 NE 5TH AVE	STE 4		Delray Beach	FL	33483	
National Corporate Research Ltd		122 E 42nd St Fl 18			New York	NY	10168-1899	
National Depo		P.O. Box 404743			Atlanta	GA	30384-4743	
NATIONAL ECONOMIC RESEARCH ASSOC. INC		PO BOX 29677	GENERAL POST OFFICE		New York	NY	10087-9677	
National Economic Research Associate		PO Box 7247-6754			Philadelphia	PA	19170-6754	
National Financial Services Corp.	ATTN Emily Ivers-Mailzone ZEF7	82 Devonshire St.			Boston	MA	02109	
National Financial Services, LLC	Attn FI Operational Accounting	100 Salem St, Mail Zone O1S			Smithfield	RI	02917	
National Financial Services, LLC	Attn Thomas Smith-Vaughan	82 Devonshire Street			Boston	MA	02109	

003303

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NATIONAL FLAG & DISPLAY CO.		22 W 21ST ST			New York	NY	10010	
National MS Society	Attn Cara Harting	2105 Luna Rd, Ste 390			Carrollton	TX	75006	
National Multiple Sclerosis Society		PO Box 4527			New York	NY	10163	
National Regulatory Services		33443 Treasury Center			Chicago	IL	60694-3400	
National Stripper Well Association		PO Box 18336			Oklahoma City	OK	73154	
National Trust Management Services	Accounts Receivable	7957 Wellington Dr			Warrenton	VA	20186	
National Trust Management Services		PO Box 3322			Warrenton	VA	20188	
National Valuation Consultants, Inc.		7807 E. Peakview Ave, Ste 200			Centennial	CO	80111	
Nationwide Business Concepts		1439 W. Chapman Avenue	#64		Orange	CA	92868	
Nationwide Services		P.O. Box 23099			Ft. Lauderdale	FL	33307	
Natixis North America LLC		1251 Avenue of the Americas			New York	NY	10020	
NAU, STEVEN		Address on File						
NautaDutith NV		Postbus 7113, 1007 JC						
NAVE,JAS, MARIANA		Amsterdam, Beethovenstraat 400			Amsterdam		1082 PR	Netherlands
NAVIGANT CONSULTING INC		Address on File						
Navigator 3, LLC		4511 PAYSPPHERE CIRCLE			Chicago	IL	60674	
Navigator 3, LLC		PO Box 5370			Wayland	MA	01778	
NC Office of the Secretary of State		1737 Washington st			E. Bridgewater	MA	02333	
NEAR EARTH LLC		2 South Salisbury Street	Old Revenue Complex		Raleigh	NC	27601	
Nebraska Department of Banking & Finance	Bureau of Securities	945 WEST ROAD	HOYT DAVIDSON		New Canaan	CT	06840	
NEEL MITRA		1526 K Street, Suite 300			Lincoln	NE	68508-2732	
Neil Menard		Address on File						
Neil Desai		Address on File						
NELL GWYNN HOUSE APARTMENTS LTD		Address on File						
Nelson, Caitlin		SLOANE AVE			London		SW3 3AX	United Kingdom
Nelson, Kaitlin		Address on File						
NELSON, KRAMER		Address on File						
NELSON, KRAMER		Address on File						
NEOFUNDS BY NEOPOST		PO BOX 30193			Tampa	FL	33630-3193	
Nesmith, Christopher		Address on File						
NESTLE WATERS POWWOW		PO BOX 727						
Netapp		1395 Crossman Ave			CAMBERLEY		GU15 9WZ	United Kingdom
Netherland, Sewell & Associates, Inc.		Sunnyvale				CA	94089-0000	
Netherland, Swell & Associates, Inc.		2100 Ross Avenue	Suite 2200		Dallas	TX	75201	
		1601 Elm St. Suite 4500			Dallas	TX	75201	

003304

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Netpro Computing Inc.		4747 N. 22nd St. #400			Phoenix	AZ	85016-4774	
NetWrix Corporation	Accounts Receivable	1460 Manning Parkway			Powell	OH	43065	
NEVADA COACHES, LLC		1550 S INDUSTRIAL RD			Las Vegas	NV	89102	
Nevada Dept of Taxation		PO Box 52609			Phoenix	AZ	85072-2609	
Nevada Secretary of State		Securities Division	2250 Las Vegas Blvd N		N Las Vegas	NV	89030-5873	United Kingdom
NEW CONCEPT		CROOKED COTTAGE,	LINGFIELD		SURREY		RH7 6BJ	
New Edge Networks		NEWCHAPEL RD			Portland	OR	97208-5000	
NEW ERA		Unit 10 PO Box 5000			Dallas	TX	75229	
New Hampshire Department of State	Bureau of Securities Regulation	2935 Tallisman						
New Horizons Computer Learning Center		107 North Main Street	Room 204, State House		Concord	NH	03301-4951	
New Mexico Securities Division		PO Box 671164			Dallas	TX	75267-1164	
NEW YORK CITY DEPARTMENT OF FINANCE		P.O. Box 25101			Santa Fe	NM	87504	
NEW YORK CITY DEPARTMENT OF FINANCE		345 ADAMS ST			Brooklyn	NY	11201	
NEW YORK CITY DEPARTMENT OF FINANCE		PO Box 3931			New York	NY	10008-3931	
NEW YORK CITY DEPARTMENT OF FINANCE		PO Box 5150			Kingston	NY	12402-5150	
New York Financial Writers Association		PO Box 338			Ridgewood	NJ	07451-0338	
New York State Corporation Tax	NYS Corporate Tax	Processing Unit	P.O. Box 22093		Albany	NY	12201	
New York State Department of Law		New York Office of the Attorney General	120 Broadway, 23rd Floor		New York	NY	10271	
New York State Department of State		Misc. Records Bureau	41 State St		Albany	NY	12231	
New York State Income Tax		W A HARRIMAN CAMPUS			Albany	NY	12227	
New York State Income Tax		Extension Request PO Box 4125			Binghamton	NY	13902-4126	
Newbridge Financial Inc.	ATIn Scott Weeks - Accountant	5200 Town Center Circle	Tower 1, Ste 306		Boca Raton	FL	33486	
Newbridge Securities Corporation		1451 W Cypress Creek Rd, Suite 204			FL Lauderdale	FL	33309	
Newbridge Securities Corporation	Attn Robert Spitzer-CFO	5200 Town Center Circle	Ste 306		Boca Raton	FL	33486	
NewOak Advisors LLC		485 Lexington Ave, 25th Floor			New York	NY	10017	
NewOak Capital		485 Lexington Ave, 25th flr			New York	NY	10017	
News Communications		4th Flr, Chinyang Bldg	90-3 Chungjeongno 2-ga,		Seodamun-gu		120-012	SOUTH KOREA
NexBank	John Danilowicz	2515 McKinney Ave	Ste 1100		Dallas	TX	75201	
NexBank Capital Advisors		2515 McKinney Ave, Ste 1100			Dallas	TX	75201	

003305



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NexBank Capital, Inc., NexBank Securities, Inc., NexBank Title, Inc. and NexBank	Jason M. Rudd and Lauren K. Drawhorn	Wick Phillips Gould & Martin, LLP	3131 McKinney Avenue, Suite 500		Dallas	TX	75204	
NEXBANK SECURITIES, INC		2515 McKinney	Suite 1700		Dallas	TX	75201	
NEXBANK SECURITIES, INC		13455 NOEL RD	22ND FL		Dallas	TX	75240	
NexBank SSB	dba NexBank Credit Services	Grant Smith	2515 McKinney Ave.	11th Floor	Dallas	TX	75201	
NexBank SSB		1100			Dallas	TX	75201	
NEXBANK, SSB	ATTN MARCIA SANDS	13455 NOEL RD	STE 2220		Dallas	TX	75240	
NexPoint Advisers, L.P.	Attn Davor Rukavina, Esq. and Julian P. Vasek, Esq.	Munsch Hardt Kopf & Harr, P.C.	3800 Ross Tower	500 N. Akard Street	Dallas	TX	75202-2790	
NexPoint Advisors, L.P.		200 Crescent Court	Suite 700		Dallas	TX	75201	
NexPoint Latin America Opportunities Fund		Stephen G. Topetzes	1601 K Street, NW		Washington	DC	20006	
NexPoint Latin America Opportunities Fund		James A. Wright III	State Street Financial Center	One Lincoln Street	Boston	MA	02111-2950	
NexPoint Latin America Opportunities Fund		K&L Gates LLP	1601 K Street, NW		Washington,	DC	02006	
NexPoint Latin America Opportunities Fund		Stephen G. Topetzes	PO Box 54977		Los Angeles	CA	90054-0977	
Nextel Communications								
NexVest, LLC	Jason Rudd	3131 McKinney Ave Suite 100			Dallas	TX	75204	
NexVest, LLC		2515 McKinney Ave Suite 1100			Dallas	TX	75201	
Ney Castro		Address on File						
NGO, HONGVIEN		Address on File						
Nguyen, Hung		Address on File						
NGUYEN, KRISTINE		Address on File						
NGUYEN, TONY KHOI		Address on File						
NH Dept of State	Bureau of Securities Regulation	107 N. Main St, State House Room 204			Concord	NH	03301	
Nicholas Headley		Address on File						
NICHOLAS HEADLEY		Address on File						
NICHOLAS OLENEC		Address on File						
Nicholas T. Meserve		Address on File						
NICHOLAS TRUYENS		Address on File						
NICK ALFERMANN		Address on File						
Nick Meserve		Address on File						
NICK PAULEIT		Address on File						
Nickey L. Oates Company		25 Highland Park Village	Suite 100		Dallas	TX	75205	
Nicklas James		Address on File						
NICODEMUS WINATA		14181 NOEL RD			Dallas	TX	75254	
Nicole Lacues		Address on File						
Nikolayev, Yegor		Address on File						
Niles Chura		Address on File						
Niles K Chura		Address on File						
NILSEN, CHRISTOPHER		Address on File						
Nirav Batavia		Address on File						

003306

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Nisen & Elliott LLC		200 West Adams St			Chicago	IL	60606	
Nitro Software, Inc.		150 Spear St Ste 1500			San Francisco	CA	94105-5115	
NIXON PEABODY LLP	ATTN BOBBI HALL REVENUE PROCESSING CENTER	100 SUMMER ST			Boston	MA	02110	
NJ DIVISION OF TAXATION		PO BOX 642	PART		Trenton	NJ	08646-0642	
NMS Communications LLC		443 12th Street	5C		Brooklyn	NY	11215	
NMS MANAGEMENT, INC.		500 NORTH BROADWAY	STE 236		Jericho	NY	11753	
NOAH MAYER		Address on File						
NOBLE, SHELBY		Address on File						
Noel, Kirby		Address on File						
Noelle Williams		Address on File						
Nonna Knows Catering		1931 Market Center Blvd Apt 1323			Dallas	TX	75207-3500	
Noonmark Capital		9 Hall Avenue			Larchmont	NY	10538	
NORRIS, DUSTIN		Address on File						
NORRIS, DUSTIN		Address on File						
North Carolina Department of Revenue		PO Box 25000			Raleigh	NC	27640-0520	
North Ridge Securities		112 Madison Ave, 5th Floor			New York	NY	10016	
NorthPark Center		8687 North Central Expressway			Dallas	TX	75225	
Northwestern University	Attn Maureen Fenty	1800 Sherman Avenue, Suite 400			Evanston	IL	60201	
Norton Rose		Address on File						
Notable Solutions, Inc.		9715 Key West Avenue	Suite 200		Rockville	MD	20850	
Nouveau		2270 Springlake Rd	Suite 400		Dallas	TX	75234	
Nova Engineering, Inc		2625 N. Josey Lane, Suite 112			Carrollton	TX	75007	
Novack and Macey LLP		100 N Riverside Plaza			Chicago	IL	60606-1501	
NOW Advisors		1320 Greenway Dr	Suite 758		Irving	TX	75038	
NPB Financial Group, LLC		3500 W. Olive Avenue	Suite 300		Burbank	CA	91505	
NTR Review		407 East maple Street			Cumming	GA	30040	
Numara Software Inc		PO Box 102280			Atlanta	GA	30368-2280	
Numara Software Inc		PO BOX 933754			Atlanta	GA	31193-3754	
Nutter, McClennen & Fish, LLP	Attn Ian Roffman	Seaport West	155 Seaport Blvd		Boston	MA	02210	
NWCC, LLC	c/o of Michael A. Battle, Esq.	Barnes & Thornburg, LLP	1717 Pennsylvania Ave N.W. Ste 500		Washington	DC	20006-4623	
NWCC, LLC	James Peterson	375 Park Avenue, 36th Floor			New York	NY	10152	
NWCC, LLC	Jonathan D. Sundheimer	Barnes and Thornburg LLP	11 S. Meridian St.		Indianapolis	IN	46204	
NYC DEPARTMENT OF FINANCE		PO Box 3644			New York	NY	10008	
NYC DEPARTMENT OF FINANCE		PO Box 3646			New York	NY	10008	
NYC DEPARTMENT OF FINANCE		PO Box 3922	General Corporation Tax		New York	NY	10008-3922	
NYC DEPARTMENT OF FINANCE		PO Box 3931			New York	NY	10008-3931	
NYC DEPARTMENT OF FINANCE		59 Maiden Lane, 19th Floor			New York	NY	10038-4502	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NYC DEPARTMENT OF FINANCE		PO Box 5040			Kingston	NY	12402-5040	
NYC DEPARTMENT OF FINANCE		PO Box 5060			Kingston	NY	12402-5060	
NYC DEPARTMENT OF FINANCE		PO Box 5070			Kingston	NY	12402-5070	
NYC DEPARTMENT OF FINANCE		PO BOX 5100			Kingston	NY	12402-5150	
NYC DEPARTMENT OF FINANCE		PO BOX 5150			Kingston	NY	12402-5150	
NYC FIRE DEPARTMENT		CHURCH STREET STATION	PO BOX 840		New York	NY	10008-0840	
NYEMASTER GOODE LAW FIRM		700 WALNUT	STE 1600		Des Moines	IA	50309-3899	
NYIAC		150 E. 42nd St, 17th Floor			New York	NY	10017	
NYS Assessment Receivables		PO Box 4127			Binghamton	NY	13902-4127	
NYS Unemployment Insurance		PO Box 4301			Binghamton	NY	13902-4301	
NYS Workers Comp Board DB		One Exchange Plaza	55 Broadway Suite 201		New York	NY	10006	
NYSE ARCA, LLC		PO Box 223529			Pittsburgh	PA	15251-2529	
NYSE MARKET, INC		Grand Central Station	PO BOX 4695		New York	NY	10163	
NYSE MARKET, INC		Box #223695			Pittsburgh	PA	15251-2695	
NYSE MARKET, INC		BOX #4006	PO BOX 8500		Philadelphia	PA	19178-4006	
NYSIF Disability Benefits	DCC	1 Watervliet Ave. EXT			Albany	NY	12206	
NYSIF Disability Benefits		PO Box 5239			New York	NY	10008-5239	
Oak Tree Securities, Inc.		4049 First Street	Suite 129		Livermore	CA	94551-4949	
Ober, Kaler, Grimes & Shriver		100 Light Street			Baltimore	MD	21202	
Objective Group, Inc.		201 South Biscayne Blvd, 28th Floor			Miami	FL	33131	
OBJECTIVE PARADIGM CORPORATION	ATTN RYAN POLLOCK	805 N MILWAUKEE AVE STE 300			Chicago	IL	60622	
OBRIEN, JUSTIN		Address on File						
OBRIEN, MICHAEL J		Address on File						
OC CRUISER, Inc		1439 W Chapman Ave #260			Orange	CA	92868	
Oce Imagistics Inc		PO Box 856193			Louisville	KY	40285	
OConnor, Shannon		Address on File						
OConnors		3800 Buffalo Speedway	Ste 500		Houston	TX	77098	
Office Depot, Inc		DEPT 56-4201182804	PO BOX 689020		Des Moines	IA	50368-9020	
Office Depot, Inc		Dept. 56 - 4201182804 PO Box 9020			Des Moines	IA	50368-9020	
Office Depot, Inc		PO Box 70025			Los Angeles	CA	90074-0025	
OFFICE EQUIPMENT								
FINANCE SERVICES		PO BOX 790448			Saint Louis	MO	63179-0448	
Office Expo		2025A Midway Rd			Carrollton	TX	75006	
Office of Secretary of State		1019 Brazos Street			Austin	TX	78701	
Office of the Attorney General	Michael B. Mukasey, Esq.	U.S. Department of Justice	950 Pennsylvania Avenue, N.W.		Washington	DC	20530-0001	

003308

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Office of the Attorney General		Securities Division	200 St Paul Place		Baltimore	MD	21202	
Office of the General Counsel	Re Prime Brokerage Services	Jefferies LLC	520 Madison Avenue, 16th Floor		New York	NY	10022	
Office of the General Counsel Office of the Securities Comm.		Pension Benefit Guaranty Corp.	1200 K Street, N.W.		Washington	DC	20005-4026	
KS	Securities Division	1300 SW Arrowhead Rd			Topeka	KS	66604-4019	
OGLETREE DEAKINS		PO BOX 89			Columbia	SC	29202	
OGLETREE DEAKINS		918 S PLEASANTBURG DR (29607)	PO BOX 167		Greenville	SC	29602	
Ogletree Deakins Nash Smoak & Stewart PC		P.O. Box 89			Columbia	SC	29202	
OHANNA, DAVID		Address on File						
OHC Advisors Inc		12060 SW 129th CT Ste 200			Miami	FL	33186-4582	
Ohio Division of Securities		77 South High Street	22nd Floor		Columbus	OH	43215	
Oil & Gas Information Systems		5801 Edwards Ranch Road	Suite 200		Fort Worth	TX	76109	
Oil & Gas Journal		Pennwell Corporation	PO Box 4362		Chicago	IL	60680-4207	
Oil and Gas Investor		PO Box 3001			Northbrook	IL	60065-3001	
Okada, Luke		Address on File						
Oklahoma Department of Securities		Oklahoma Department of Securities	204 N. Robinson Ave., Ste. 400		Oklahoma City	OK	73102-7001	
Oklahoma Independent Petroleum Assoc.		500 N.E. 4th Street			Oklahoma City	OK	73104	
OKLAHOMA TAX COMMISSION	GENERAL COUNSELS OFFICE	100 N. BROADWAY AVE, SUITE 1500			OKLAHOMA CITY	OK	73102	
OKLAHOMA TX COMMISSION		PO BOX 26930			Oklahoma City	OK	73126-0930	
OKOLITA, MATTHEW		Address on File						
Okta Inc.		100 1st St Fl 6			San Francisco	CA	94105-4632	
Okta, Inc.		301 Brannan St	Suite 100		San Francisco	CA	94107	
Old Republic National Title Ins. Co.		8201 Preston Rd	Suite 450		Dallas	TX	75225	
Olander Reporting, Inc.		1522 K St NW Ste 720			Washington	DC	20005	
Olive & Ivy		7135 E Camelback Rd	No 195		Scottsdale	AZ	85251	
OLIVER CASTELINO		Address on File						
OLSON,CANNON, GORMLEY, & DESRUISSEAUX		9950 WEST CHEYENNE AVE			Las Vegas	NV	89129	
OM5-DALLAS		Prestonwood Tower	5151 Bellline Rd. Suite 550		Dallas	TX	75254	
OMelveny & Myers LLP		400 South Hope St., 18th Floor			Los Angeles	CA	90071-2899	
Omgeo LLC		2967 Collections Center Dr			Chicago	IL	60693	
On Course Promotion		6865 Pear Tree Dr			Carlsbad	CA	92011	
Onelogin, Inc.		848 Battery St			San Francisco	CA	94111-1504	
On-Site Sourcing, Inc.		PO Box 75495			Baltimore	MD	21275	
Opal Financial Group		132 W 36th St Rm 200			New York	NY	10018-8840	
Open Text Inc.	c/o JP Morgan Lockbox	24685 Network Place			Chicago	IL	60673-1246	
Opentext		275 Frank Tompa Drive			Waterloo	ON	N2L 0A1	Canada

003309

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
OppenheimerFunds, Inc.	Attn Accounts Payable	6803 S. Tucson Way, Bldg 2 Garden Level			Centennial	CO	80112	
Options Group		121 East 18th St			New York	NY	10003	
Options Price Reporting Authority		PO Box 95718			Chicago	IL	60694-0001	United Kingdom
Opus 2 International Inc	Mr Matthew Finney Matthew Finney, Credit Controller	5th Floor, 5 New Street Square			London		EC4A 3BF	United Kingdom
Opus 2 International, Inc.		5 New Street Square			London		EC4A 3BF	United Kingdom
Opus 2 International, Inc.		100 Pine Street	Suite 560		San Francisco	CA	94111	
ORACLE AMERICA, INC		PO BOX 71028			Chicago	IL	60694-1028	
ORACLE AMERICA, INC		PO Box 203448			Dallas	TX	75320-3448	
Oracle America, Inc.		500 Oracle Parkway			Redwood Shores	CA	94065-0000	
Oracle America, Inc., Successor in Interest to Sun Microsystems	Shawn M. Christianson, Esq.	Buchalter, a Professional Corporation	55 2nd St., 17th Fl.		San Francisco	CA	94105	
Oracle Healthcare Advisors Inc.								
Orbis Marketing, Inc.		12060 SW 129th Ct Ste 201			Miami	FL	33186-4582	
Orchard Group Productions		21550 Oxnard Street	Suite 850		Woodland Hills	CA	91367	
Oregon Department of Revenue		301 Park Forest Ct			Hurst	TX	76053	
ORENT, COURTNEY		955 Center St NE			Salem	OR	97301	
Organizational Talent		Address on File						
Orrick, Herrington & Sutcliffe LLP		3752 Colliers Dr			Edgewater	MD	21037	
OSD Investments, LLC		4253 Collections Center Dr			Chicago	IL	60693	
OUTLOOKSOFT CORPORATION		8951 Synergy Dr., Ste 225			McKinney	TX	75070	
OutSource Management	c/o Cathy Wylet, Meeting Planner	ONE STAMFORD PLAZA	11TH FLR		Stamford	CT	06901-3281	
Ouyang, Kaixi		14410 N. 10th Place			Phoenix	AZ	85022	
Ovation TRAVEL GROUP	ATTN ANDREA KELLY	71 FIFTH AVE	11TH FLR		New York	NY	10003	
Ovis Creative		483 10th Ave	Suite 230		New York	NY	10018	
Owens, David		Address on File						
OXANA BROWN		Address on File						
Oxer Technologies		59 Franklin Street	Suite 5R		New York	NY	10013	
PA Consulting Group		1750 Pennsylvania Ave Ste 100			Washington	DC	20006-4506	
PAGER Service Center		PO Box 71364			Philadelphia	PA	71364	
PAGER Service Center		PO BOX 70951			Charlotte	NC	28272-0951	
PAGER Service Center		PO Box 277773			Atlanta	GA	30384-7773	
PAGER Service Center		P.O. Box 5208			Portland	OR	97208-5208	
Pachulski Stang Ziehl & Jones LLP		10100 Santa Monica Blvd	Ste 1300		Los Angeles	CA	90067	
Pacific Life Annuities & Mutual Funds		700 Newport Center Drive			Newport Beach	CA	92660-6397	
Paciugo Catering		1215 Viceroy Drive			Dallas	TX	75247	
Packerland Brokerage Services Inc.		432 Security Blvd			Green Bay	WI	54313-9709	

003310

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PADILLA, ANDREW		Address on File			Nuremberg		90411	Germany
Paessler		Thurn-und-Taxis-Str. 14						United Kingdom
Pageant Media		Dunstan House 14a St Cross St			London		EC1N 8XA	
PAIPANANDIKER, CHET		Address on File						
Palico LLC		420 Lexington Avenue	Suite 1425		New York	NY	10170	
Palisade Capital Management		One Bridge Plaza	Suite 695		Fort Lee	NJ	07024	
PALLEY, RENNICK		Address on File						
Palm Beach Investment Research Grp Inc.		13638 Via Flora	Suite A		Delray Beach	FL	33484	
PALMER, JAMES		Address on File						
PAM Capital Funding LP	c/o Maples & Calder	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PAM Capital Funding LP	c/o Queensgate SPV Services Limited	PO Box 1093GT / Suzanne St. Thomas	Compass Center, 2nd Flr, Crewe Road	George Town	Grand Cayman			Cayman Islands
PAM Capital Funding LP / Ranger Asset M	c/o Maples and Calder, PO Box 309	Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd.	c/o Maples & Calder	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd.	c/o Queensgate SPV Services Limited	PO Box 1093, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd. / Ranger Asset Managem	c/o Maples and Calder, PO Box 309	Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Panhandle Producers Royalty Ownrs Assoc.		3131 Bell Street	Suite 209		Amarillo	TX	79106	
PaperCut Software International Pty Ltd		308 SW 1st Ave Ste 300			Portland	OR	97204-3432	
PAR Plumbing		60 N. Prospect Avenue			Lynbrook	NY	11563-1395	
Paradigm		360 Park Avenue South	16th Floor		New York	NY	10010	
Paradise Bakery and Cafe		13710 Dallas Parkway, Suite H			Dallas	TX	75240	
Paradox Sports		710 10th Street	Suite 200		Golden	CO	80401	
Paragon Photocopying, Co.		1700 Commerce Ste 200			Dallas	TX	75201	
PARCELS INC		PO BOX 27			Wilmington	DE	19899	
PARIVEDA SOLUTIONS		PO BOX 671060			Dallas	TX	75267	
Park Cities Quail 2016 Dinner & Auction		25 Highland Park Village	Suite 100-417		Dallas	TX	75205	
Park, Jun		Address on File						
Parker Poe Adams & Bernstein LLP		401 S. Tryon St, Ste 3000	Three Wells Fargo Center		Charlotte	NC	28202	
Parkinsons Disease Foundation		Gift Processing Center	PO Box 96268		Washington	DC	20090-6268	
Parkland Securities, LLC	ATtn Blayne Andersen	300 Parkland Plaza			Ann Arbor	MI	48103	
Parks Coffee		PO Box 110209			Carrollton	TX	75011-0209	
Parkway Bent Tree Partners, Ltd		17130 Dallas Parkway	Suite 240		Dallas	TX	75248	
Parmentier, Andrew		Address on File						
Parmentier, Andrew		Address on File						
Parmentier, Andrew		Address on File						

003311

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PARNELL, CATHERINE		Address on File						
PARS International Corp	Attn Permissions A/R	253 West 35th Street, 7th Floor			New York	NY	10001	
Parth Shah		Address on File						
Partner Engineering & Science, Inc.		2154 Torrance Blvd	Suite 200		Torrance	CA	90501	
Partridge Snow & Hahn, LLP		40 Westminster Street	Suite 1100		Providence	RI	02903	
Party Frills		219 E White St			Anna	TX	75409	
PASSMORE, MICHAEL		Address on File						
Pat & Emmitt Smith Charities		16000 North Dallas Pkwy	Suite 550N		Dallas	TX	75248	
Pate & Knair		PO Box 1907			Oklahoma City	OK	73101-1907	
PATEL, VISHAL		Address on File						
PATRICK BOYCE		Address on File						
Patrick Bressler		Address on File						
Patrick Conner		Address on File						
Patrick Daugherty	c/o Thomas A. Uebler	McCollom DEmilio Smith #401	2751 Centerville Rd		Wilmington	DE	19808	
Patrick Daugherty	c/o Thomas A. Uebler, Esq.	McCollom DEmilio Smith Uebler LLC #401	2751 Centerville Rd		Wilmington	DE	19808	
Patrick Daugherty/Andrew K. York		Address on File						
Patrick Daugherty/Andrew K. York	Dylan O. Drummond	Gray Reed & McGraw, LLP	1601 Elm Street	Suite 4600	Dallas	TX	75201-7212	
Patrick Hagaman Daugherty	Jason Kathman	2701 Dallas Parkway Suite 590			Plano	TX	75093	
Patrick Hagaman Daugherty	Pronske and Kathman	Jason P. Kathman	2701 Dallas Parkway	Suite 590	Plano	TX	75093	
Patrick J. Eiverum		Address on File						
PATRICK KELLY		Address on File						
PATRICK, MARK		Address on File						
Patrina Corporation		45 Broadway	Ste 1440		New York	NY	10006	
Patton Boggs LLP		2550 M St NW			Washington	DC	20037	
Paul D. Kauffman		Address on File						
Paul D. Peterson, Ltd.		3040 Woodbury Drive			Woodbury	MN	55129	
Paul DiMartino		Address on File						
Paul Hastings, Janofsky & Walker LLP		55 Second St, 24th Flr			San Francisco	CA	94105-3441	
Paul Kauffman	Jason P. Kathman	Pronske & Kathman, P.C.	2701 Dallas Parkway,	Suite 590	Plano	TX	75093	
PAUL KAUFFMAN		Address on File						
Paul Kaufman		Address on File						
Paul Kaufmann		Address on File						
PAUL KUNKEL		Address on File						
PAUL N. ADKINS		Address on File						
Paula Shober		Address on File						
PAUS2 (Investments) GP Ltd.	Attn Eric Pedde	c/o Alberta Investment Management Corporation	1100-10830 Jasper	Avenue	Edmonton	AB	T5J2B3	Canada
Paws Cause 2015	Attn Paws Cause 2015	2400 Lone Star Drive			Dallas	TX	75212	

003312



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Paxstone Capital LLP	Attn Kasper Kemp Hansen	483 Green Lane 4005 NW Expressway, STE 500			London		N13 4BS	United Kingdom
PayCom Payroll, LLC		10802 Farnam Drive	Suite 100		Oklahoma City	OK	73116	
PayFlex Systems USA, Inc.		1400 American Ln # 1900			Omaha	NE	68154	
Paylocity		3850 N. Wilke Rd.			Schaumburg	IL	60173-5452	
Paylocity Corporation		10711 Preston Rd	Suite 110		Arlington Heights	IL	60004-0000	
Payne & Smith, LLC		PO Box 670805			Dallas	TX	75230	
Payne & Smith, LLC		PO Box 49283			Dallas	TX	75367-0805	
PayScale Inc		DEPT 77430, PO BOX 77000			San Jose	CA	95161-9283	
PBGC		PO Box 979120			Detroit	MI	48277-0430	
PBGC		PO Box 382808			Saint Louis	MO	63197-9001	
PC Connection					Pittsburgh	PA	15250-8808	
PC Serv LLC/SharePoint Solutions	Accounts Receivable	1521 Gordon Petty Dr			Brentwood	TN	37027	
PC Serv, LLC / SharePoint Solutions		PO Box 1588			Brentwood	TN	37024-1558	
PCMG Trading Partners XXIII, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
PCS Securities, Inc.		19020 88th Avenue West			Edmonds	WA	98026	
Peach Labs, Inc.		108 S Jackson St Ste 300			Seattle	WA	98104-2872	
Pearcock, Carissa		Address on File						
Pearson, James M.		Address on File						
Pearson, Kyle		Address on File						
PEGGY FRANCIS		Address on File						
Peller		Dreikonigstrasse 45	Postfach 2016		Zurich		CH-8027	SWITZERLAND
Peltkian, Michael		Address on File						
Peltkian, Michael		Address on File						
PELZEL, TERRY		Address on File						
Penant Management GP, LLC	c/o Highland Capital Management, L.P.	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Penland, Nathan		Address on File						
Pension Benefit Guaranty Corporation	Attn M. Baird	Office of the General Counsel	1200 K Street, N.W., Suite 3305		Washington	DC	20005	
Pension Benefit Guaranty Corporation	Lori Butler, Assistant General Counsel	1200 K Street, N.W., Suite 3513			Washington	DC	20005	
Pension Benefit Guaranty Corporation		Department 77430	PO Box 77000		Detroit	MI	48277-0430	
PensionDanmark	Attention Head of Legal	Langelinie Alle 43			Copenhagen		02100	Denmark
PensionDanmark								
Pensionsforsikringsaktieselskab	Attn David Grant Crooks	c/o Fox Rothschild LLP	5420 LBJ Freeway, Suite 1200		Dallas	TX	75240	
Pensions & Investments		Crain Communication Inc.	115 Gratiot		Detroit	MI	48207-2997	
Pensions & Investments		Subscriber Services Department 77940			Detroit	MI	48277-0940	
Pensions & Investments		PO BOX 79001	DRAWER #7718	SUBSCRIBER SERVICES	Detroit	MI	48279-7718	

003313

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PENTAGROUP FINANCIAL, LLC		5959 CORPORATE DR	STE 1400		Houston	TX	77036	
PENTON TECHNOLOGY MEDIA		221 E 29TH ST			Loveland	CO	80538	
Pepper Hamilton LLP		1201 Market St, Ste 1600			Wilmington	DE	19899	
Pepperdine University PEREIRA, TOM	ATTN Stacy Taylor	Pepperdine School of Law Address on File	24255 Pacific Coast Hwy		Malibu	CA	90263	
Perino, Inc		450 W 42nd Street	Apt 46M		New York	NY	10036	
Perkins Coie LLP	Attn Client Accounting	1201 Third Avenue, Suite 4900			Seattle	WA	98101	
Perot Museum of Nature and Science		2201 North Field Street			Dallas	TX	75201	
Perot Museum of Nature and Science		PO Box 151469			Dallas	TX	75315	
Pershing LLC	Alternative Invest Dept. - Zamena Khan	300 Colonial Center Parkway, 3rd Floor			Lake Mary	FL	32746	
Pershing LLC	Attn Brittany Crowley	300 Colonial Center Parkway			Lake Mary	FL	32746	
Pershing LLC	Attn Genesis Garcia	One Pershing Plaza, 8th Fl			Jersey City	NJ	07399	
Pershing LLC	Attn IBD - 15th Floor	One Pershing Plaza			Jersey City	NJ	07399	
Personel Concepts		PO Box 3353			San Dimas	CA	91773	
PERTRAC FINANCIAL SOLUTIONS, LLC		2650 Thousand Oaks, Ste 1340			Memphis	TN	38118	
PERTRAC FINANCIAL SOLUTIONS, LLC		10403 DOUBLE R BOULEVARD			Reno	NV	89521	
Pestotnik + Gold LLP		501 W. Broadway	Suite 1850		San Diego	CA	92101	
Petals & Stems Florist		13319 Monfort	LBJ at Monfort		Dallas	TX	75240	
PETER CHUNG		Address on File						
PETER CHUNG		Address on File						
PETER FERGUSON		Address on File						
PETER NOLAN		Address on File						
PETER PESTILLO		Address on File						
Peter Roman		Address on File						
PetroCap III and SLP	Marc Lombardi	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap III and SLP	Sarah Schultz	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap III and SLP	Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap Inc		2602 McKinney Avenue	Suite 400		Dallas	TX	75204	
Petrocap Incentive Partners III GP, LLC	Attn Lane Britain	Petrocap Incentive Holdings III, LP	3333 Lee Parkway, Suite 750		Dallas	TX	75219	
Petrocap Incentive Partners III GP, LLC	Marc Lombardi, Sarah Schultz, Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap Partners II GP, LLC	Attention William L. Britain	2602 McKinney Avenue	Suite 400		Dallas	TX	75204-0000	
Petrocap Partners II GP, LLC	Attn Lane Britain	Petrocap Incentive Partners II, LP	3333 Lee Parkway, Suite 750		Dallas	TX	75219	
PetroCap Partners II, GP, LLC	PetroCap, LLC	William L. Britain	2602 McKinney Avenue Suite 400		Dallas	TX	75204	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PetroCap Partners III, L.P.	Marc Lombardi, Sarah Schultz, Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap Partners III, L.P.		3333 Lee Parkway	Suite 750		Dallas	TX	75219	
Petroleum Club of Midland		PO Box 10527			Midland	TX	79702-7527	
Petsmart Charities, Inc.		PO Box 96426			Washington	DC	20077-7227	
PFERTNER, JIM		Address on File			Philadelphia	PA	19182-8789	
PFPC DISTRIBUTORS		PO BOX 828789			Philadelphia	PA	19182-8810	
PFPC DISTRIBUTORS		PO BOX 828810			Philadelphia	PA	19182-8810	
Phase 3 Marketing and Communications		Dept# 7052	PO Box 2153		Birmingham	AL	35287-7052	
PHELAN, KEVIN		Address on File						
PHIL GALPIN		Address on File						
Phil Rochefort		Address on File						
Philadelphia Biblical University	Attn Mr. Tim Hui	200 Manor Ave			Langhorne	PA	19047-9989	
PHILET FOODS		5331 E MOCKINGBIRD LN	STE 413		Dallas	TX	75206	
Philip Settimi		Address on File						
Philippine American Physicians		PO Box 690695			Orlando	FL	32869	
Phillips, Michael		Address on File						
Phoenician Operating LLC		6000 East Camelback Road			Scottsdale	AZ	85251	
PicFlips, LLC		8553 N Beach St #280			Fort Worth	TX	76244	
Pillsbury Winthrop Shaw Pittman LLP		PO Box 7880			San Francisco	CA	94120-7880	
Pink Ribbon Cleaning Services		PO Box 541141			Dallas	TX	75354	
Pinnacle Aviation Charter		14988 North 78th Way	Suite 106		Scottsdale	AZ	85260	
Pinnacle Business Systems		609 S. Kelly Avenue, Suite E-7			Edmond	OK	73003	
Pinnacle Group International		PO BOX 2800, # 265			Carefree	AZ	85377	
Pinnacle International		5420 LBJ, Ste 390			Dallas	TX	75240	
Pinnacle International		PO Box 2800, #265			Carefree	AZ	85377	
Pinnacle Office Products LLC		8024 Glenwood Ave	Suite 200		Raleigh	NC	27612	
Pinnacle Office Products LLC		8024 Glenwood Ave Ste 200	STE 200		Raleigh	NC	27612	
PIONEER INVESTMENT MANAGEMENT		60 STATE STREET			Boston	MA	02109	
Pipos Travel Corp.		2333 Brickell Ave.	Mezz UL4		Miami	FL	33129	
PIRA Energy Group		3 Park Ave, 26th Flr			New York	NY	10016-5989	
Piriform Inc.		590 Madison Avenue	21st Floor		New York	NY	10022	
Pirozzi & Hillman, Inc.		274 Madison Ave			New York	NY	10016	
Pirtle Design		506 Union St			Hudson	NY	12534-2816	
Pitney Bowes Credit Corp.		PO Box 856460			Louisville	KY	40285-6460	
PITNEY BOWES FINANCIAL SERVICES LLC		PO BOX 371887			Pittsburg	PA	15250-7887	
Pitney Bowes Global Financial Services		PO Box 371874			Pittsburgh	PA	15250-0000	
Pitney Bowes Inc.		PO Box 371896			Pittsburgh	PA	15250-7896	

003315

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Pitney Bowes- Purchase Power PITTMAN, TABOR J.		PO Box 371874 Address on File			Pittsburgh	PA	15250-2648	
Pivotal Research Group LLC	Jeff Shelton	c/o 12 John Street 12 John Street			Demarest	NJ	07627	
PJ Mechanical Service & Maint. Corp.		135 W. 18th Street			Demarest	NJ	07627	
Planatech Solutions Ltd.		Grosvenor Gardens House 35/37 Grosvenor Gardens			New York	NY	10011	United Kingdom
Plano East Golf Booster Club	Attn Brian Flanagan	700 Bear Creek Dr. 600 Legacy Drive			Murphy	TX	75094	
PLANT PARTY ANIMALS		PO BOX 8 6436 Babcock Rd.	Suite 111		Plano	TX	75023	
PLANT DECOR		PO BOX 226142			Ponder	TX	76259-0008	
Plant Interscapes, Inc.		Subscriber Services			San Antonio	TX	78249	
PlantKeeper		325 N. Saint Paul Street 300 Crescent Court			Dallas	TX	75222-6142	
Plastic News		2055 Corte Del Nogal 21805 W Field Parkway, Ste 300			Detroit	MI	48207-9944	
Platinum Litigation Solutions, LLC		142 N. Milpitas Blvd #435 PO Box 4987			Dallas	TX	75201	
Platinum Parking		Address on File			Dallas	TX	75201	
Platypus Studios	Attn Mark Baldi	17950 Preston Road 2425 DillaRd St			Carlsbad	CA	92011	
Plexus Groupe LLC		PO Box 828789 8312 Westlawn Avenue			Deer Park	IL	60010	
Plimus, Inc.		Address on File			Milpitas	CA	95035-4401	
PLUM, KEITH		Address on File			Houston	TX	77210-4987	
PLUMER, KURTIS		Address on File						
PMC Commercial Trust		17950 Preston Road 2425 DillaRd St			Dallas	TX	75252	
PMC Service Company		Address on File			Grand Prairie	TX	75051	
PNC Global Investment Servicing		Address on File						
PNP Productions		Address on File			Philadelphia	PA	19182-8789	
POER, MARY		Address on File			Los Angeles	CA	90045	
POGLITSCH, JON		Address on File						
POGRANICHNY, PAUL		Address on File						
Point Multimedia LLC		501 Elm Street	Suite 350		Dallas	TX	75202	
Pollock, Staci		Address on File						
Polsen, Gregory		Address on File						
Pope, Harwicke, Christie, Schell, Kelly & Taplett LLP		500 W 7th Street	Ste 600		Fort Worth	TX	76102	
POPE, JAMES		Address on File						
POPE, THERESA		Address on File						
Portfolio Media, Inc		860 Broadway	6th Floor		New York	NY	10003	
POST, ROBERT		Address on File						
Potbelly Sandwich Works, LLC		222 Merchandise Mart Plaza 23rd FL			Chicago	IL	60654	
POTTER ANDERSON & CORROON LLP	Timothy R. Dudderar	Hercules Plaza, 6th Floor 1313 North Market St PO Box 951	1313 North Market Street		Wilmington	DE	19801	
Potter, Anderson & Corroon POWELL, ETHAN K.		Address on File			Wilmington	DE	19899-0951	

003316

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PR Newswire		PO Box 5897			New York	NY	10087-5897	
PR Newswire Association, LLC		602 Plaza	Three Harborside Financial Center		Jersey City	NJ	07311-0000	
PRACTICING LAW INSITUTE		810 SEVENTH AVE			New York	NY	10019	
PRACTICING LAW INSITUTE		PO Box 26532			New York	NY	10087-6532	
Prairie Rose Studio		PO Box 1316			Commerce	TX	75429	
PRAMOD RAJU		Address on File			Mesquite	TX	75149	
Precise Land Surveying, Inc.		4625 Eastover Dr						
Premier Wealth Strategies	Attn Jon Rustad	8777 E. Via de Ventura, Ste 140			Scottsdale	AZ	85258	
Premiere Global Services		PO Box 404351			Atlanta	GA	30384-4351	
Premiere Speakers Bureau, Inc.		109 International Drive	Suite 300		Franklin	TN	37067	United Kingdom
Preqin Ltd.		Scotia House	33 Finsbury Square		London		EC2A 1BB	
Preqin Ltd.		PO Box 200918			Pittsburgh	PA	15251-0918	
Presbyterian Hospital of Dallas		PO Box 910013			Dallas	TX	75391	
Prescott Legal Search		PO Box 1024140			Atlanta	GA	30368-4140	
Presidential Process Service Inc		419 Park Ave South	Suite 700		New York	NY	10016	
Preston Florist		14856 Preston Rd Ste 110			Dallas	TX	75240	
Preston Hollow Catering		3419 Westminister	#235		Dallas	TX	75205	
Preston Hollow Elementary								
PTA		6423 Walnut Hill Lane			Dallas	TX	75230	United Kingdom
PRI Association		5th Floor	25 Camperdown Street		Whitechapel		E1 8DZ	
PRICE, BRIAN		Address on File						
Price, Kevin		Address on File						
PRICE, WHITNEY		Address on File						
Pricewaterhouse Coopers, LLP		8 Cross St. #17-00	PWC Singapore Building		Singapore		048424	SINGAPORE
Pricewaterhouse Coopers, LLP		P.O. Box 952282			Dallas	TX	75395	
Pricewaterhouse Coopers, LLP		PO Box 75647			Chicago	IL	60675-5647	
PricewaterhouseCoopers	c/o John Wander, Vinson Elkins LLP	2001 Ross Avenue	Suite 3900		Dallas	TX	75201	
PRICEWATERHOUSECOOPE		SOUTHWARK TOWERS	32 LONDON BRIDGE		London		SE1 9SY	United Kingdom
RS			ST					
PricewaterhouseCoopers LLP		One North Wacker			Chicago	IL	60606-0000	
Prime Brokerage Services		Jefferies LLC	520 Madison Avenue		New York	NY	10022	
Primedia		PO Box 96985			Chicago	IL	60693	
Princeton Club of NY		15 West 43rd Street			New York	NY	10036-7497	
Princeton Search LLC		d/b/a PrincetonOne	PO Box 52265		Newark	NJ	07101-0220	
Principal Financial Group		PO Box 477			Appleton	WI	54912-0477	
Principal Life		Dept. 400 PO Box 14416			Des Moines	IA	50306-3416	

003317

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PrintComm		1161 Executive Drive West			Richardson	TX	75081	
PrintGlobe		PO Box 975659			Dallas	TX	75397-5659	
Privcap LLC		86 Chambers Street	7th Floor		New York	NY	10007	
Probe Ministries		2001 W. Plano Pkwy	Suite 2000		Plano	TX	75075	
Probe Ministries		1900 Firman Dr Ste 100			Richardson	TX	75081-6796	
Professional Technologies, Inc.	Accounting Dept.	4950 N. OConnor Rd., 1st Floor			Irving	TX	75062-2778	
PROFESSIONALS PUBLISHING GROUP		1911 N US HWY 301	STE 140		Tampa	FL	33619	
PROFESSIONAL TECHNOLOGIES INCORPORATED		CORPORATE PLAZA 1, 1st floor	4950 North OConnor Rd		Irving	TX	75062-2778	
Professional Video Services, LLC		8 Canterbury Lane			Westfield	NJ	07090	
Progenics Pharmaceuticals, Inc.	Attn CEO	777 Old Saw Mill Road			Tamytown	NY	10591	
Progressive Business Publication		370 Technology Drive	PO BOX 3019		Malvern	PA	19355	
Pronske and Kathman Proofpoint	Jason P. Kathman	2701 Dallas Parkway Suite 590			Plano	TX	75093	
Proposal Software, Inc.		892 Ross Drive			Sunnyvale	CA	94089	
Prosek Partners LLC		1140 US Hwy 287	Suite 400-102		Broomfield	CO	80020	
Proskauer Rose LLP		1552 Post Road			Fairfield	CT	06824	
Prospect News Inc.		Eleven Times Square	9th floor		New York	NY	10036-8299	
Prospect News Inc.		6 MAIDEN LANE			New York	NY	10038	
Prospect News Inc.		164 Prospect Park West #4R			Brooklyn	NY	11215	
Prosper Sports Association		1050 High Willow			Prosper	TX	75078	
ProStar Services, Inc		PO Box 110209			Carrollton	TX	75011	
Protection Networks		4887 Alpha Road, St 200			Farmers Branch	TX	75244-4632	
PROVIDEA CONFERENCEING LLC		PO Box 636132			Cincinnati	OH	45263	
PROVIDEA CONFERENCEING LLC		1297 Flynn Rd.	Suite 100		CAMARILLO	CA	93012	
Prudential	Attn Nirsa Reyes	100 Mulberry St, Gateway Ctr 3, 14 flr			Newark	NJ	07102	
Prudential		PO BOX 856138			Louisville	KY	40285	
Pryor Cashman LLP		410 Park Ave			New York	NY	10022	
PUBLIC COMPANY ACCTNG OVERSIGHT BOARD		PO BOX 631116			Baltimore	MD	21263-1116	
Puerto Rico Secretary of the Treasury		Securities Division	1492 Ponce de Leon Avenue, Suite 600		San Juan	PR	00907-1492	
Puglisi & Associates		850 Library Ave., Suite 204			Newark	DE	19711	
PUNCHSTOCK		8517 EXCELSIOR DR	STE 200		Madison	WI	53717	
PUNCHSTOCK		PO Box 953604			Saint Louis	MO	63195	
PURCELL, ONDINA		Address on File						
PURCELL, ONDINA A.		Address on File						
Purdy-McGuire		4300 Sigma Ste 200			Dallas	TX	75244-4416	
Pure Compliance		PO BOX 951839			Dallas	TX	75395	

003318

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Purshe Kaplan Sterling Investments, Inc.		18 Corporate Woods Blvd Address on File	4th Floor		Albany	NY	12211	
PUSATERI, MICHAEL		1155 Metcalfe St, 4th Fir			Montreal	QC	H3B 4S9	CANADA
PwC Product Sales LLC		PO Box 952282			Dallas	TX	75395-2282	
Q&A RECRUITING		14241 N DALLAS PKWY, STE 550			Dallas	TX	75254	
Q.O.P.S.		PO Box 10429			Van Nuys	CA	91410	
Quadriga Partners, LLC	Attn Jason Ficken	100 Fillmore, Suite 425			Denver	CO	80206	
Quality High-Tech Services, Inc.		11807 Forestgate Dr Address on File			Dallas	TX	75243	
QUAN ZHANG		DEPT 0596	PO BOX 120596		Dallas	TX	75312	
QUANTUM		Queens Ballpark Co.	126-01 Roosevelt Ave.		Flushing	NY	11368	
Quest CE	Attn Marc Candelaria	10100 W. Innovation Drive	Suite 200		Milwaukee	WI	53226	
Quest Events		2591 Dallas Parkway	Suite 201		Frisco	TX	75034	
QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # x9811		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO JON POGLIITSCH, ACCT. # x0612		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # x8311		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO NEIL DESAI, ACCT. # x9211		17171 Park Row #100			Houston	TX	77084	
Quest Software		PO Box 51739			Houston	TX	77084	
Quick Trak Messengers		267 West 17th Street	3rd Floor		Los Angeles	CA	90051-6039	
Quinn Emanuel Trial Lawyers		865 S Figueroa St	10th FL		New York	NY	10019	
Quintairo, Prieto Wood & Boyer		9300 South Dadeland Blvd, 4th Floor			Los Angeles	CA	90017	
Quintairo, Prieto Wood & Boyer		865 S. Figueroa St	10th FL		Miami	FL	33156	
QVerity, Inc.		740 Greenville Blvd.	Suite 400, PMB 154		Los Angeles	CA	90017	
Rabbit Reproduction		PO Box 29764			Greenville	NC	27858	
Rachael Romine		Address on File			Dallas	TX	75229	
RACHAL, TRAVIS		Address on File						
RACHAL, TRAVIS		Address on File						
Rademacher, Cole		Address on File						
Radianz Americas Inc	ATTN Head of Legal	620 Eighth Ave	45 th Floor		New York	NY	10018	
Radianz Americas Inc		PO Box 7247-6642			Philadelphia	PA	19170-6642	
Radianz Americas Inc		DEPT CH 19227			Palentine	IL	60055-9227	
Rafael Anchia		Address on File						
RAJU, PRAMOD		Address on File						
Rakhee V. Patel, Phillip Lamberson, Annmarie Chiarello		500 Windstead Building	2728 N. Harwood Street		Dallas	TX	75201	
Rally Point Media Strategies LLC		1320 North Veitch St Address on File	#1712		Arlington	VA	22201	
RAMAMURTHY, SUNDAR								

003319



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Ramesh Swaminathan		Address on File						
Rand Advisors Series I Insurance Fund	c/o Rand Advisors	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Rand Advisors, LLC / Atlas IDF LP, et al	Attn: John Honis	87 Railroad Place	Ste 403		Saratoga Springs	NY	12866-0000	
Rand PE Fund I, L.P.	c/o Rand PE Fund Management, LLC	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Randal Stout Entertainment		2341 Hummingbird Trail			Grapevine	TX	76051	
RANDAL ZIEGENHAGEN		5317 ELLSWORTH AVE			Dallas	TX	75206	
Random Lengths		PO Box 867			Eugene	OR	97440-0867	
RANGEL, VICTOR		Address on File						
Ranger Creek Goose		209 Alex Way			Abilene	TX	79602	
Ransom, Garrett		Address on File						
Rapid7 LLC		120 Causeway St Ste 400			Boston	MA	02114-1314	
Rapid7 LLC		PO Box 347377			Pittsburgh	PA	15251-4377	
Ratcliffe for Congress		2931 Ridge Road, Ste 101	PMB #217		Rockwall	TX	75032	
RAWLINGS, OLSON, CANNON		GORMLEY & DESRUISSEAU AVE			Las Vegas	NV	89129	
Raymond Dougherty		Address on File						
Raymond James & Associates, Inc	Attn Kristin Koscho	880 Carillon Parkway			St. Petersburg	FL	33716	
Raymond James & Associates, Inc	Attn Treasury/RMB-M/F	PO Box 23591			St. Petersburg	FL	33742	
Raymond James & Associates, Inc		70 East Main St			Avon	CT	06001	
Raymond James & Associates, Inc		Granada Building, 5th Floor	1216 State Street, Suite 500		Santa Barbara	CA	93101	
Raymond James Financial	ALPG attn Todd Moulton	3610 N. University Ave, Ste 350			Provo	UT	84604	
Raymond James Financial	Attn Catina Cruz/RJ BP Dev Conf Free	PO Box 23613			St. Petersburg	FL	33742	
Raymond Joseph Dougherty	D. Craig Shew, PLLC	PO Box 1373			Ada	OK	74821-1373	
Raymond Joseph Dougherty		Address on File						
RBC Capital Markets, LLC	Attn Dave Hiron	4250 Executive Square, Ste 800			Lajolla	CA	92037	
RBC Capital Markets, LLC	Attn Jim Brick	60 South Street, P21			Minneapolis	MN	55402	
RCR Wireless News		Subscriber Services						
Real Capital Analytics		Department 77940			Detroit	MI	48277-0940	
REAL ESTATE ALERT		139 5th Ave			New York	NY	10010	
Real Time Services		5 Marine View Plaza #400			Hoboken	NJ	07030	
REALPOINT		452 West John Street			Hicksville	NY	11801-1301	
REALPOINT		BOX #3001	200 WITMER RD		Horsham	PA	19044	
REALPOINT		Receiveable Management Services	4836 Brecksville Rd		Richfield	OH	44286	
Reasoning Mind		5910 N. Central Expressway # 250			Dallas	TX	75206	
Rebecca A. Thompson		Address on File						
Rebecca Stropoli		Address on File						
Record Press Inc.		229 West 36th Street			New York	NY	10018	
Records Deposition Service		1701 N Collins Blvd Ste 334			Richardson	TX	75080-3602	

003320

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Red Hat		100 East Davie Street			Raleigh	NC	27601-0000	
Red Oak Compliance Solutions LLC		1320 Arrow Point Dr Ste 411			Cedar Park	TX	78613-2095	
Red River CLO Corp.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Red River CLO Ltd c/o Ogier Fiduciary Services (Cayman) Limited	Attention The Directors	P.O.Box 1234,	Queensgate House South Church Street	George Town	Grand Cayman		KY1-1108	Cayman Islands
Red River CLO Ltd.		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Red River CLO Ltd. et al	U.S. Bank National Association Corporate Trust Services/CDO Department	One Federal Street, Third Floor			Boston	MA	02110	
Red River CLO Ltd. Grand Central Asset Trust	LaSalle Bank N.A., as Collateral Administrator	181 West Madison Street	Suite 3200	CDO Trust Services - Roy Hykal	Chicago	IL	60602	
Red River CLO Ltd. Grand Central Asset Trust	U.S. Bank, National Association	One Federal Street	3rd Floor	Mr. Jackson Carneiro	Boston	MA	02110	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	Highland Special Opp. Holding Company	2 Galleria Towers 13455 Noel Road	Suite 1300		Dallas	TX	75240	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	LaSalle Bank N.A., as Collateral Administrator	181 West Madison Street	Suite 3200	CDO Trust Services - Maciej Zurawski	Chicago	IL	60602	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	U.S. Bank, National Association	One Federal Street	Third Floor	Mr. Jackson Carneiro	Boston	MA	02110	
Red River CLO Ltd. MMP-5 Funding, LLC IXIS Financial Products Inc.	IXIS Financial Products Inc.	9 West 57th Street	36th Floor		New York	NY	10019	
Red River CLO Ltd. MMP-5 Funding, LLC IXIS Financial Products Inc.	MMP-5 Funding, LLC	120 White Plains Road	Suite 115		Tarrytown	NY	10591	
Red River CLO Ltd. U.S. Bank National Association IXIS Financial Products Inc.	Red River CLO Ltd. Address c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1234	Queensgate House South Church Street	Red River CLO Ltd.	George Town		KY1-1108	Cayman Islands
Red River CLO Ltd., et al	c/o Ogier Fiduciary Services (Cayman) Limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Red River CLO, Ltd.	Red River CLO Ltd. c/o Ogier Fiduciary Services (Cayman) limited	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Red River CLO, Ltd.	Fiduciary Services (Cayman) limited	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town			Cayman Islands
Red River CLO, Ltd. U.S. Bank National Association	U.S. Bank National Association Corporate Trust Services/CDO Department	One Federal Street, Third Floor	Ref Red River CLO Ltd	c/o Ogier Fiduciary Services (Cayman) Limited	Boston	MA	02110	
Red River CLO, Ltd. U.S. Bank National Association	Red River CLO Ltd. U.S. Bank National Association	P.O. Box 1234	Queensgate House South Church Street	The Directors - Red River	George Town		KY1-1108	Cayman Islands

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Red Rock Strategic Partners		PO Box 35			Watkinsville	GA	30677	
Redbud E&P Inc.		2602 McKinney Ave	Ste 400		Dallas	TX	75204	
Redeemer Committee - Highland Crusader	Attn Eric Felton	731 Pleasant Ave.			Glen Ellyn	IL	60137	
Redeemer Committee Highland Crusader Fund	c/o Terri Mascherin, Esq.	Jenner & Block 6731 W. 121 St, Ste 226	353 N. Clark Street		Chicago	IL	60654-3456	
Redmond Law Firm		27271 Las Ramblas	Suite 200		Overland Park	KS	66209	
Redspih		Address on File			Mission Viejo	CA	92691	
REED SMITH		PO Box 360074M			Pittsburgh	PA	15251-6074	
REED SMITH		PO BOX 759052			Baltimore	MD	21275-9052	
REED WATSON		Address on File						
Reese Energy Consulting, Inc.		725 South Boulevard			Edmond	OK	73034	
Refinitiv	c/o Sarah E. Doerr	Refinitiv f/d/b/a Thomson Reuters	Moss & Barnett	150 5th St S, Suite 1200	Minneapolis	MN	55402	
Refinitiv US LLC		3 Times Square			New York	NY	10036	
Regulatory Compliance Watch		PO Box 9407			Gaithersburg	MD	20898-9407	
Regus Business Centre		Colleen Susini, Centre Manager	245 Park Ave, 39th Flr		New York	NY	10167	
Regus Management Group LLC		PO Box 842456			Dallas	TX	75284-2458	
Reid Collins & Tsai	William T. Reid, Esq.	Reid Collins & Tsai LLP	810 Seventh Avenue, Ste 410		New York	NY	10019	
Reid Collins & Tsai LLP		1301 S. Capital of Texas Hwy	#C300		Austin	TX	78746	
Reid Collins & Tsai LLP		4301 Westbank Drive	Building B Suite 230		Austin	TX	78746	
Reid Davis		Address on File			New York	NY	10036	
REIS SERVICES, LLC		530 Fifth Ave5th Floor			New York	NY	10018	
Reis, Inc.		5 West 37th St			New York	NY	10036	
REIT ZONE PUBLICATIONS, LLC		530 5TH AVE, 5TH FLR						
Reiter, Jon		448 IGNACIO BLVD	STE 345		Novato	CA	94949	
Relationship Science LLC		Address on File			New York	NY	10022	
Relationship Science LLC		909 3rd Ave	FL 18		Pittsburgh	PA	15251-4989	
Ren Morrison Photography		PO Box 347989			Dallas	TX	75225	
Rentacrate Incorporated		5445 Caruth Haven 121			Waltham	MA	02453	
Rentacrate Incorporated		124 Prospect St	Suite 420		Nashville	TN	37214	
Rentacrate Incorporated		22 Century Blvd			New York	NY	10087-2194	
Rentfro, Tyler		PO Box 32194						
Reorg Research, Inc.		Address on File			New York	NY	10001	
Reorg Research, Inc.		1140 Broadway	Ste 201		New York	NY	10010-0000	
Reporters Central LLC		11 East 26th Street	12th Floor		New York	NY	10001	
Republic Title of Texas, Inc.		363 Seventh Ave, 21st Fl						
Reputation Management Consultants		2701 W. Plano Parkway, Suite 100			Plano	TX	75075	
Rescue Cell Phone		92 Corporate Park	Suite C-700		Irvine	CA	92606	
		280 Legacy Dr	#104		Plano	TX	75023	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Rescue Cell Phone		6121 Greenville Ave			Dallas	TX	75206	
Research in Motion Corporation		12432 Collections Center Dr			Chicago	IL	60693	
Resolutions, LLC.		222 Berkeley Street	Suite 1060		Boston	MA	02116	
Resort Capital Advisors		712 Intracoastal Dr			Ft. Lauderdale	FL	33304	
Resource Technologies Corp.		PO Box 3201			Troy	MI	48007-3201	
Restaurant Associates	Attn Jeanine Miller	1071 Fifth Avenue			New York	NY	10128	
Resulte Universal		5151 Belt Line Rd	Suite 455		Dallas	TX	75254	
REUTERS LOAN PRICING CORPORATION		GENERAL POST OFFICE	PO BOX 26803		New York	NY	10087-6803	
Rey Rodriguez		Address on File						
Reynolds Frizzell Black Doyle Allen		1100 Louisiana	Ste 3500		Houston	TX	77002	
Reynolds, Steven		Address on File						NETHERLAN DS
RFPnetworks B. V.		Laan van Kronenburg 14			Amstelveen		1183AS	
Rhinotek Computer Products		PO Box 6205			Carson	CA	90749	
Rhode Island Dept. Business Regulation		Securities Division	1511 Pontiac Ave. Bldg		Cranston	RI	02920	
Rialto Capital Advisors, LLC		790 NW 107th Avenue	Suite 400		Miami	FL	33131	
RICCI, JENNIFER		Address on File						
Riccione Resources, Inc		17194 Preston Rd	Suite 102-390		Dallas	TX	75248-1221	
RICE, BRIAN		Address on File						
RICE, CHARLES		Address on File						
Rice, Christopher		Address on File						
Rich Bitterman		Address on File						
RICH DAPAAH		Address on File						
RICH, MICHAEL		Address on File						
RICHARD & SYLVIA TUCKER TRUST		Address on File						
Richard Arnitz		Address on File						
RICHARD BARNES TRUST		Address on File						
Richard Egelhof		Address on File						
Richard Even		Address on File						
Richard Harris		Address on File						
Richard Layton & Finger		One Rodney Square	920 North King Street		Wilmington	DE	19801	
RICHARD LINDENMUTH		Address on File						
Richard M. Alderman		Address on File						
Richard Pines		Address on File						
Richard Redden		Address on File						
Richard Rinehart		Address on File						
RICHARD TUCKER		Address on File						
Richards Partners		8750 N Central Expy	Suite 100		Dallas	TX	75231-6437	
Richards, Paul		Address on File						
Richards, Paul A.		Address on File						
Richardson, Kellie		Address on File						
Richmond Communicatinos Group, Inc.		2750 Northhaven Rd Ste 202			Dallas	TX	75229	
Richofsky, Lori		Address on File						

003323

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
RICK DREW		Address on File						
Ricky Swadley	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Ricoh Americas Corporation		PO BOX 13852			Newark	NJ	07188-0852	
Ricoh Americas Corporation		PO Box 4245			Carol Stream	IL	60197-4245	
Ricoh Americas Corporation		PO BOX 73210			Chicago	IL	60673-7210	
Ricoh Americas Corporation		PO Box 660342			Dallas	TX	75266-0342	
Ricoh Americas Corporation		PO BOX 730366			Dallas	TX	75373-0366	
RICOH BUSINESS SOLUTIONS		First Floor	4667 N. Royal Atlanta Dr.		Tucker	GA	30084	
RICOH BUSINESS SOLUTIONS		PO BOX 73210			Chicago	IL	60673-7210	
Ricoh USA, Inc.		PO Box 827577			Philadelphia	PA	19182-7577	
Ricoh USA, Inc.		21146 Network Place			Chicago	IL	60673-1211	
Ricoh USA, Inc.		PO Box 660342			Dallas	TX	75266-0342	
Riddle, Cara		Address on File						
Ridgely, Taylor		Address on File						
RIDGELY, TAYLOR		Address on File						
RIDGELY, TAYLOR		Address on File						
RIDGEWAY, BRIAN		Address on File						
Rigzone.com, Inc.		14531 FM 529, Ste 225			Houston	TX	77095	
RINGHEIMER, JEREMY		Address on File						
RIORDAN, TERRENCE		Address on File						
RIORDAN, TERRENCE C.		Address on File						
Rios, Heriberto		Address on File						
Ripe4Offices		13-19 Circus Rd	St. Johns Wood		London		NW8 6PB	United Kingdom
Ripple Effect Strategies, Inc.		503 E. Jackson St.	Suite 235		Tampa	FL	33602-4904	
RISI		PO BOX 16586			North Hollywood	CA	91615-6586	
Risk Metrics Group		PO Box 2621			Buffalo	NY	14240-2621	
Ritch, Lauren N.		Address on File						
Riveron Consulting, LLC		2515 McKinney Avenue	Suite 1200		Dallas	TX	75201	
RL Consulting		19228 Charandy Drive			Leesburg	VA	20175	
RME		PO Box 261237			Tampa	FL	33685-1237	
ROARK, BRANDEN		Address on File						
ROB BUCK PHOTOGRAPHS, INC		3411 CLEARVIEW DR			Austin	TX	78703	
ROB PEDERSON		Address on File						
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP		2000 K Street, NW	4th FL		Washington	DC	20006	
Robert A. Leonard		Address on File						
Robert Carey		Address on File						
Robert Flink		Address on File						
ROBERT GAGE		Address on File						
ROBERT GEORGE		Address on File						
Robert Half Finance and Accounting		2613 Camino Ramon			San Ramon	CA	94583	
Robert Half Finance and Accounting		PO Box 743295			Los Angeles	CA	90074-3295	

003324

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Robert Half Legal		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Half Legal		File 73484	PO Box 60000		San Francisco	CA	94160-3484	
Robert Half Management Resources		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Half Management Resources		PO Box 60000			San Francisco	CA	94160-3484	
Robert Half Technology		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Half Technology		FILE 73484	PO Box 60000		San Francisco	CA	94160-3484	
Robert Hargshesheimer		Address on File						
Robert M. Garza & Associates, Inc.		1001 Hot Springs Dr			Allen	TX	75013	
ROBERT MUNROE		Address on File						
Robert Pederson		Address on File						
Robert Peiser		Address on File						
Robert Roland		Address on File						
Robert Sullivan		Address on File						
ROBERT THOMPSON		Address on File						
Robert William Chanda		Address on File						
Roberta L. Fisher		Address on File						
Robin Russell, Joseph P. Rovira		600 Travis Street, Suite 4200			Houston	TX	77002	
Robust Advisors, Inc.	Huntton Andrews Kurth LLP	7 DeGraaf Court			Mahwah	NJ	07430	
ROBY, JOHN		Address on File						
Rochelle McCullough, LLP	E. P. Keiffer	325 North St Paul Street, Suite 4500			Dallas	TX	75201	
Rockwall CDO II Ltd.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rockwall CDO II, Ltd. Investors Bank & Trust Company	Investors Bank & Trust Company	200 Claredon Street	CDO Services Group		Boston	MA	02116	
Rockwall CDO II, Ltd. Investors Bank & Trust Company	Rockwall CDO II Ltd. c/o Maples Finance Limited	P.O. Box 1093GT, Boundary Hall	Cricket Square George Town, Grand Cayman	Attention The Directors-Stratford CLO Ltd. Worldwide Securities Services-Rockwall CDO Ltd.	Grand Cayman			Cayman Islands
Rockwall CDO Ltd.	JPMorgan Chase Bank	600 Travis Street	50th Floor		Houston	TX	77002	
Rockwall CDO Ltd., et al	c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House	George Town	Grand Cayman			Cayman Islands
Rockwell CDO (Delaware) Corp.	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rockwell CDO I Ltd	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rockwell CDO II Ltd	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rockwell CDO, Ltd	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rod Laughlin		Address on File						
Rod Lim		Address on File						

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
RODDA, SANDIE		Address on File						
RODDA, SANDIE K		Address on File						
Roderick Givens		Address on File						
Rodolfo Esquivel		Address on File						
Roe Golightly		Address on File						
Roerber, Blair A.		Address on File						
ROGER CHEN		Address on File						
ROGER LI		Address on File						
ROGGE DUNN GROUP, PC	Brian P. Shaw	500 N. Akard Street, Suite 1900			Dallas	TX	75201	
Romacorp. Inc.	David Short	1700 Alma Drive	Suite 400		Plano	TX	75075	
Ron Attar		Address on File						
Ron Dvari		Address on File						
Ron Patterson Insurance		2435 N Central Expy Ste 1600			Richardson	TX	75080-2784	
Ronald McDonald House of Dallas		5641 Medical Center Dr			Dallas	TX	75235	
ROOS, PAUL		Address on File						
Ropes & Gray LLP		800 Boylston Street			Boston	MA	02199	
Ropes & Gray LLP		One International Place			Boston	MA	02110-2624	
Ropes & Gray LLP		PO Box 414265			Boston	MA	02214-4265	
Rosen Systems, Inc.		2323 Langford St.			Dallas	TX	75208	
Rosenthal, Monhait, & Goddess PA		Suite 1401, 919 Market St	PO Box 1070		Wilmington	DE	19899-1070	
Rosewood Crescent Hotel	Attn Ms Eva Delgadillo	PO Box 845576			Dallas	TX	75284-5576	
Rosewood Crescent Hotel		400 Crescent Court			Dallas	TX	75201	
Rosewood Crescent Hotel & Rosewood Crescent Hotel		Rosewood Mansion on Turtle Creek	400 Crescent Court		Dallas	TX	75201	
Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610			Dallas	TX	75201	
Ross Smith Energy Group		400, 407 - 8th Avenue			Dallas	TX	75201	
Ross Vaillancourt		Address on File			CALGARY	AB	T2P 4Z2	CANADA
ROSS, JAMES		Address on File						
Roth Staffing Companies, LP		PO Box 848761			Los Angeles	CA	90084-8761	
ROTHSTEIN, JASON		Address on File						
Rothstein, Kass & Company, P.C.		9171 Wilshire Blvd, Ste 500			Beverly Hills	CA	90210-5591	
Roubini Global Economics, LLC		131 Varick St., Ste 1005			New York	NY	10013	
Roubini Global Economics, LLC		PO Box 10087			Uniondale	NY	11555	
Rough Creek Lodge		PO Box 2400			Glen Rose	TX	76043	
Round Hill Country Club		3169 Roundhill Rd			Alamo	CA	94507	
ROURKE, KEVIN		Address on File						
ROWLETT HILL, LLP		25 HIGHLAND PARK VILLAGE	STE 100-448		Dallas	TX	75205	
Rowlett Law PLLC		100 HIGHLAND PARK VILLAGE	STE 200		Dallas	TX	75205	
Rowlett Law PLLC		12655 N Central Expy Ste 421			Dallas	TX	75243	

003326



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ROY SEROUSSI		Address on File			Long Island City	NY	11101	
Royal Dispatch Services Inc		43-22 Van Dam Street						
ROYAL PRINTING GROUP, INC.			STE 250		Dallas	TX	75229	
RR Donnelley		2035 ROYAL LN			Cleveland	OH	44193	
RR Donnelley		PO Box 932721			Atlanta	GA	30353-8602	
RR Donnelley Financial, Inc.		PO Box 538602			Cleveland	OH	44193	
RR Donnelley Financial, Inc.		PO Box 932721			Dallas	TX	75373-0216	
RR Donnelley Financial, Inc.		PO Box 730216						
RR Donnelley Receivables, Inc		PO Box 13654			Newark	NJ	07188-0001	
RSM MCGladrey		5155 Paysphere Circle			Chicago	IL	60674	
RSM US LLP		5155 Paysphere Circle			Chicago	IL	60674	
RTB Media LLC		619 Willow Ave	Suite 3L		Hoboken	NJ	07030	
Rubin and Rudman LLP		50 Rowes Wharf			Boston	MA	02110	
Rudy Mora Brick Masonry		131 Rosegarden Dr.			McKinney	TX	75070	
RUGG, STACEY		Address on File						
Rugmakers Gallery, Inc.		4920 Cash Rd.			Dallas	TX	75247-6308	
RUSCH, MARYAM		Address on File						
Russ Kathrein		Address on File						
Russel Reynolds & Associates		Church Street Station	Post Office Box 6427		New York	NY	10249	
Russell Jones & Walker		61 Sandmere Rd	Clapham		London		SW1Y4UR	United Kingdom
Russell Reynolds Associates		Church Street Station	PO Box 6427		New York	NY	77100	
Russell W. May		Address on File						
Russell W. May		Address on File						
RUTLEDGE, ROBERT		Address on File						
Ryan Associates Technology LLC		Address on File						
RYAN HIGHTOWER		21 Hillandale Dr			New Rochelle	NY	10804	
Ryan Law		Address on File						
Ryan Lucero		Address on File						
Ryan Moore		Address on File						
Ryan Odowd Photography		Address on File						
Ryan P. Newell (Connolly Gallagher LLP)		3924 County Road 168			McKinney	TX	75071	
RYAN VOTAW		1201 N. Market Street, 20th Floor			Wilmington	DE	19801	
Ryan, Inc.	Attn Jeffrey C. Wisler, Esq.	Address on File						
Ryder, Phillip		Address on File						
S&P Global Market Intelligence		Address on File						
S&P Global Market Intelligence LLC		33356 Collection Center Drive			Chicago	IL	60693-0333	
S. LeBlanc & Company		55 Water Street			New York	NY	10041-0000	
Saagar Grover		942 Shore Crest Rd.			Carlsbad	CA	92011	
Sachdev, Kunal		Address on File						
Sacred Heart in NYC		Address on File						
SACRS	c/o Strategic Local Govt Services, LLC	1 East 91st ST.			New York	NY	10128	
		1415 L Street, Suite 1000			Sacramento	CA	95814	

003327

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Sadis & Goldberg	Stephen Huttler	551 Fifth Avenue, 21st Flr			New York	NY	10176	
SAEHLER, CHRISTOPHER J.		Address on File						
Sagar Vira		Address on File						
Sage Document Services Group LLC								
Sage Search Partners		2 West 45th Street	Ste 407		New York	NY	10036	
SagePoint Financial, Inc.	Attn Supervision-Reimbursement	3811 Turtle Creek Blvd	Suite 850		Dallas	TX	75219	
SagePoint Financial, Inc.		2800 N Central Ave, Suite 1200			Phoenix	AZ	85004	
SAKUNGEW, PON		74 8th St. SE	Suite 105		Hickory	NC	28602	
Sal Villacorta		Address on File						
Salesforce.com		Address on File						
Salesforce.com		PO BOX 842569			Boston	MA	02284	
Salesforce.com		PO Box 5126			Carol Stream	IL	60197-5126	
Salesmanship Club Chrtbl Golf Dallas Inc		PO Box 203141			Dallas	TX	75320-3141	
Sali Fund Management, LLC	Tom Nieman	106 E. Tenth St.	Suite 320		Dallas	TX	75203	
Salomon Smith Barney Inc. Highland Loan Funding V Ltd.		6836 Austin Center Blvd.	Queensgate House South Church Street		Austin	TX	78731	
Salomon Smith Barney Inc. Highland Loan Funding V Ltd.	Highland Loan Funding V Ltd	P.O. Box 1093 GT		The Directors	George Town		KY11-1108	Cayman Islands
Salomon Smith Barney Inc. Highland Loan Funding V Ltd.	Salomon Smith Barney	390 Greenwich Street	4th Floor	FI Structured Products Group	New York	NY	10013-2396	
Salutis Valuation Group, Inc.		111 West Myrtle Ave	Unit 6		Foley	AL	36535	
SAM Engineering & Testing		1115 Luke St, Suite 100			Irving	TX	75061	
SAM GARCIA		Address on File						
Sam Graham		Address on File						
Sams Club		PO Box 9001152			Louisville	KY	40290-1152	
Sanborn, Brian		Address on File						
SANBORN, PATRICIA		Address on File						
SANCHEZ, RODERICK		Address on File						
SANDEEP GUPTA		Address on File						
SANDEEP GUPTA		Address on File						
Sandlapper Securities, LLC		406 N Pleasantburg Dr			Greenville	SC	29607-2128	
Sands Point Funding, Ltd.	c/o Guggenheim Partners	330 Madison Ave, 11th Floor			New York	NY	10017	
SANJEEV MEHTA		Address on File						
Santoyo Moore Wehmeyer P.C.		1020 NE Loop 410, Suite 320			San Antonio	TX	78209	
Sard Verbinnen & Co.		630 Third Ave			New York	NY	10017	
Sard Verbinnen & Co.		General Post Office	PO Box 26781		New York	NY	10087-6781	
Sard Verbinnen, LLC		PO Box 26781			New York	NY	10087-6781	
Satuit Technologies Inc.		80 Washington St.	Unit M50		Norwell	MA	02061	
Satuit Technologies Inc.		100 Grossman Drive	Suite 302		Braintree	MA	02184	
Sawvy Training & Consulting		4530 Independence Trail			Evergreen	CO	80439	
Sawko & Burroughs, P.C.		1172 Bent Oaks Drive			Denton	TX	76210	
Saxton Morgan		PO Box 2302			Addison	TX	75001	
Sayles Werbner		Address on File						
Sbati & Company PLLC	Mazin A Sbati	J.P. Morgan Chase Tower	2200 Ross Avenue	Suite 4900W	Dallas	TX	75201	
SBC		PO Box 660324			Dallas	TX	75266-0324	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SBC Long Distance		PO Box 660688			Dallas	TX	75266-0688	
SBC Southwestern Bell		PO Box 5069			Saginaw	MI	48605-5069	
SC Department of Revenue		300A Outlet Pointe Boulevard			Columbia	SC	29210	
Scarab Consulting	AMEGY BANK NATIONAL ASSOCIATION	ASSIGNEE FOR SCARAB ACQUISITION, LLC	DEPT 338, PO BOX 4346		Houston	TX	77210-4346	
Scarab Consulting		Dept 338, PO Box 4346			Houston	TX	77210	
SCF Securities, Inc.		504 Lavaca, Suite 910			Austin	TX	78701	
SCHEMBRI, STEPHEN		155 E. Shaw Avenue Address on File	Suite 102		Fresno	CA	93710	
Schmidt & Stacey Consulting Eng. Inc.		400 City Place Address on File	2711 N. Haskell Ave. Lock Box 29		Dallas	TX	75204	
SCHNABEL, MATTHEW		Address on File						
School, Jennifer		Address on File						
SCHRAY, NATHAN		Address on File						
SCHRECK, DEANNE		Address on File						
Schroepfer Wessels Jolesch		8401 North Central Expwy Ste 300			Dallas	TX	75225	
SCHROTH, MELISSA		Address on File						
SCHULER, ELLIOT		Address on File						
SCHULER, KARISSA		Address on File						
Schulte Roth & Zabel LLP	James T. Bentley	919 Third Avenue			New York	NY	10022	
Schumacher Cargo Logistics, Inc.		550 W. 135th Street			Gardena	CA	90248	
SCI		31/507 Clerknwell Close			London		EC1R 0AT	United Kingdom
Scoop Reprint Source		30270 Rancho Viejo Road	Suite E		San Juan Capistrano	CA	92675	
Scott A. Snook		Address on File						
Scott B. Ellington	c/o David Neier, Winston Strawn LLP	200 Park Avenue			New York	NY	10166	
Scott B. Ellington	Scott Ellington c/o Francis A Smith, Ross & Smith PC	Plaza of the Americas Address on File	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
SCOTT B. ELLINGTON		Address on File						
SCOTT COOPER		Address on File						
SCOTT Douglass & McConnico LLP		303 Colorado Street, Suite 2400			Austin	TX	78701	
Scott Ellington	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue 1900 North Pearl, Suite 1500		New York	NY	10018	
Scott Ellington	Michelle Hartmann	Baker & McKenzie LLP Address on File			Dallas	TX	75201	
Scott F. Kavanaugh		Address on File						
Scott F. Kavanaugh		Address on File						
Scott Harris		Address on File						
Scott Hoermann		Address on File						
Scott K Meyer		Address on File						
SCOTT KOHNEN		Address on File						
Scott McCurry		Address on File						
SCOTT NELSON		Address on File						
Scott Niebling Valuation Group		3930 East Ray Rd	Suite 180		Phoenix	AZ	85044	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SCOTT ROSENTHAL		Address on File						
SCOTT SCHEIN		Address on File						
Scott Shpilberg		Address on File						
SCOTT TANDBERG		Address on File						
Scott Waggoner		Address on File						
Scura Paley Securities LLC		489 5th Ave, 15th Flr			New York	NY	10017	
Sea Island Company	c/o Group Billing, Acctg Dept	100 Cloister Drive			Sea Island	GA	31561	
SEAL Legacy Foundation		1401 McKinney	Ste 2222		Houston	TX	77010	
SEAMAN, CRISTINA		Address on File						
SeamlessWeb Professional Solutions, Inc.		PO Box 5439			New York	NY	10087-5439	
SeamlessWeb Professional Solutions, Inc.		PO Box 71649			Chicago	IL	60694-1649	
Sean Neumayer Photography		4321 S. Coolidge Ave			Tampa	FL	33611	
Search Finance		14001 Dallas Pkwy	Ste 1200		Dallas	TX	75240	
Seaver, Jeffrey		Address on File						
SEC Headquarters	Mail Stop 7010 / 2017 Annual Report	100 F Street, NE	Mail Stop 7010		WASHINGTON	DC	20549-2000	
Secretary of State	Division of Corporations	Franchise Tax	P.O. Box 7040		Dover	DE	19903	
Secretary of State		PO BOX 12887			Austin	TX	78711	
Secretary of State		1500 11th St	IRC Unit, 3rd FL		Sacramento	CA	95814	
Secretary of State		PO Box 13550			Austin	TX	78711-3550	
Secretary of State		PO Box 13697			Austin	TX	78711-3697	
Secretary of State		801 Capitol Way South	PO Box 40234		Olympia	WA	98504-0234	
Secretary of State of Illinois		Illinois Securities Department	421 E. Capital Ave., 2nd Fl.		Springfield	IL	62701	
SECRETARY OF STATE OF TEXAS	ACCOUNTS RECEIVABLE	PO BOX 12887			Austin	TX	78711-2887	
Secretary of the Commonwealth		Securities Division	One Ashburton Place, Rm 1701		Boston	MA	02108	
Secretary of Treasury		P.O. Box 7040			Dover	DE	19903	
Secretary of Treasury		15th & Pennsylvania Avenue, N.W.			Washington	DC	20220	
Secure Concepts LLC		128 East BRdway #501			New York	NY	10002	
Secure Options, Inc.		5420 Bryan Street			Dallas	TX	75206	
Secure Options, Inc.		2156 W Northwest Hwy Ste 300			Dallas	TX	75220	
Secure Share Network LLC		3475 Piedmont Road NE, Ste 450			Atlanta	GA	30305	
Secure Source Inc.		710 South Kimball Ave			Southlake	TX	76092	
Secured Access Systems, LLC		1913 Walden Court			Flower Mound	TX	75022	
Securities & Exchange Commission	Division of Trading & Markets	100 F Street, NE	Mail Stop 7010		WASHINGTON	DC	20549-2000	
Securities & Exchange Commission		Office of General Counsel-Bankruptcy	100 F Street, N.E.		Washington	DC	20549	
Securities America	Michael A. Berman, Esq.	12325 Port Grace Blvd.			La Vista	NE	68128	
Securities America, Inc. (Cooper McManus)		9870 Research Drive			Irvine	CA	92618-3302	

003330

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Securities Commissioner State of ND		State Capitol	600 East Boulevard Avenue, 5th Floor		Bismarck	ND	58505-0510	
Securities Division, AZ Corp. Comm		Securities Division	1300 W Washington St #3		Phoenix	AZ	85007	
Securities Investor Protection Corp		PO Box 92185			Washington	DC	20090-2185	
Securities Service Network		115 Glastonbury Blvd			Glastonbury	CT	06033	
See Food Media LLC		496 Lagurdal Place # 4C			New York	NY	10012	
SEI Investments Distribution Co.	Attn Chris Rowan-SIDCO Acctng	One Freedom Valley Dr			Oaks	PA	19456	
SEIDEN KRIEGER ASSOCIATES, INC		375 PARK AVE			New York	NY	10152	
Selah Photography		5421 Shiver Road			Keller	TX	76244	
Select Security & Private Investigations		PO Box 1352			Rockwall	TX	75087	
Selig ADR, Inc		5009 Caroline St, Ste 100			Houston	TX	77004	
Selman, Matthew		Address on File						
SERENI, ALEXIS J.		Address on File						
SERV/CORP		Level 19	Two International Finance Center	8 Finance Street	CENTRAL HONG KONG			HONG KONG
SERV/CORP		6 BATTERY ROAD	RAFFLES PLACE		Singapore		049909	SINGAPORE
Service Systems Associates	Attn Robin Scichilli	650 S RL Thornton Frwy			Dallas	TX	75203	
SET, AUGUSTUS		Address on File						
Selfords Solicitors		14 Haydon Place			Guilford		GU1 4LL	United Kingdom
Seth Weinstein		Address on File						
Seton Hall University	Attn Bryan Felt	400 South Orange Ave			South Orange	NJ	07079	
Severson, Keith		Address on File						
SEVILLA, JEAN-PAUL		Address on File						
Seward & Kissel		One Battery Park Plaza			New York	NY	10004	
Seyfarth Shaw LLP		131 S. Dearborn Street, Suite 2400			Chicago	IL	60603	
ShadowTV, Inc.		630 9th Ave	Suite 1000		New York	NY	10036	
Shag Carpet Productions, Inc.		502 South 2nd Avenue			Dallas	TX	75226	
SHAH, AMOL		Address on File						
SHAHDA, CHRIS		Address on File						
SHAHDA, CHRISTOPHER		Address on File						
Shahzad Pirvani		Address on File						
Shakelford Melton & McKinley		3333 Lee Pkwy	10 th fl		Dallas	TX	75219	
Shane Tipton		Address on File						
Shannon, Gracey, Ratliff & Miller, LLP		420 Commerce St, Ste 500			Fort Worth	TX	76102	
SharePoint Solutions	Attn Accounts Receivable	PO Box 1588			Brentwood	TN	37024-1588	
SHARON EASLEY		Address on File						
SHARON SHUSTER		Address on File						
SHARRY, GREGORY		Address on File						
Shasta Land Management Consultants		1229 South Street			Redding	CA	96001	

003331

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SHAWN LEDERMAN		Address on File						
Shawn Raver		Address on File						
Shayla Kelly		Address on File						
Shea & Carlyon Ltd		701 Bridger Ave #850			LasVegas	NV	89101	
Shearman & Sterling LLP		5990 Lexington Ave			New York	NY	10022-6069	
Shelley Shackelford & Co.		5807 SANDHURST LN SUITE D			Dallas	TX	75206	
SHELLY RASTOGI		Address on File						
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP		333 S. Hope Street	48th Floor		Los Angeles	CA	90071	
SHIFFERD, CHARLES		Address on File						
Shoot2Sell		14681 Midway Rd	Ste 105		Addison	TX	75001	
Short, Lauren		Address on File						
SHPILBERG, SCOTT		Address on File						
Shred-it USA		11101 Franklin Avenue	Suite 100		Franklin Park	IL	60131-1403	
Shred-it USA		28883 Network Place			Chicago	IL	60673-1288	
Shred-it USA		PO Box 730504			Dallas	TX	75373-0504	
Shred-it USA		PO Box 101007			Pasadena	CA	91189-1007	
SHUMWAY, CLAY		Address on File						
SHUSTER, SHARON		Address on File						
Siber Systems, Inc		3701 Pender Dr Ste 400			Fairfax	VA	22030-6045	
Siddharth Mehra		Address on File						
SIDLEY AUSTIN LLP		PO BOX 0642			Chicago	IL	60690	
SIEGEL, HAROLD		Address on File						
Siepe Services, LLC	Chris Doty	5440 Harvest Hill Road Suite 100			Dallas	TX	75230	
Siepe Services, LLC		5440 Harvest Hill Road	Suite 100		Dallas	TX	75230	
Siepe Services, LLC		2200 Ross Ave, Ste 4700E			Dallas	TX	75201-0000	
Siepe, LLC		6135 Churchill Way			Dallas	TX	75230	
SIEVERT, AMY		Address on File						
Sigma Financial Corp	Attn Jackie Pascarella	1717 N. IH 35, Ste 150			Round Rock	TX	78664	
Sigma Financial Corporation		300 Parkland Plaza			Ann Arbor	MI	48103	
Signator Investors, Inc.		20 E Thomas Rd Ste 2000			Phoenix	AZ	85012-3129	
Signature Productions, Ltd.		5331 85th St.			Lubbock	TX	79424	
Silis Cummis & Gross		The Legal Center	One Riverfront Plaza		Newark	NJ	07102-5400	
Silva, Alison		Address on File						
Silver Scriptor LLC		PO Box 9012			Austin	TX	78766	
Silver Scriptor LLC		PO Box 61064			Seattle	WA	98141	
Silverman Communications Group		11 Carol Ct.			Glen Rock	NJ	07452	
SIMEK, DAVID		Address on File						
SIMMONS, DAVID		Address on File						
Simon, Scott		Address on File						
Simpson Appraisal, Inc		6009 Belt Line Rd., Suite 145			Dallas	TX	75254	
SIMPSON THACHER & BARTLETT LLP		425 LEXINGTON AVE			New York	NY	10017-3954	
SIMPSON THACHER & BARTLETT LLP		PO Box 29008			New York	NY	10087-9008	
Sims, Austin		Address on File						

003332

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SINGH, TANIA		Address on File						
SISK, JESSICA		Address on File						
Sitrick and Company Inc.		11999 Vincente Blvd	Penthouse		Los Angeles	CA	90049	
Sitrick and Company Inc.		1840 Century Park East Ste 800			Los Angeles	CA	90067	
SK Research, LLC		10320 Little Patuxent Parkway	12th Floor		Columbia	MD	21044	
Skadden, Arps, Slate, Meagher & Flom LLP		Four Times Square			New York	NY	10036	
Skadden, Arps, Slate, Meagher & Flom LLP		PO Box 1764			White Plains	NY	10602	
SK COMMUNICATION PRODUCTS, LLC		P.O. BOX 874843			Kansas City	MO	64187-4843	
Skybridge Alternatives Conference	Attn Jeanie Reyes	527 Madison Ave, 16th Flr			New York	NY	10022	
SkyBridge SALT LLC	Attn Jeanie Reyes	527 Madison Ave, 16th Floor			New York	NY	10022	
Skyline DFW Exhibits & Events		900 Avenue S			Grand Prairie	TX	75050	
Skyline Sector 5		525 113th Street			Arlington	TX	76011	
Siant Partners		3838 Oak Lawn Avenue	Suite 1550		Dallas	TX	75219	
Slayton International		One North Franklin Ste 2500			Chicago	IL	60606	
SlideGenius, Inc.		1660 Hotel Cir N # 175			San Diego	CA	92108-2807	
SloMo Lounge		4901 Harbor Court			Flower Mound	TX	75022	
Smallwood, Allan		Address on File						
Smarsh		921 SW Washington St	Suite 540		Portland	OR	97205	
Smarsh		PO Box 505265			Saint Louis	MO	63150-5265	
Smith Katzenstein Jenkins LLP		800 Delaware Avenue, Ste. 1000	P.O. Box 410		Washington	DE	19899	
SMITH, DAVID		Address on File						
Smith, Felicia		Address on File						
Smith, Ian		Address on File						
Smith, Jackson, Boyer & Bovard		9400 NCX, Ste 420 9400 N Central Expwy			Dallas	TX	75231-5063	
SMITH, SEAN		Address on File						
Smith, Theodore		Address on File						
SMS		WELLS FARGO BANK-IN CARE OF SMS	6480 ARGO ST		Dallas	TX	75214	
SMU Cox School of Business		Pitts Leadership Award	PO Box 750333		Dallas	TX	75275-0333	
Snaptraffic Consulting		9 Cherry Pl.			Huntington	NY	11743	
Snell & Wilmer LLP		One Arizona Center	400 E. Van Buren, Suite 1900		Phoenix	AZ	85004-2202	
SNI Companies		14241 Dallas Parkway	Suite 550		Dallas	TX	75254	
SNL Financial		PO BOX 414624			Boston	MA	02241-4624	
SNR Denton US LLP		233 S. Wacker Dr	Suite 7800		Chicago	IL	60606	
Snyder Kearney, LLC		10320 Little Patuxent Pkwy						
Snyder, Evan		Suite 1200			Columbia	MD	21044	
Social Matters		Address on File						
		PO Box 800357			Dallas	TX	75380-0357	

003333



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SOCIETY FOR HUMAN RESOURCE MANAGEMENT		PO BOX 79482			Baltimore	MD	21279-0482	
Society of St. Vincent de Paul, Inc	Diocesan Council of Dallas	10500 Steppington Drive, Suite 251			Dallas	TX	75230	
Software Shelf International, Inc		601 Cleveland Street, Suite 710			Cleanwater	FL	33755	
Software Shelf International, Inc		PO Box 7343			Menlo Park	CA	94026	
SoftwareONE, Inc.		20875 Crossroads Cir. Suite 1			Waukesha	WI	53186	
SoftwareONE, Inc.		PO Box 510944	15700 W. Cleveland Ave		New Berlin	WI	53151-0944	
Sohn Conference Foundation	c/o Garwood Events	225 106 Street, Ste 15M			New York	NY	10025	
Solarwinds		7171 Southwest Parkway	Bldg 400		Austin	TX	78735-0000	
SolarWinds, Inc		PO Box 730720			Dallas	TX	75373	
Solid Details LLC		2121 Santa Anna Ave.			Dallas	TX	75228	
Solomon R. Guggenheim Foundation		345 Hudson Street	12th Floor		New York	NY	10014	
SOLOW BUILDING COMPANY II, LLC		PO BOX 27112			New York	NY	10087-7112	
SOLOW BUILDING COMPANY II, LLC		PO Box 823812			Philadelphia	PA	19182-3812	
SOMMER FRAZIER		Address on File						
Sonny Bryans Smokehouse		2625 Seelcoo St			Dallas	TX	75235-2608	
Sony Pictures Studio Group	A Sony Pictures Entertainment Company	File #54715			Los Angeles	CA	90074-4715	
Soto, Hailey		Address on File						
Source Code North America, Inc		Dept CH 16510			Palatine	IL	60055-6510	
Source, Inc.		PO Box 202414			Dallas	TX	75320	
SourceMedia		PO Box 4871			Chicago	IL	60680	
SourceMedia		PO Box 4634			Chicago	IL	60680-9598	
SourceMedia		PO Box 71633			Chicago	IL	60694-1633	
South Dakota Division of Securities		124 S. Euclid, Ste. 104			Pierre	SD	57501	
Southern Conference Teacher Retirement		PO Box 642			Sturbridge	MA	01566	
Southern Methodist University	Attn Erin Sutton	PO Box 750460			Dallas	TX	75275-0460	
Southfork CLO Ltd. JPMorgan Chase Bank, National Association	Attention The Directors-Stratford CLO Ltd.	Queensgate House, South Church Street, George Town		P. O. Box 1093GT	Grand Cayman			Cayman Islands
Southfork CLO Ltd. JPMorgan Chase Bank, National Association		600 Travis Street	50th Floor	Institutional Trust Services-Southfork CLO Ltd.	Houston	TX	77002	
Southfork CLO, Ltd.	The Directors	PO Box 1093 GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Southland Property Tax Consultants, Inc		201 S Main St Ste 1460			Fort Worth	TX	76102-3146	

003334

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Southland Property Tax Consultants, Inc		777 Main Street	Suite 1960		Fort Worth	TX	76102-5323	
Southwest Ford Inc.		PO Box 234			Weatherford	TX	76086	
Southwest Glass, Inc.		2333 Glenda Lane			Dallas	TX	75229	
Southwest Reporting & Video Service		826 Heights Blvd.			Houston	TX	77007	
Southwest Search		PO Box 710596			Dallas	TX	75371-0596	
Southwest Securities, Inc.	Attn Holly Peritz	1201 Elm St, Ste 3500			Dallas	TX	75270	
Southwestern Medical Foundation		Parkland Hall at Old Parkland	3889 Maple Ave, Ste 100		Dallas	TX	75219	
Sove Lavi		Kimberly Simeus	1212 Wyndham Hill Lane		Southlake	TX	76092	
SOWIN, JOSEPH		Address on File						
SOWIN, JOSEPH		Address on File						
Spears & Associates		8908 S. Yale	Suite 440		Tulsa	OK	74137	
Special Delivery Service, Inc.		5470 L.B.J. Freeway			Dallas	TX	75240	
Special Fund For Disability Benefits	Accounts-DB Penalty	328 State Street			Schenectady	NY	12305-2318	
Special Fund For Disability Benefits	Accounts-DB Penalty Room	301 20 Park St			Albany	NY	12207-1674	
Specialized Schedulers, Inc.		22334 SW 107th Ave			Tualatin	OR	97062	
SPECTOR, ANASTASIYA		Address on File						
SPECTRUM GAMING GROUP LLC		2 DONOVAN ROAD			Pennington	NJ	08534	
SPEICHER, NATHAN		Address on File						
Spence, Austin		Address on File						
Spherion		PO Box 100186			Atlanta	GA	30384-0186	
Spinner Printing Company		3335 Keller Springs #100			Carrollton	TX	75006	
Spin-Off Advisors, LLC		1327 W. Washington Blvd	Ste 4-G		Chicago	IL	60607	
Spoke LLC		3304 9th St. NE #1			Washington	DC	20017	
Spot Cooling Systems		1420 Century Dr Ste 800			Carrollton	TX	75006	
Spotlight Marketing								
Communications		18101 Von Karman Ave.	Third Floor		Irvine	CA	92612	
Springboard Network LLC		9900 Spectrum Drive			Austin	TX	78717-0000	
Sprint		PO Box 660092			Dallas	TX	75266-0092	
Square, Inc		1455 Market St.	Suite 600		San Francisco	CA	94103	
Squire Patton Boggs (US) LLP		PO Box 643051			Cincinnati	OH	45264	
ST JUDE CHILDRENS RESEARCH HOSPITAL		501 St. Jude Place			Memphis	TN	38105	
ST JUDE CHILDRENS RESEARCH HOSPITAL		4324 N BELTLINE RD	STE C-206		Irving	TX	75038	
ST LOUIS CARDINALS		700 Clark St	Group Ticket Dept.		Saint Louis	MO	63102	
STA SVDP		6306 Kenwood Ave			Dallas	TX	75214	
Stacey Morimoto		Address on File						
STACEY RUGG		Address on File						
Staffelbach, Inc.		2525 McKinnon, Suite 800			Dallas	TX	75201	
STAGGS, JOE		Address on File						
Staltari, Mauro		Address on File						
Stan Lata		Address on File						

003335

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Standard & Poors	Capital IQ	2542 Collection Center Dr			Chicago	IL	60693	
Standard & Poors/Capital IQ		33356 Collection Center Drive			Chicago	IL	60693-0333	
Standard Ins. Co. RAS Executive Benefits	Attn Glenda Wright-P4B	1100 SW 6th Ave			Portland	OR	97204	
Standard Ins. Co. RAS Executive Benefits		INDIVIDUAL CLIENT SERVICES	PO BOX 711		Portland	OR	97207-0711	
Standard Ins. Co. RAS Executive Benefits		PO BOX 5674			Portland	OR	97228-5674	
Standard Insurance Company		1100 SW 6th Ave			Portland	OR	97204	
Standard Insurance Company		PO Box 2707			Portland	OR	97208-3358	
Standard Insurance Company		PO BOX 3358			Portland	OR	97208-3358	
Standard Research Corporation		4430 Tyne Blvd			Nashville	TN	37215	
STANLEY ACCESS TECH LLC		PO BOX 0371595			Pittsburgh	PA	15251-7595	
Stanton Advisors LLC		300 Coles Street	Apt. 802		Jersey City	NJ	07310	
Stanton Law Firm PC	James Stanton	1717 Main St., Suite 3800			Dallas	TX	75201	
Stanton Law Firm PC		4350 Beltway Drive			Addison	TX	75001	
Stanton LLP		1717 Main St, Ste 3800			Dallas	TX	75201	
Stanton LLP		9400 N Central Expwy	Ste 1304		Dallas	TX	75231	
Staples Credit Plan		Dept. 22 - 0008144217 PO Box 9020			Des Moines	IA	50368-9020	
Star Displays		16914 FM 2920			Tomball	TX	77377	
Star Pro Staffing		8600 Preston Rd Apt 113			Dallas	TX	75225-3529	
State Auditor		1900 Kanawha Boulevard East	Building 1, Room W-100		Charleston	WV	25305	
STATE BAR OF TEXAS		PO Box 5075			Saginaw	MI	48605-5075	
State Bar of Texas		PO Box 12487			Austin	TX	78711-2487	
State Bar of Texas		PO BOX 13007	MCLE DEPT		Austin	TX	78711-3007	
State Bar of Texas		PO Box 149335			Austin	TX	78714-9335	
State Comptroller		111 E 17th St			Austin	TX	78774-0001	
State Comptroller		Comptroller of Public Accounts	111 E 17th St		Austin	TX	78774-0100	
State Fair of TX Youth Livestock Auction		PO Box 150009			Dallas	TX	75315	
State Insurance Fund		PO Box 4779			Syracuse	NY	13221-4779	
State Insurance Fund		PO Box 5261	Disability Benefits		Binghamton	NY	13902-5261	
State of Alaska		Securities Section, Division of Banking	333 W. Willoughby Ave., Ste. 9		Juneau	AK	99801	
STATE OF ARKANSAS STATE OF CALIFORNIA, FRANCHISE TAX BOARD	DEPT OF FINANCE & ADMINISTRATION	PO BOX 919	CORPORATION INCOME TAX SECTION		Little Rock	AR	72203-0919	
State of Delaware	Division of Corporations	PO BOX 942867			Sacramento	CA	94267-0011	
		PO Box 5509			Binghamton	NY	13902-5509	

003336

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
STATE OF MARYLAND	Dept of Assessments & Taxation	Personal Property Division	PO Box 17052		Baltimore	MD	21297-1052	
STATE OF MICHIGAN	COMPOSITE RETURN	PO BOX 30058	MICHIGAN DEPT OF TREASURY		Lansing	MI	48909	
STATE OF MICHIGAN	Corp. Securities & Comm Licensing Bureau	525 W. Allegan Street	Audit & Exam Division		Lansing	MI	48909	
STATE OF MICHIGAN	MICHIGAN DEPARTMENT OF TREASURY	DEPT 77375	PO BOX 77000		Detroit	MI	48277-0375	
STATE OF MICHIGAN		PO Box 30774			Lansing	MI	48909-8274	
State of New Hampshire		New Hampshire Dept. of State	107 N. Main Street, Rm 204, State House		Concord	NH	03301-4951	
STATE OF NEW JERSEY	DEPT OF LABOR AND WORKFORCE	PO BOX 929	DIV OF REVENUE PROCESSING		Trenton	NJ	08646-0929	
STATE OF NEW JERSEY		New Jersey Dept of Law & Public Safety	153 Halsey Street, 6th Floor		Newark	NJ	07102	
STATE OF NEW JERSEY		REVENUE PROCESSING CENTER	PO BOX 642		Trenton	NJ	08646-0642	
State of New Jersey-CBT	Division of Tax Revenue Proc Center	PO Box 66			Trenton	NJ	08646-0666	
State of Oregon	Div of Finance & Corporate Securities	350 Winter St NE, Rm 410	Labor & Industries Bldg 401 Adams Avenue, Suite 280		Salem	OR	97301	
State Securities Commissioner of Alabama		Registration Division			Montgomery	AL	36104	
State Street Bank and Trust Company		200 Clarendon Street	Mail Code EUC-108		Boston	MA	02116	
State Street Bank and Trust Company	CDO Services Group	PO Box 5607			Boston	MA	02206-5607	
State Street Corporation		PO Box 5013			Boston	MA	02206-5013	
State Street Corporation		PO Box 5607			Boston	MA	02206-5607	
State Street Global Exchange	State Street Bank and Trust Company	Elkins McSherry LLC	One Lincoln Street		Boston	MA	02111	
State Street Global Markets, LLC		One Lincoln Street			Boston	MA	02111	
Status Labs.com		151 South 1st	Suite 100		Austin	TX	78704	
Stax Media, Inc.		4630 Soquel Drive	Suite 5		Soquel	CA	95073	
Stefan Peller		Address on File						
Stellar Adventures		PO Box 8329			Scottsdale	AZ	85252	
Stenstrom-Schneider, INC		13748 Neutron Rd			Dallas	TX	75244-4412	
Stephanie Catalano		Address on File						
Stephanie Vitello	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
STEPHEN LORENZ		Address on File						
Stephen M. Frengen		Address on File						
Steptoe & Johnson LLP		1330 Connecticut Ave, N.W.			Washington	DC	20036-1795	
STERLING VALUATION GROUP, INC		590 MADISON AVE	5TH FLR		New York	NY	10022	
STEVE LEACH		Address on File						
Steve Mackay		Address on File						
Steve Thel		Address on File						
STEVE ZIMMERMAN		Address on File						

003337

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Steven Delarosa		Address on File						
STEVEN GART		Address on File						
Steven Haltom	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Steven J White MD		PO Box 650772			Dallas	TX	75265-0772	
Steven J. Kaplan, P.C.		5910 Stoneshire Ct			Dallas	TX	75252	
Steven Johnson		Address on File						
STEVEN SUN		Address on File						
Stevens, Kellie		Address on File						
Stevens, Kellie		Address on File						
Stewart F. House Photography		2600 Bunker Hill Cr			Plano	TX	75075	
Stewart, Phoebe		Address on File						
Stewart, Phoebe L.		Address on File						
STEWART, STEVEN a.		Address on File						
STF Services Corporation		PO Box 3251			Syracuse	NY	13220-3251	
STIKEMAN ELLIOT		5300 Commerce Court West	199 Bay Street West		Toronto	ON	M5L 1B9	CANADA
Stillman & Friedman, P.C.		425 Park Avenue	26th Floor		New York	NY	10022	
Stinson Leonard Street LLP	Stinson LLP	Attn Paul Lackey	3102 Oak Lawn Avenue, Suite 777		Dallas	TX	75219	
Stinson Leonard Street LLP		PO Box 843052			Kansas City	MO	64184	
Stinson LLP	Attn Paul Lackey	3102 Oak Lawn Avenue, Suite 777			Dallas	TX	75219	
Stinson LLP	Deborah Deitsch-Perez, Michael P. Aigen	3102 Oak Lawn Avenue, Suite 777			Dallas	TX	75219	
Stinson LLP	Paul M. Hoffmann	1201 Walnut Street, Suite 2900			Kansas City,	MO	64106-2150	
STINSON MORRISON								
HECKER LLP		PO Box 219492			Kansas City	MO	64121	
Stone, David		Address on File						
Stone, Kenneth		Address on File						
Stonecypher, Abbie		Address on File						
Stonelake Capital Holdings, LP	Attn Blake Wilson	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn Jacob Becker	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn John A. Kiltz	3200 Gracie Kiltz Lane, Suite 500			Austin	TX	78758	
Stonelake Capital Holdings, LP	Attn Kenneth E. Aboussie, Jr.	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn W. Hunter Sage, Esq.	200 Park Place, 4200 Westheimer, Suite 900			Houston	TX	77027	
Stonelake Capital Holdings, LP	Attn William C. Wiushusen	Haynes & Boone, LLP	2323 Victory Avenue, Suite 700		Dallas	TX	75219	
STOOPS, CLIFFORD		Address on File						
Stout Management Company		10151 Park Run Drive			Las Vegas	NV	89145	
Stradley Ronon Stevens & Young, LLP		2005 Market Street	Suite 2600		Philadelphia	PA	19103-7018	
Strand Advisors Inc.		1209 Orange Street			Wilmington	DE	19801-0000	

003338

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Strand Advisors, Inc.	Attn James Seery	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strand Advisors, Inc.	Attn John Dubel	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strand Advisors, Inc.	Attn Russell Nelms	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strasburger & Price, L.L.P.		PO Box 50100			Dallas	TX	75250-9989	
Strategas Research Partners LLC	ATTN Eileen Gabay	52 Vanderbilt Avenue	8th Floor		New York	NY	10017	
Strategas Securities LLC		52 Vanderbilt Ave	8th Fl		New York	NY	10017	
STRATEGIC ALLIANCE GROUP, LLC		500 W CYPRESS CREEK RD	STE 420		Ft. Lauderdale	FL	33309	
Strategic Financial Solutions		2650 Thousand Oaks Blvd	Suite 1340		Memphis	TN	38118	
Strategic Growth, Inc		5004 Crestway Drive			Austin	TX	78731	
Strategic Insight Group		1300 Summit Ave Ste 512			Fort Worth	TX	76102-4419	
STRATEGIC WORKFORCE SOLUTIONS								
Stratford CLO Ltd.		PO BOX 32960			Hartford	CT	32960	
Stratford CLO Ltd. State Street Bank and Trust Company	State Street Bank and Trust Company	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Stratford CLO Ltd. State Street Bank and Trust Company	Stratford CLO Ltd.	200 Clarendon Street			Boston	MA	02116	
Stratford CLO, Ltd.		P.O. Box 1093 GT, Queensgate House						
Stratos Legal Services, LP		4295 San Felipe			Grand Cayman			Cayman Islands
Stratus Energy Group	Attn P. Hudson	1206 San Antonio Street			Grand Cayman			Cayman Islands
Strohi Systems Group		631 Park Ave			Houston	TX	77027	
STRONCZEK, JILLIAN N. Ledyard, L.L.P.		Address on File			Austin	TX	78701	
Stroock & Stroock & Lavan LLP		1400 San Jacinto Building, 595 Orleans			King of Prussia	PA	19406	
Structural and Steel Products, Inc		180 Maiden Lane			Beaumont	TX	77701-3255	
Structure Tone Southwest, Inc.		3001 W Pafford Street			New York	NY	10038	
Structured Credit Investor		3333 Weiborn St, Ste 200			Fort Worth	TX	76110-0000	
Studio Movie Grill		507 Clerkwel Workshops	27/31 Clerkenwell Close		Dallas	TX	75219	
STUECHELI, GREGORY		5405 Bellline Rd			Farrington	TX	EC1R 0AR	United Kingdom
Stuhlsatz, Amy		Address on File			Dallas	TX	75248	
Sutman Treister & Glat PC		1901 Avenue of the Stars			Los Angeles	CA	90067-6013	
Styx International, Ltd.		875 Third Avenue	12th Floor		New York	NY	10022	
Syax Partners, LP		875 Third Avenue	10th Floor		New York	NY	10022	
Success CE		2 Corporate Plaza Drive	Suite 100		Newport Beach	CA	92660	
Succession Resource Group		PO Box 1573			Tualatin	OR	97062	

003339

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Sue McGeehan	VP, Collections, Finance Dept.	7 World Trade Center at 250 Greenwich Street			New York	NY	10007	
Sui Hock Goy		Ni Advisors, Inc.	1138 Cadillac Ct.		Niipitas	CA	95035	
Suicide and Crisis Center of North Texas		10625 Northboro			Dallas	TX	75230	
Sullivan Cromwell LLP	Brian D. Glueckstein	125 Broad Street			New York	NY	10004	
SULLIVAN, JOURDAN		Address on File						
Summit Brokerage Services, Inc.	Attn Compliance/Payroll	595 South Federal Highway	Ste 500		Boca Raton	FL	33432	
Summit Brokerage Services, Inc.		500 S. Federal Highway	Suite 500		Boca Raton	FL	33432	
Summit Management Limited		23 Lime Tree Bay Avenue	Suite #4-210	Govenors Square			KY1-1209	Cayman Islands
Sun Life Assurance Company of Canada		PO Box 7247-7184			Philadelphia	PA	19170-7184	
Sunbelt Securities, Inc.		2700 Post Oak Blvd, Suite 1700			Houston	TX	77056	
Sundance Painting		3702 N Buckner Blvd			Dallas	TX	75228-5612	
SunDiego Charter Company		522 W 8th Street			National City	CA	91950	
SUNEET AGARWAL		444 WASHINGTON BLVD			Jersey City	NJ	07310	
SunGard		Bank of America Lockbox Services	15138 Collections Center Dr		Chicago	IL	60693	
Sungard Availability Services		91233 Collection Center Drive			Chicago	IL	60693	
Sungard Protegent	Automated Securities Clearance LLC	15138 Collections Center Dr			Chicago	IL	60693	
Sunil Devarakonda		111 East 125th Street, Apt 3 E			New York	NY	10035	
SunTrust Robinson Humphrey Inc.	Attn Documentation	SunTrust Robinson Humphrey	711 5th Avenue 14th Fl.		New York	NY	10022-0000	
Superior Search & Staffing		5001 Spring Valley Rd Ste 1000 W			Dallas	TX	75244	
Supermarket News		PO Box 15548			North Hollywood	CA	91615-5548	
SURGENT, THOMAS		Address on File						
Susan Burton Consulting, LLC		4127 Towne Green Circle			Addison	TX	75001	
Susan Leahy		Address on File						
SUSMAN GODFREY LLP		1000 Louisiana	Ste. 5100		Houston	TX	77002	
Sutherland Asbill & Brennan LLP		700 Sixth Street NW	Suite 700		Washington	DC	20001	
Sutherland Asbill & Brennan LLP		999 Peachtree Street NE			Atlanta	GA	30309-3996	
Swadley, Emily		Address on File						
SWADLEY, RICK		Address on File						
Swank Audio Visuals		400 Crescent Court			Dallas	TX	75201	
Sweeney, Katelyn		Address on File						
SWIXMED		Zurichbergsrasse 20			Zurich		08032	SWITZERLAN D
Sybari Software, Inc.		353 Larkfield Rd			East Northport	NY	11731	

003340



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Symphony Communication Services LLC		1117 S California Ave			Palo Alto	CA	94304-0000	
Synnex Corporation		5845 Collections Center Dr			Chicago	IL	60693	
Sysco Food Services		PO Box 560700			Lewisville	TX	75056-0700	
System Electric		1278 Montalvo Way			Palm Springs	CA	92262	
T.H. Quest, Inc.		5001 Spring Valley Rd.	Ste 400-E		Dallas	TX	75244	
T4 Capital Talent, LLC		272 E. Deerpath Rd	Suite 236		Lake Forest	IL	60045	
TACA The Arts Community Alliance	Attn Julie Bice	One Arts Plaza	1722 Routh Street, #115		Dallas	TX	75201	
TAK-CHEUNG DAVIDSON WAN		5050 S LAKE SHORE DR, APT #1509			Chicago	IL	60615	
Talkingbox DMG, LLC		284 Sport Hill Road			Easton	CT	06612	
TAMALE SOFTWARE, INC		320 CONGRESS ST			Boston	MA	02210	
TANDBERG, SCOTT		Address on File						
Tanner Morgan		Address on File						
Tara Allen		Address on File						
TARAS LIMO & AIRPORT SERVICE		PO BOX 795581			Dallas	TX	75379-5581	
Tarrant County	Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
TARSHA, DANIEL S.		Address on File						
TARUN K BHATT		PO BOX 71687			Chicago	IL	60694-7687	
Tax & Accounting-R&G		Address on File						
TAX EXECUTIVES INSTITUTE, INC		PO BOX 9407			Uniondale	NY	11555-9407	
Taylor Porter		Address on File						
Taylor, Brian		Address on File						
TAYLOR, GREGORY		Address on File						
TCS Central Region GP LLC	ATTN Kelly Thomas	5001 Spring Valley	Suite 600W		Dallas	TX	75244	
TCS Corporate Services	Allied Capital Partners	PO Box 676649			Dallas	TX	75267	
TCS Corporate Services		PO Box 671160			Dallas	TX	75267-1160	
TD Ameritrade Trust Company	Attn FFC RMT	PO Box 17748			Denver	CO	80217-0748	
TDA Associates, Inc.		2101 Sardis Rd N, Suite 109			Charlotte	NC	28227	
TDIndustries		PO Box 300008			Dallas	TX	75303-0008	
Technology Team, LLC		1120 South Freeway	Suite 215		Fort Worth	TX	76104	
Ted Kanarek		Address on File						
Telecomm Strategies Inc		6404 Highland Drive			Chevy Chase	MD	20815	
TELOS Performance Center		13701 Dallas Pkwy			Dallas	TX	75240	
Temple Emanu-El	Attn Rick Rosenberg	8500 Hillcrest			Dallas	TX	75225	
Tennessee Department of Revenue		500 Deaderick Street	Andrew Jackson State Office Building		Nashville	TN	37242	
Tennessee Dept of Commerce & Insurance		Securities Division	500 James Robertson Parkway, Suite 680		Nashville	TN	37243	
TERRELL, ARTIS		Address on File						
Terrie Rabinowitz, L.C. S.W.		7186 Promenade Dr Apt 801			Boca Raton	FL	33433-6977	
Terry Jackson		Address on File						
Terry Jackson		Address on File						
Terry Swagerly		Address on File						
Terry, Doris A.		Address on File						

003341

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TERRY, JOSHUA N.		Address on File						
TESLA, NIKOLA		Address on File						
Texas Alliance of Energy Producers		900 8th Street, Suite 400			Wichita Falls	TX	76301	
Texas Best Meats		PO Box 4810			Wichita Falls	TX	76308	
Texas Best Meats		7043 Seymour Hwy			Wichita Falls	TX	76310	
Texas Commerce Bank, N.A.		600 Travis Street	8th Floor, Texas Commerce Tower	Global Trust Services	Houston	TX	77002	
Texas Comptroller of Public Accounts		PO Box 149348			Austin	TX	78714-9348	
Texas Department of Insurance	Financial Regulation Division	Company Licensing and Registration	333 Guadalupe		Austin	TX	78701	
Texas Dept of Licensing and Regulation		PO Box 12157			Austin	TX	78711	
TEXAS DEPT OF STATE HEALTH SERVICES		LOCKBOX-DSHS ASBESTOS/DEMO NOTIFICATION			Austin	TX	78711-2190	
Texas Entertainment Group		103 N Kirby St	PO BOX 12190		Garland	TX	75042	
Texas LawBook LLC		3888 Everwood Lane			Addison	TX	75001	
TEXAS ROOF MANAGEMENT, INC		728 LINGCO DR			Richardson	TX	75081	
Texas Secretary of State	Accounts Receivable	PO Box 12887			Austin	TX	78711-2887	
Texas Secretary of State		PO Box 13697			Austin	TX	78711	
Texas State Comptroller		9241 LBJ FREEWAY			Dallas	TX	75243	
Texas State Comptroller		PO Box 12030	STE 205		Austin	TX	78711-2030	
Texas State Securities Board		Securities Commission of Texas	208 E 10th, Room 610		Austin	TX	78701	
TEXPERS		13111 Northwest Freeway	Suite 100		Houston	TX	77040	
Thackray Williams LLP		32-40 Widmore Rd	Bromley		Kent	BR1 1RY	United Kingdom	
Tharrington Smith LLP		PO Box 1151			Raleigh	NC	27602	
The American Cancer Society		18505 West Twelve Mile Rd			Southfield	MI	48076	
The Ashcroft Lawfirm, LLC		950 North Glebe Road	Suite 2400		Arlington	VA	22203	
The Ashcroft Lawfirm, LLC		1100 Main Street	Suite 2710		Kansas City	MO	64105	
The Aspen Institute		Society of Fellows	1000 N. Third Street		Aspen	CO	81611	
The Badge of Honor Memorial Foundation		David Blanchard	3131 Maple Ave		Dallas	TX	75201	
The Bailey Group		PO Box 1395			Whitehouse Station	NJ	08889	
The Bank of New York Mellon	Elizabeth Stern	Director and Managing Counsel	240 Greenwich Street, 18th Floor		New York	NY	10286	
The Bank of New York Mellon Trust Compan		601 Travis, 16th floor			Houston	TX	77002-0000	
The Bank of New York Trust Co.	Global Corp. Trust	600 Travis Street, 50th Floor			Houston	TX	77002	
The Bermuda Monetary Authority		43 Victoria Street			Hamilton	HM 12	Bermuda	
The Bowman Law Firm, LLC		840 Tom Wheeler Lane			McEwen	TN	37101	
The Bradbury Group		10661 Rockley Rd			Houston	TX	77099	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Brattle Group		44 Brattle St			Cambridge	MA	02138-3736	
The Bretton Woods Institute		R.R. #1 Simcoe			Toronto	ON	N3Y 4J9	CANADA
The Bryant Park Hotel		40 W. 40th Street			New York	NY	10018	
THE BUREAU OF NATIONAL AFFAIRS, INC		PO Box 419889			Boston	MA	02241-9889	
The Bureau of National Affairs, Inc. (Blo		1801 South Bell Street			Arlington	VA	22202-0000	
The Burnett Companies Consolidated, Inc.		PO Box 973940			Dallas	TX	75397	
The Cake Guys		730 Big Stone Gap Rd	Suite B		Duncanville	TX	75137	
The Cayman Islands Monetary Authority		171 Elgin Ave, SIX Cricket Square		George Town	Grand Cayman			Cayman Islands
The Charlotte Observer		600 S. Tryon Street			Charlotte	NC	28202	
The Chart Store		11768 Tarrynot Ln			Carmel	IN	46033	
The Claro Group, LLC		123 N Wacker Dr Ste 2100			Chicago	IL	60606-1747	
THE CLUEN CORPORATION		135 5TH AVE FL 4			NEW YORK	NY	10010-7157	
The Crystal Charity Ball		Mrs. Mark D Leyendecker, Underwriting	3838 Oak Lawn Avenue, Suite L150		Dallas	TX	75219	
The Cystic Fibrosis Foundation		4040 North Central Expressway	Ste 730		Dallas	TX	75204	
The da Vinci School	Attn Christi Warren	10909 Midway Rd			Dallas	TX	75229	
The Dallas Morning News		Subscriptions Dept.	PO Box 630054		Dallas	TX	75263-0054	
The Darden School	Attn Development- CFR	PO Box 7726			Charlottesville	VA	22906-7726	
The Day Group		The 401 Centre	302 Regent Street		London		W1B3HH	United Kingdom
The Deal LLC		105 Madison Ave	5th floor		New York	NY	10016	
The Deal LLC		PO BOX 26356			New York	NY	10087-6356	
The Deal LLC		PO Box 3502			Northbrook	IL	60065-9850	
The Devon Trust II		#2800	715 - 5th Avenue SW		Calgary	AB	T2P 2X6	CANADA
The DI Wire Publishing LLC		18101 Von Karman Ave	Suite 300		Irvine	CA	92612	
The Dugaboy Investment Trust	Grant Scott, Trustee	4140 Park Lake Ave., Suite 600			Raleigh	NC	27612	
The Economist		Subscription Center	PO Box 46978		Saint Louis	MO	63146-6978	
The Economist		Subscriptions Department	PO Box 58522		Boulder	CO	80322-8522	
The Efficient Business LLC		13601 Preston	Ste 250E		Dallas	TX	75240	
The Efficient Business LLC		14800 Quorum Dr	Suite 560		Dallas	TX	75254-7679	
The Emblem Source, LLC		4575 Westgrove Drive	Suite 500		Addison	TX	75001	
The Englishmans Interiors		14655 Midway Rd			Addison	TX	75001	
The Executive Centre		Tokyo Ginko Kyokai Bldg 15th Floor	1-3-1 Marunouchi		Chiyoda-ku	Tokyo	100-0005	JAPAN
The Expert Series LLC		317 Madison Avenue	Suite 920		New York	NY	10017	
The Family Place	Attn Shivangi Pokharel	PO Box 7999			Dallas	TX	75209	
THE FRANCHISE TAX BOARD		PO BOX 942867			Sacramento	CA	94267-0001	
THE FRANK W. NORRIS FOUNDATION		PO Box 6071			Athens	GA	30604	
THE FRANK W. NORRIS FOUNDATION		Warnell School of Forestry	and Natural Resources		Athens	GA	30602-2152	
THE FREDONIA GROUP		767 BETA DR			Cleveland	OH	44143	

003343

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Garden Gate		2615 Routh Street			Dallas	TX	75201	
The Garden Gate		2303 Farrington			Dallas	TX	76207	
The General Counsel Forum		PO Box 131263	#100		Dallas	TX	75313	
The Greitens Group		4500 West Pine Boulevard			Saint Louis	MO	63108	
The Griffith Law Firm		4925 Greenville Ave	Suite 200		Dallas	TX	75206	
The Gym		921 W. Mayfield Rd.	Suite 112		Arlington	TX	76015	
The Hanover Insurance Group		PO Box 580045			Charlotte	NC	28258-0045	
The Harry Walker Agency, Inc.		355 Lexington Ave			New York	NY	10017	
THE HARTFORD		PO BOX 2907	Fir 21		The Hartford	CT	06104-2907	
THE HARTFORD		PO Box 660916			Dallas	TX	75266-0916	
The Hockaday School	Attn Holly Hook	11600 Welch Road			Dallas	TX	75229	
The Hogan Firm		1311 Delaware Ave			Wilmington	DE	19806	
The House Oldtown Brasserie		6936 E. Main St.			Scottsdale	AZ	85251	
The Intl Stock Exchange Authority Ltd		PO Box 623, Helvetoa Court	Block B, 3rd Floor	Les Echelons	St Peter Port	GUERNSEY	GY1 1AR	United Kingdom
The Irish Stock Exchange plc		28 Anglesea Street			Dublin	CA	D02 XT25	IRELAND
The Island Hotel		690 Newport Center Drive			Newport Beach	CA	92660	
The Joule		1530 Main Street			Dallas	TX	75201	
The Junior League of Dallas		PO Box 12707			Dallas	TX	75226	
The Kaplan Group		2250 King Ct, Suite 50			San Luis	CA	93401	
The Kiplinger Tax Letter		PO Box 62300			Tampa	FL	33662-2300	
The Kiplinger Tax Letter		PO Box 3299			Harlan	IA	51593-0479	
The Ladders	Accounting Dept	137 Varick St			New York	NY	10013	
THE LAKESHORE COMPANIES		1081 MOMENTUM PL			Chicago	IL	60689-5310	
The LDM Group, LLC		Renaissance Tower	1201 Elm Street, Ste. 4201		Dallas	TX	75270	
The Leukemia & Lyphoma Society		1311 Mamaroneck Ave, Suite 310			White Plains	NY	10605	
The Leukemia & Lyphoma Society		8111 LBJ Freeway	Suite 425		Dallas	TX	75251	
The Loan Syndications and Trading Assoc		366 Madison Ave	15th Floor		New York	NY	10017	
The Mark and Pamela Okada Family Exempt Trust #1	Brian D. Glueckstein	Sullivan Cromwell LLP	125 Broad Street		New York	NY	10004	
The Markets.com		PO Box 9420			Uniondale	NY	11555-9420	
The Matchbox Studio		3013 Canton Street			Dallas	TX	75226	
The McCarton Foundation		331 W. 25th Street			New York	NY	10001	
The Medleh Group		PO Box 96370			Houston	TX	77213	
The Money Management Institute		1101 17th St, NW Ste 703			Washington	DC	20036	
The Money Management Institute		PO Box 759231			Baltimore	MD	21275-9231	
The Montessori School of Raleigh		7005 Lead Mine Road			Raleigh	NC	27615	

003344

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Morgan Library & Museum		225 Madison Avenue			New York	NY	10016	
The NASDAQ OMX Group Inc.		Lockbox 90200	PO Box 8500		Philadelphia	PA	19178-0200	
The NASDAQ Stock Market LLC	c/o Wells Fargo Bank	Lockbox 80200/PO Box 8500	10205 Westheimer Rd, Ste 500		Philadelphia	PA	19178-0200	
The National due Diligence Alliance		West8 Tower			Houston	TX	77042	
The Neighbors Law Firm P.C.		2500 Regency Parkway			Cary	NC	27518	
The New York Times		PO Box 4039			Woburn	MA	01888-4039	
The New York Times		PO BOX 371456			Pittsburgh	PA	15250-7456	
The nGage Company, LLC	Attn Phil McKay	170 Pine Point Rd			Scarborough	ME	04074	
The Oechsli Institute		PO Box 29385			Greensboro	NC	27429	
The Optimal Networking Event, LLC		5 Block Court			Randolph	NJ	07869	
The Optimal Networking Event, LLC		PO Box 191			Mt. Freedom	NJ	07970-0191	
The Original Butt Sketch		PO Box 4495			Dallas	TX	75208-4495	
The Paley Center for Media	Attn Accounting Department	25 West 52nd Street			New York	NY	10019	
The Party New York		137 Avenue A	Suite 2E		New York	NY	10009	
The Paul Revere Life Ins. Co.		PO Box 740590			Atlanta	GA	30374-0590	
The Pension Bridge, Inc		4504 S Ocean Blvd			Highland Bch	FL	33487-4233	
THE PLACEMENT GROUP, INC.		6060 North Central Expressway	Suite 524		Dallas	TX	75206	
THE PLANT PLACE		10704 Goodnight Lane	Suite 300		Dallas	TX	75220	
The Plexus Group		21805 Field Parkway			Deer Park	IL	60010	
The Plumbing Mechanical Fire Prot. Co		60 North Prospect Avenue			Lynbrook	NY	11563-1395	
The Promise House	Attn Christy Cerralvo	RBC Capital Markets	2711 N Haskell Ave, Site 2500		Dallas	TX	75240	
The Real Estate Council		Three Lincoln Center	5430 LBJ Frwy, Suite 100		Dallas	TX	75240	
The Real Estate Council Foundation	Attn Stephanie Keller Hudiberg	3100 McKinnon Street	Suite 1150		Dallas	TX	75201	
The Reeds Public Relations Corporation		3232 McKinney Avenue	Suite 855		Dallas	TX	75204	
The Renaissance Consulting Group		870 San Jacinto Twr 2121 San Jacinto St			Dallas	TX	75201	
The Rhythm Room	Attn Elaine Hewlett	4734 Tremont Street			Dallas	TX	75246	
The Rise School		4220 Monterey Oaks Blvd.			Austin	TX	78749	
The Ritz-Carlton		455 Grand Bay Drive			Key Biscayne	FL	33149	
The Ritz-Carlton		2121 McKinney Avenue			Dallas	TX	75201	
THE RITZ-CARLTON, LAKE LAS VEGAS	ATTN AVR	1610 LAKE LAS VEGAS PKWY			Henderson	NV	89011	
The Rowland Law Firm	Ronald L. Rowland, Authorized Agent	2453 Vineyard Lane			Crofton	MD	21114	
The Ryan Anthony Foundation		2512 Boll Street			Dallas	TX	75204	
The Search Group		222. W Las Colinas Blvd	Ste 844E		Irving	TX	75039	

003345

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
THE SIGN COMPANY		575 MADISON AVE			New York	NY	10022	
The Spencer Company		2121 North Akard	Suite 100		Dallas	TX	75201	
The Standard		1100 SW Sixth Ave			Portland	OR	97204-0000	
The Standard		PO Box 3358			Portland	OR	97208-3358	
The Standard		PO BOX 5674			Portland	OR	97228-5674	
The Standard Life Insurance Co of NY		PO Box 3358			Portland	OR	97208-3358	
The State of Texas	Deana K. Adams, CSR	Official Court Reporter	600 Commerce, 630 C		Dallas	TX	75202	
The Stewpot Alliance		4516 Lovers Lane	Suite 229		Dallas	TX	75225	
The Strategic Financial Alliance, Inc.		202 Abbey Court			Alpharetta	GA	30004	
The Strategic Financial Alliance, Inc.		2200 Century Parkway, Ste 500			Atlanta	GA	30345	
The TAARP Group, LLP		8333 Douglas Avenue	Suite 1500		Dallas	TX	75225	
The TAARP Group, LLP		PO Box 797337			Dallas	TX	75379-7337	
The TASA Group, Inc.		1166 DeKalb Pike			Blue Bell	PA	19422-1853	
The Texas Lyceum Association, Inc		3305 Steck Ave Ste 200			Austin	TX	78757-8155	
The Texas Lyceum Association, Inc		7131 Lavendale Ave			Dallas	TX	75230	
The Townwide Fund of Huntington, Inc.		148 East Main Street			Huntington	NY	11743	
The United States Ski & Snowboard Assoc		1 Victory Lane	Box 100		Park City	UT	84060	
The United States Treasury		Internal Revenue Service	PO Box 9941		Ogden	UT	84409	
The University of Texas at Arlington		Grants and Accounting, Box 19136			Arlington	TX	76019-0136	
The VIA Group, Inc		2610 Technology Forest Blvd			The Woodlands	TX	77381	
The Wall Street Journal		Corporate Subscription Program	102 First Ave		Chicopee	MA	01020	
The Wellness Group, LLC		1000 N. Green Valley Pkwy	Suite 440 #401		Henderson	NV	89074	
The Wellness Group, LLC		100 N. Green Valley Pkwy	Suite 440 #401		Henderson	NV	89074	
The Westin Charlotte		601 South College Street			Charlotte	NC	28202	
The YGS Group		3650 West Market Street	Content Division-A/R		York	PA	17404	
The Yield Book, Inc.		PO Box 13755			Newark	NJ	07188-0755	
THEDFORD, LAUREN E.		Address on File						
Theodore N Dameris		Address on File						
Theodore N. Dameris		Address on File						
Think-Cell		InvalidenstrBe 34			Berlin		10115	GERMANY
Think-cell Sales GmbH & Co. KG		Chausseestr. 8/E			Berlin		10115	GERMANY
Thirstystone Resources		860 E 19th St			Tucson	AZ	85719	
THOMAS HENNING		Address on File						
Thomas Hoerner		Address on File						
Thomas Printworks		PO Box 740967			Dallas	TX	75374-0967	
Thomas Reprographics		P.O. Box 740967			Dallas	TX	75374-0967	
THOMAS SHARP		Address on File						
Thomas Surgent	c/o David Neier	Winston Strawn LLP	4441 Beverly Drive		Dallas	TX	75205	
Thomas Surgent	c/o David Neier, Winston Strawn LLP	200 Park Avenue			New York	NY	10166	
Thomas Surgent		Address on File						

003346

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Thomas White	c/o KGen Power Corp	9337 Spring Cypress Rd, #2114			Spring	TX	77379	
Thompson & Knight		PO Box 660684			Dallas	TX	75266-0684	
Thompson & Knight		Dept 70 PO Box 4346			Houston	TX	77210-4346	
THOMPSON & KNIGHT LLP			1722 ROUTH STREET		Dallas	TX	75201-2533	
Thompson Coe Cousins & Irons LLP		700 N. Pearl Street	Twenty Fifth Floor		Dallas	TX	75201	
Thompson Reuters		610 Opperman Drive	PO Box 64833		Eagan	MN	55123-0000	
THOMPSON, DAVISON R.		Address on File						
Thompson, Jordan		Address on File						
THOMPSON, ROBIN		Address on File						
Thomson		PO Box 4634			Chicago	IL	60680-9598	
Thomson Financial		195 Broadway	7th floor		New York	NY	10007	
Thomson Financial		PO Box 360301			Pittsburgh	PA	15251-6301	
Thomson Financial		PO Box 5136			Carol Stream	IL	60197-5136	
Thomson Financial		PO Box 95512			Chicago	IL	60690-5512	
THOMSON REUTERS	Attn Greg Winterton	3 Times Square, 18th Floor			New York	NY	10036	United Kingdom
THOMSON REUTERS		PO BOX 55743	The Thomson Reuters Building		London		E14 10B	
THOMSON REUTERS		PO Box 95512			Chicago	IL	95512	
THOMSON REUTERS		TAX & ACCOUNTING- R&G	PO BOX 71687		Chicago	IL	60694-1687	
Thomson Reuters (Markets) LLC		PO Box 415983			Boston	MA	02241	
Thomson Reuters (Markets) LLC		GPO BOX 10410			Newark	NJ	07193-0410	
Thomson Reuters (Tax & Accounting) Inc.		PO Box 71687			Chicago	IL	60694-1687	
Thomson Reuters Corporation		17400 Medine Road	Suite 850		Plymouth	MN	55447	
Thomson Reuters Tax & Accounting - Check		PO Box 71687			Chicago	IL	60694-0000	
thomson RIA		PO Box 6159			Carol Stream	IL	60197-6159	
Thomson West		PO Box 64833			Saint Paul	MN	55164-0833	
Thomson West		PO Box 6292			Carol Stream	IL	60197-6292	
Thornton-Tomasetti Group, Inc.		PO Box 826203			Philadelphia	PA	19182-6203	
Throckmorton, Michael		Address on File						
Thuzio, Inc.		267 Fifth Avenue	Seventh Floor		New York	NY	10016	
TIAMPO, SAUKOK		Address on File						
TIBCO Software, Inc.		Lockbox No 7514	PO Box 7247		Philadelphia	PA	19170-7514	
Tiffs Treats		Address on File						
Tim Dalton		Address on File						
TIM LAWLER		Address on File						
Tim Symington		Address on File						
Timber Mart-South	Center for Forest Business	Daniel B. Warnell School of Forestry	The University of Georgia		Athens	GA	30602-2152	
Timberhorn, LLC		127 W Worthington Ave Ste 100			Charlotte	NC	28203-0064	
Time Value Software		22 Mauchly			Irvine	CA	92618	

003347



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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 17**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>				<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>				<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

Vol. 8			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001349	8 5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001352	9 5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001359	10 5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
001361	11 5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
001369	12 5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
001381	13 5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018				
	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024				
	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036				
	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051				
Thru Vol 14				
Vol. 15	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
002916				
Thru Vol. 18				
Vol. 19	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
003783				
Thru Vol. 22				



001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

*/s/ Mazin A. Sbaiti*

\_\_\_\_\_  
Mazin A. Sbaiti

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TIME WARNER CABLE		PO BOX 9227			Uniondale	NY	11555-9227	
TIME WARNER CABLE		Box 223085			Pittsburgh	PA	15251-2085	
TIME WARNER CABLE		PO BOX 742663			CINCINNATI	OH	45274-2663	
TIME WARNER CABLE		PO Box 742633			Cincinnati	OH	45274-2663	
TIME WARNER CABLE		PO Box 650063			Dallas	TX	75265-0063	
TIME WARNER CABLE		PO BOX 650210			Dallas	TX	75265-0210	
TIME WARNER CABLE		PO Box 60074			City of Industry	CA	91716-0074	
Time, Inc.		PO Box 60001			Tampa	FL	33660-0001	
Times Square Tower Associates LLC		800 Boylston Street	Suite 1900		Boston	MA	02199	
Times Square Tower Associates LLC		PO Box 415917			Boston	MA	02241-5917	
Timothy Brice		Address on File						
Timothy Hochandani		Address on File						
Timothy Lawler		Address on File						
Timothy Leung		Address on File						
Timothy Spring		Address on File						
TIPS,LLC		Department 34932	PO Box 39000		San Francisco	CA	94139	
TIPS,LLC		File 30578	PO Box 60000		San Francisco	CA	94160	
Title Partners, LLC		5501 LBJ Freeway	Ste 200		Dallas	TX	75240	
TLK Networks		PO Box 202286			Arlington	TX	76006	
TMC Communications, LLC		245 Park Ave, 24th Flr			New York	NY	10167	United Kingdom
TMF Group		400 Capability Green			Luton		LU1 3AE	United Kingdom
TNT INTERNATIONAL		PO BOX 186	RAMSBOTTOM		BURY		BL09GR	United Kingdom
Tobias Lewis		Address on File						
TOBY FELDMAN INC.		ONE PENN PLAZA			New York	NY	10119	
Todd A. Travers		Address on File						
Todd Blatterman		Address on File						
Todd Travers	c/o Jason P. Kathman	Pronske & Kathman, P.C.	2701 Dallas Parkway, Suite 590		Plano	TX	75093	
Toly Novik		Address on File						
TOM BEACH		Address on File						
TOM LOVELL		Address on File						
Tom Rigatti		Address on File						
Tomasino, Matthew		Address on File						
TOMLIN, WILLIAM		Address on File						
Tony Zaffaro		Address on File						
Total Alternatives		PO Box 5018			Brentwood	TN	37024	
Total Uptime Tech		Post Office Box 2228			Skyland	NC	28776-0000	
Touchstone Securities, Inc		303 Broadway	Suite 1100		Cincinnati	OH	45202-4203	
TOUDOUZE, KENNETH		Address on File						
Towers Watson		PO Box 8500	S-6110		Philadelphia	PA	19178-6110	
TPAC		920 Tyne Blvd			Nashville	TN	37220	
TQ,ESI, LLC		400 N. St Paul	STE 1230		Dallas	TX	75201	
Tracey Ivey		Address on File						
TradeStation Securities, Inc.	Aftn Account Department	8050 SW 10th St -- Ste 2000			Plantation	FL	33324	
TRAHAN, MICHAEL		Address on File						

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TransPerfect Legal Solutions	Attn Accounts Receivable	1250 Broadway Fl 7			New York	NY	10001-3749	
TRANSWESTERN		5001 SPRING VALLEY RD	STE 600W		Dallas	TX	75244	
TRANATHAM, AUSTIN		Address on File						
Travel Search Network		8111 LBJ Freeway # 550			Dallas	TX	75251	
TRAVERS, TODD		Address on File						
Travis Kruger		Address on File						
TRC		PO Box 536282			Pittsburgh	PA	15253-5904	
TRC Consultants, LC		120 Dietert Ave	Suite 100		Boerne	TX	78006	
Treasurer of State of Vermont		Securities Division	89 Main Street, 2nd Floor, Drawer 20		Montpelier	VT	05620	
Treasurer of Virginia		Virginia State Corporation Commission	1300 East Main Street, 9th Floor		Richmond	VA	23219	
Treasurer, State of Connecticut		Securities & Business Investment Div	260 Constitution Plaza		Hartford	CT	06103	
Treasurer, State of Maine		Office of Securities	76 Northern Avenue		Gardiner	ME	04345	
TREASURY OF THE UNITED STATES	Austin Campus Disclosure Office	Stop 7000-AUSC	PO Box 2986		Austin	TX	78768	
TREASURY OF THE UNITED STATES	INTERNAL REVENUE SERVICE	3651 SOUTH IH-35, MS 7000AUSC	DISCLOSURE OFFICE		Austin	TX	78741	
TREMOR, LAUREN E.		Address on File						
Trend Macrolitics LLC		680 N. Lake Shore Drive	#1412		Chicago	IL	60611	
Trenkner, Jamie		Address on File						
Trepp, LLC		477 Madison Ave 18th Flr			New York	NY	10022	
Triad Security Systems		971 Lehigh Avenue			Union	NJ	07083	
Trial Arts Professional Copy Service								
Tricor Evatthouse Corporate Services		1500 Dragon St, Ste C			Dallas	TX	75207	
Tricor Singapore Pte Ltd		8 Cross Street	#11-00 PWC Building		Singapore		048424	SINGAPORE
Trinity River Mission		8 Cross Street	#11-00 PWC Building		Singapore		048424	SINGAPORE
Triple Threat Cowboy		2060 Singleton Blvd, Ste 104			Dallas	TX	75212	
TRI-RIVER CAPITAL		1430 Regal Row	Suite 320		Dallas	TX	75247	
Tritech Communications, Inc.	C/O BEUTEL & JOYCE, LP	ATTN MILTON WALTERS	555 FIFTH AVE - 15TH FLR		New York	NY	10017	
Troutman Sanders LLP		625 Locust St.			Garden City	NY	11530	
TROY BARNETTE		P.O. Box 933652			Atlanta	GA	31193-3652	
Trump International Hotel & Tower CH		Address on File						
Trussway Holdings, Inc.		401 North Wabash Ave			Chicago	IL	60611	
Trussway Holdings, LLC	Kendall Hoyd	9411 Alcorn			Houston	TX	77093-6753	
Trustees of Boston University		7001 Enterprise Ave			Fort Worth	TX	76118	
Trustwave		1 Silber Way			Boston	MA	02215	
TSCM AMERICA		70 W Madison St	Ste. 1050		Chicago	IL	60602	
TSCPA		PO Box 6743			McKinney	TX	75071	
TSG Reporting, Inc		PO Box 797488			Dallas	TX	75379	
TSX INC		747 Third Ave, Suite 10A			New York	NY	10017	
TTA Research & Guidance		The Exchange Tower	PO Box 421, 130 King Street West		Toronto	ON	M5X 1E1	CANADA
Tuan Olona, LLP		PO Box 71687			Chicago	IL	60694	
Turf Scapes		One Rockefeller Plaza	Eleventh Floor		New York	NY	10020	
		368 National Drive			Rockwall	TX	75032-6531	

003349

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Turing Experts		Birchin Court	20 Birchin Lane		London		EC3V 9DU	United Kingdom
Turtle Bay Resort	Attn Finance Department	57-091 Kamehameha Highway PO Box 910182			Kahuku	HI	96731	
TW Telecom Holdings, llc					Denver	CO	80291-0182	
Twenty-First Securities Corporation		780 Third Avenue PO BOX 650638	24th Floor		New York	NY	10017	
TXU ENERGY		PO BOX 660409			Dallas	TX	75265-0638	
TXU ENERGY		PO Box 371967			Dallas	TX	75266-0409	
Tyco Integrated Security		Address on File			Pittsburg	PA	15250-7967	
Tyler Kemp								
TYRA GILB TRUST		325M SHARON PARK DR #207			Menlo Park	CA	94025-6804	
U.D.S.TX., LLC		1401 Elm, Suite 4567			Dallas	TX	75202	
U.S. - Japan Council	Attn Dana Fager, Develop. Coordinator	1819 L Street, NW, Suite 800			Washington	DC	20036	
U.S. Bancorp Equipment Finance, Inc.		PO Box 790448			Saint Louis	MO	63179-0448	
U.S. Bank		CM-9690	PO Box 70870		Saint Paul	MN	55170-9690	
U.S. Bank National Association	Attn CDO Unit	One Federal Street 520 Post Oak Blvd	3rd Floor Suite 280	Mail Code EX-MA-FED	Boston	MA	02110	
U.S. Fund for UNICEF					Houston	TX	77027	
U.S. Securities and Exchange Commission	Fort Worth Regional Office Attn Suzanne Forster, John Lantz	Burnett Plaza, 19th Floor	801 Cherry Street, Unit 18		Fort Worth	TX	76102	
UBS AG, London Branch		UBS Securities LLC, Jeffrey E. Bjork, Kimberly A. Posin	1285 Avenue of the Americas		New York	NY	10019	
UBS AG, London Branch		Latham & Watkins LLP	355 South Grand Avenue, Ste. 100		Los Angeles	CA	90071	
UBS AG, London Branch		Latham and Watkins LLP	330 North Wabash Ave. Suite 2800		Chicago	IL	60611	
UBS AG, London Branch		Latham and Watkins LLP	555 Eleventh Street, NW, Suite 1000		Washington	DC	20004-1304	
UBS AG, London Branch		UBS Securities LLC	1285 Avenue of the Americas		New York	NY	10019	
UBS AG, London Branch UBS Securities LLC	c/o Andrew Clubock, Esq. Attn Suzanne Forster, John Lantz	Latham & Watkins LLP	555 Eleventh Street NW Suite 1000		Washington	DC	20004	
UBS Securities LLC		1285 Avenue of the Americas			New York	NY	10019	
UBS Securities LLC	c/o Andrew Clubock	Latham & Watkins LLP	555 11th Street NW #1000		Washington	DC	20004	
UBS Securities LLC	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100		Los Angeles	CA	90071	
UBS Securities LLC	Latham and Watkins LLP	Asif Attarwala	330 North Wabash Ave. Suite 2800		Chicago	IL	60611	
UBS Securities LLC		11300 Rockville Pike	Ste 1100		Rockville	MD	20852-3030	
Uchi Dallas, LLC		701 S. Lamar Blvd	Suite C		Austin	TX	78704	
UDAI DHAWAN		28 SPRAIN VALLEY RD			Scarsdale	NY	10583	
UERM/MC-MAAAI	Dr. Audrey Coo, Treasurer	PO Box 2153			Bedford Park	IL	60499-2153	
Ulf Nofelt		Address on File						
Ulicny, Inc.		92 Amity Drive			Wayne	PA	19087	

003350

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Umar Zugaro, PLLC	Basil A. Umari	1403 Eberhard			Houston	TX	77019	
UMB Bank, N.A.	Attn Trust Fees Dept	PO Box 414589			Kansas City	MO	64141-4589	
UNICOM TECHNOLOGIES, INC		1011 HWY 6 S	STE 200		Houston	TX	77077	
Unimerica Insurance Company	Administrative Office	6300 Olson Memorial Highway			Golden Valley	MN	55427	
Unishippers		800 W Airport Fwy Ste 611 LB 6065			Irving	TX	75062	
Unishippers		800 W Airport Fwy Ste 611 LB 6065			Irving	TX	75062-6294	
United American Reporting Services		1201 Elm Street	Suite 5220		Dallas	TX	75270	
United Capital		5655 S. Yosemite St.	Suite 450		Greenwood Village	CO	80111	
United Carpet Cleaning Systems, Inc.		PO Box 1625			Hurst	TX	76053	
UNITED HEALTHCARE INSURANCE COMPANY	ATTN LISA CARRILLO	5800 GRANITE PKWY, STE 700			Plano	TX	75024	
UNITED HEALTHCARE INSURANCE COMPANY		22561 NETWORK PLACE			Chicago	IL	60673-1225	
United Mechanical		11540 Plano Road	PO Box 551206		Dallas	TX	75355-1206	
United Parcel Service, Inc		55 Glenlake Parkway			Atlanta	GA	30328-0000	
United States Treasury		INTERNAL REVENUE SVC	PO BOX 69		Memphis	TN	38101-0069	
United States Treasury		INTERNAL REVENUE SERVICE			Cincinnati	OH	45999-0039	
United States Treasury		INTERNAL REVENUE SERVICE			Kansas City	MO	64999-0202	
United States Treasury		STOP 5107 NWSAT	4050 ALPHA RD		Farmers Branch	TX	75244-4201	
United States Treasury		PO Box 660443			Dallas	TX	75266-0443	
United States Treasury		INTERNAL REVENUE SERVICE			Ogden	UT	84201-0039	
UNITED VAN LINES		ONE UNITED DRIVE			Fenton	MO	63026-1350	
United Way of Mass. Bay & Merrimack Vily	Attn AVR- Barbara Alexander	PO Box 51381			Boston	MA	02205-1381	
Universal Printing Solutions, Inc.		10573 West Pico Blvd. #610			Los Angeles	CA	90064-2438	
University of Michigan	c/o Matching Gifts	3003 S. State Street, Suite 8000			Ann Arbor	MI	48109-1288	
University of Pennsylvania		433 Franklin Building	3451 Walnut Street		Philadelphia	PA	19104-6285	
University Pk Sch Parent/Teacher Assoc		3505 Amherst			Dallas	TX	75225	
Unum Life Insurance Company of America		PO BOX 406834			Atlanta	GA	30384-6834	
Unum Life Insurance Company of America		PO Box 409548			Atlanta	GA	30384-9548	
Update Legal		1140 Avenue of the Americas			New York	NY	10036	
Uplift Education	c/o David Jackson	1825 Market Center Blvd, Ste 500			Dallas	TX	75207	
UPMC HEALTH SYSTEM PENSION TRUST		1 MELLON BANK CTR			Pittsburgh	PA	15258	

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
UPS Freight		PO Box 730900			Dallas	TX	75373-0900	
UPS Supply Chain Solutions		PO BOX 7247-0244			Philadelphia	PA	19170-0001	
UPS Supply Chain Solutions		28013 Network Place			Chicago	IL	60673-1280	
UPS Supply Chain Solutions		PO Box 730900			Dallas	TX	75373-0900	
UpSwing Performance Improvement, Inc.		PO Box 738			Manchester	MO	63011	
Uptown Energy Partners		2602 McKinney Ave	Suite 330		Dallas	TX	75204	
Urano, Cameron		Address on File						
URBAN, ASHLEY		Address on File						
URBAN, JOHN		Address on File						
URBANIC, MATTHEW		Address on File						
URECH, DANIELLE		Address on File						
URS CORPORATION		PO BOX 121028	DEPT 1028		Dallas	TX	75312-1028	
US Attorneys Office for the Northern District of Texas	Erin Neary Cox, Donna K. Webb	1100 Commerce St. Suite 300			Dallas	TX	75242	
US Bank		1555 N Rivercenter Dr, Ste 302			Milwaukee	WI	53212	
US BANK NA	ATTN THOMAS BELCHER	ONE FEDERAL STREET	THIRD FLOOR		Boston	MA	02110	
US Foods, Inc.		Box 843202			Dallas	TX	75284-3202	
US Legal Support		Texas Records & Reporting	PO BOX 952172		Dallas	TX	75395-2172	
US Legal Support		Chicago, IL Reporting	PO Box 4772-11		Houston	TX	77210-4772	
US Markets		10 W. 37th St	7th FL		New York	NY	10018	
US Policy Metrics LLC		2001 K St NW F1 8-11			Washington	DC	20006-1042	
US Postage Meter Center		PO Box 800848			Santa Clarita	CA	91380	
US Securities & Exchange Commission	FOIA Officer & Privacy Act Officer	100 F Street, NE	Mail Stop 2736		WASHINGTON	DC	20549-2000	
US Ski and Snowboard Team Foundation		1 Victory Lane	Box 100		Park City	UT	84060	
USA Shooting	Aftn Rob Weekes	1 Olympic Plaza			Colorado Springs	CO	80909	
usfi marketing communications								
USTMAAM		12100 Ford Rd Ste 100			Dallas	TX	75234	
USW LOCAL 870	C/O MARC VILLAFANIA	104 BIG OAKS RD			STREAMWOOD	IL	60107-1320	
Utah Division of Securities		94 WASHINGTON PLACE	160 East 300 South, 2nd Floor		Totwa	NJ	07512	
UTAH STATE TAX COMMISSION		Securities Division			Salt Lake City	UT	84111	
Valhalla CLO, Ltd.	c/o Intertrust SPV (Cayman) Limited	210 N 1950 W			Salt Lake City	UT	84134	
Valhalla CLO, Ltd. JPMorgan Chase Bank	JPMorgan Chase Bank	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Valhalla CLO, Ltd. JPMorgan Chase Bank	Valhalla CLO, Ltd. c/o Walkers SPY Limited	390 Greenwich Street, 4th Floor	Institutional Trust Services	Valhalla CLO, Ltd.	New York	NY	10013	Cayman Islands
VALIANT MEDIA		Walker House, PO Box 908GT, Mary Street	George Town, Grand Cayman	The Directors	Grand Cayman			Cayman Islands
Validity, Inc.		3116-D COMMERCE ST	22nd Floor		Dallas	TX	75226	
Value Line Publishing	ATTN Matt Jamison	200 Clarendon St	220 East 42nd Street 6th floor		Boston	MA	02116	
ValueScope, Inc.		Value Line Publishing, Inc			New York	NY	10017	
VAN HOEF, ASHLEY		1400 Theiford Ct.			Southlake	TX	76092	
VANACOUR, JASON		Address on File						

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Vanessa Sea		Address on File						
Vanguard Brokerage Services	Attn Securities Receipt & Transfer	PO Box 1170			Valley Forge	PA	19482-1170	
Vector One Management		113 E 55th St			New York	NY	10022	
Vela Wood PC	Attention Kevin Vela	5307 E. Mockingbird Lane, Suite 802			Dallas	TX	75206	
Venable LLP		PO Box 630798			Baltimore	MD	21263-0798	
Venable LLP		PO Box 62727			Baltimore	MD	21264-2727	
Vengroff Williams, Inc c/o American Arbitration Association	Vengroff Williams, Inc c/s American Arbitration	2211 Fruitville Rd			Sarasota	FL	34237	
Venture Mechanical, Inc.		1644 W Crosby Rd			Carrollton	TX	75006-6628	
Veritas Backup Exec		2625 Augustine Drive			Santa Clara	CA	95054-0000	
Veritas Enterprise Vault		2625 Augustine Drive			Santa Clara	CA	95054-0000	
Veritas Software Global LLC		PO Box 60000			San Francisco	CA	94160-3667	
Veritext Corp.		3090 Bristol Street	Suite 190		Costa Mesa	CA	92626	
Veritext Los Angeles Reporting Co		3090 Bristol St	Suite 190		Costa Mesa	CA	92626	
Veritext Mid-Atlantic		1801 Market Street	Suite 1800		Philadelphia	PA	19103	
Veritext New York Reporting Co		330 Old Country Rd	Suite 300		Mineola	NY	11501	
Veritext New York Reporting Co		PO Box 71303			Chicago	IL	60694-1303	
Verity Group		885 E Collins Blvd	Ste. 102		Richardson	TX	75081-0000	
Verity Group		PO Box 940361			Plano	TX	75094-0361	
VERIZON		PO BOX 15124			Albany	NY	12212-5124	
VERIZON		PO BOX 1100			Albany	NY	12250-0001	
Verizon Wireless		PO Box 489			Newark	NJ	07101-0489	
Verizon Wireless		PO Box 790406			Saint Louis	MO	63179-0406	
Verizon Wireless		PO Box 660108			Dallas	TX	75266-0108	
Verizon Wireless		PO Box 4001			Inglewood	CA	90313-4001	
Vermont Department of Taxes		PO Box 588			Montpelier	VT	05601	
Vermont Dept of Financial Regulation		Dept of Banking, Insurance & Securities	89 Main Street, 2nd Floor, Drawer 20		Montpelier	VT	05620	
Verrill Dana LLP		One Portland Square	P.O. Box 586		Portland	ME	04112	
VFG Securities, Inc.	Attn Jana Oledzki	100 Corporate Pointe	Suite 382		Culver City	CA	90230-7612	
ViaWest, Inc.	Attn John Greenwood	1200 17th Street, Suite 1150			Denver	CO	80202	
ViaWest, Inc.		PO Box 732368			Dallas	TX	75373-2368	
ViaWest, Inc.		PO Box 912362			Denver	CO	80291-2362	
Vibrancy21		1133 South Clinton Street			Baltimore	MD	21224	
Vickery Meadow Learning Center		6329 Ridgecrest			Dallas	TX	75231	
Victor Chang		Address on File						
Victor Chong		Address on File						
Vigilant Resources		45 Rockefeller Plaza, 20th Floor			New York	NY	10111	
VILLA VERONA, LTD		13330 NOEL RD			Dallas	TX	75240	
Village on the Green		5301 Alpha Road, Suite 44			Dallas	TX	75240	
Vin Thompson		Address on File						



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Vincent Lopez Seratino & Jenevein, PC		2001 Bryan St	Suite 2000		Dallas	TX	75201	
VINSON & ELKINS, LLP		A1001 FANNIN ST, STE 2300	FIRST CITY TOWER		Houston	TX	77002-6760	
Vintage Filings		350 Hudson Street, Suite 300			New York	NY	10014	
Vintage Filings		350 Hundson Street	Suite 300		New York	NY	10014	
Vintage Filings		PO Box 30719			New York	NY	10087-0719	
Virra, Sagar		Address on File						
VIRGINIA DEPARTMENT OF TAXATION		PO BOX 1500			Richmond	VA	23218-1500	
VIRGINIA DEPARTMENT OF TAXATION		PO BOX 1777			Richmond	VA	23218-1777	
Virginia Retirement System	Attn Control	PO Box 361			Richmond	VA	23218	
Virginia Retirement Systems	Attn Control	PO Box 361			Richmond	VA	23218	
Vishnu Gogineni		Address on File						
Visix, Inc.		230 Scientific Drive	Suite 800		Norcross	GA	30092	
Vitae Search Group, LLC		6009 Mariposa Drive			McKinney	TX	75070	
Vitiello, Stephanie		Address on File						
Vlahakis, Eleni		Address on File						
VODAFONE		PO BOX 549			London		OX17 3ZJ	United Kingdom
Vogel Alcove		200 Crescent Court	Ste 300		Dallas	TX	75201	
Voice of Hope	Attn Ruth Hardesty	PO Box 224845			Dallas	TX	75222-4845	
Volunteers for Youth, Inc.		205 Lloyd Street	Suite 103		Carrboro	NC	27510	
Voya Financial Advisors	Attn-Adriana Mardarie Gagov	909 Locust Street			Des Moines	IA	50309	
Voya Financial Advisors		5780 Powers Ferry Road, NW			Atlanta	GA	30327	
VSI Solutions		203 Dumont ct			Fairview	TX	75069	
VTB Capital plc		14 Cornhill			London		EC3V3ND	United Kingdom
W San Diego		421 West B St			San Deigo	CA	92101	
W. Andrew Hodge Consulting, PA		PO Box 11417			Glendale	AZ	85318	
W.B. Mason Co., Inc.		59 Centre St			Brockton	MA	02301	
Wachovia Insurance Services		5956 Sherry Lane	Suite 2000		Dallas	TX	75225-6531	
Wachovia Secuties LLC		Relationship Management Group-MO1400						
Wachtell, Lipton, Rosen & Kaiz Wagner, Grace		51 West 52nd Street	1 North Jefferson St		Saint Louis	MO	63103	
Wake2O		Address on File			New York	NY	10019	
Wakefield Quin		Rue du Mont Blanc 3			Geneva		01201	SWITZERLAN D
Wakefield Quinn		Victoria Place	31 Victoria St		Hamilton		0HM10	Bermuda
Walek & Associates, Inc.		PO BOX HM 809			Hamilton		0HMCX	BERMUDA
WALLIA, AMIT		317 Madison Avenue Suite 2300			New York	NY	10017	
Walker Dunlop		Address on File						
Walker Kobelan		Address on File						

003354

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Walkers		PO Box 265GT, Walker House	87 Mry Street		George Town		KY1-9001	Cayman Islands
Walkers - Ireland		The Exchange, Georges Dock, IFSC			Dublin		1	Ireland
Walkers Fund Services Limited	c/o Intertrust Cayman c/o OConnor Davies Mumms & Dobbins LLP	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Wall Street Tax Association		60 East 42nd Street			New York	NY	10165	
WALLS, DAVID		Address on File						
WALTER JARMAN		Address on File						
WAN, QIAN		Address on File						
WANG, ALICE		Address on File						
WANG, CHEN-HAN		Address on File						
Wang, Ruozhou		Address on File						
Warehouse Store Fixture Co.		84 Progress Lane			Watebury	CT	06705	
Warner Stevens LLP		1700 City Center Tower II	301 Commerce Street		Fort Worth	TX	76102	
Warren Posner		Address on File						
Washington Speakers Bureau Inc.		1663 Prince Street			Alexandria	VA	22314	
Washington State Treasurer		WA Dept of Finan Inst. Securities Div	150 Israel Road SW		Tumwater	WA	98501	
Waterhouse, Frank	Ross & Smith, PC	Plaza of the Americas	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
WATERHOUSE, FRANK		Address on File						
Waterview Advisors		14800 Quorum Dr Ste 450			Dallas	TX	75254-7531	
Watson Wyatt & Co		PO Box 277665			Atlanta	GA	30384	
WATSON, ERIN		Address on File						
Watts, Andrew		Address on File						
WATTS, KEITH R		Address on File						
Wayne Bell		Address on File						
WC 4641 Production, LLC	C/o Great Value Storage Attn Sharon Popham, Reservations Chair	4641 Production Drive			Dallas	TX	75235	
WCDABG		3 Carmarthen Court			Dallas	TX	75225	
Wealthforge Securities, LLC		6800 Paragon Place	Ste 200		Richmond	VA	23230	
Wealthmaster Group, LLC		18881 Von Karman Ave	Suite 720		Irvine	CA	92612	
Weatherly, Brian		Address on File						
Weaver and Tidwell, LLP		2821 West 7th Street	Suite 700		Fort Worth	TX	76107	
Webb, Justin		Address on File						
WebsiteBackup Company		2375 E. Camelback Rd	Suite 600		Phoenix	AZ	85016	
WEBSTER, GREGORY W		Address on File						
WEIJUN ZANG		Address on File						
Weinstein, Clower & Associates		PO Box 795001			Dallas	TX	75379	
Weich Consulting Ltd		1716 Briarcrest Drive #700			Bryan	TX	77802-2760	
Wells Fargo Advisors FBO Bezilla	Attn Alan Kinney	200 Stephenson Ave, Suite 301			Savannah	GA	31405	
Wells Fargo Advisors, LLC	Attn Andrew Black	280 Park Avenue, FL 29W			New York	NY	10017	
Wells Fargo Advisors, LLC	Attn April Johnson	10900 Wilshire Blvd, 11th Floor			Los Angeles	CA	90024	

003355

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Wells Fargo Advisors, LLC	Attn Dan Racicot WF - Finet	4275 Executive Square, Ste 910			Lajolla	CA	92037	
Wells Fargo Advisors, LLC	Attn Denise Bare	9665 Wilshire Blvd, Ste 100			Beverly Hills	CA	90212	
Wells Fargo Advisors, LLC	Attn Greg Shumaker	700 Ackerman Rd, Ste 400			Columbus	OH	43202	
Wells Fargo Advisors, LLC	Attn Kathy Buckley	6060 South American Plaza St East			Tulsa	OK	74135	
Wells Fargo Advisors, LLC	Attn Kevin Dailey	100 East Wisconsin Ave, 12th Floor			Milwaukee	WI	53202	
Wells Fargo Advisors, LLC	Attn Mike McChesney	2500 Legacy Dr, Ste 200			Frisco	TX	75034	
Wells Fargo Advisors, LLC	Attn Nicole Stenquist	450 Post Road East			Westport	CT	06880	
Wells Fargo Advisors, LLC	Attn Operations Manager	20 William Street, Ste 300			Wellesley	MA	02481	
Wells Fargo Advisors, LLC	Attn Operations Manager	331 Newman Springs Rd, Ste 230			Red Bank	NJ	07701	
Wells Fargo Advisors, LLC	Attn Operations Manager	222 East Main St, Ste 106			Smithtown	NY	11787	
Wells Fargo Advisors, LLC	Attn Operations Manager	13621 University Ave			Clive	IA	50325	
Wells Fargo Advisors, LLC	Attn Operations Manager	909 Fannin St, Suite 1200			Houston	TX	77010	
Wells Fargo Advisors, LLC	Attn Operations Manager	1200 17th St, Ste 2000			Denver	CO	80202	
Wells Fargo Advisors, LLC	Attn Operations Mgr Garner Mabry	6400 South Fiddlers Green Cir, Ste 1840			Greenwood Village	CO	80111	
Wells Fargo Advisors, LLC	Attn Paula Curry, Control Specialist	2 International Place, 20th Fl			Boston	MA	02110	
Wells Fargo Advisors, LLC	Attn Rita Borchers	7400 West 130th St, Ste 200			Overland Park	KS	66213	
Wells Fargo Advisors, LLC	Attn Tracy Lusk	8115 Preston Rd, Suite 300			Dallas	TX	75225	
Wells Fargo Advisors, LLC	Attn Web Wang	5820 Canoga Ave, #100			Woodland Hills	CA	91367	
Wells Fargo Advisors, LLC	c/o David Eifenbein	1211 Avenue of the Americas, 27th Flr			New York	NY	10036	
Wells Fargo Advisors, LLC	c/o Hefter Leshem Margolis	500 Lake Cook Rd, Ste 100			Deerfield	IL	60015	
Wells Fargo Advisors, LLC	c/o Shannon Walker	695 E. Arlington Blvd., Ste 201			Greenville	NC	27858	
Wells Fargo Advisors, LLC		180 Glastonbury Blvd			Glastonbury	CT	06033	
Wells Fargo Advisors, LLC		1 North Jefferson Ave.	Suite 301		Saint Louis	MO	63103	
Wells Fargo Advisors, LLC		3501 W Rosemont Ave			Chicago	IL	60659-2207	
Wells Fargo Advisors, Westwood		10900 Wilshire Blvd	11th Floor		Los Angeles	CA	90024	
WELLS FARGO BANK		WF 8113	PO BOX 1450		Minneapolis	MN	55485-8113	
Wemple, Stefanie		Address on File						
WEN, JING		Address on File						
WENDELL, MORTON		Address on File						
Wendy Harper		Address on File						
WENTWORTH, KEVIN J.		Address on File						
Wesley Gollie		Address on File						
West Court Reporting Services		West Payment Center	P.O. Box 6292		Carol Stream	IL	60197-6292	
West Payment Center		PO Box 6292			Carol Stream	IL	60197-6292	
West Publishing Corporation		P.O. Box 12421			Newark	NJ	07101	
West Virginia State Auditor Office	Securities Division	1900 Kanawha Blvd. E	State Capital Building 1, Room W-100		Charleston	WV	25305-0230	Cayman Islands
Westchester CLO, Ltd.	The Directors	PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman		KY 1-1108	

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Westchester CLO, Ltd.		P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town			Cayman Islands
Westchester CLO, Ltd.			COO Services Group Ref Westchester CLO, Ltd.		Boston	MA	02116	
Investors Bank & Trust Company	Investors Bank & Trust Company	200 Claredon Street						
Western International Securities, Inc.		70 S. Lake Ave 49 Chetwynd Road	Ste 700		Pasadena Somerville	CA MA	91101 02144	
WESTMINSTER CITY COUNCIL		PO BOX 397			London		WA55 1GG	United Kingdom
WestPark Capital, Inc.		1900 Avenue of the Stars	Suite 310		Los Angeles	CA	90067	
Westwood Professional Services, Inc.		7699 Anagram Drive			Eden Prairie	MN	55334	
WHARF, PAUL		Address on File						
WHARF, PAUL C.		Address on File						
Whatley, David		Address on File						
WHERRY, SHANNON M.		Address on File						
Whetstone, Laurie		Address on File						
Whitaker, Chalk, Swindler, & Sawyer		Address on File						
White & Case LLP		301 Commerce St. Suite 3500			Ft. Worth	TX	76102	
White & Williams LLP		1155 Avenue of the Americas			New York	NY	10036-2787	
White, Jeremy		1800 One Liberty Place			Philadelphia	PA	19103-7395	
White, Kelly		Address on File						
WhiteGlove House Call Health, Inc.		Address on File						
WhiteGlove House Call Health, Inc.		5300 Bee Cave Rd, Bldg One	Ste 100		Austin	TX	78746	
Whitehall-Parker Securities, Inc.		PO Box 845720			Dallas	TX	75284-5720	
Whitney Smith Co		477 Pacific Ave, 2nd Floor			San Francisco	CA	94133	
WhitneySmith Company		301 Commerce St	Suite 1950		Fort Worth	TX	76102	
WICK PHILLIPS LLP		301 Commerce Street, Suite 1950			Fort Worth	TX	76102	
Wick Phillips Gould & Martin, LLP	Jason M. Rudd. Lauren K. Drawhorn	500 North Akward Street	Suite 2100		Dallas	TX	75201	
Wicks Business Information		3131 McKinney Avenue, Suite 500			Dallas	TX	75204	
Wild Rose Floral Design Studio		1375 Kings Highway East Ste 450			Fairfield	CT	06824	
Wild Rose Floral Design Studio		PO Box 541			Rockwall	TX	75087	
Wilentz Goldman & Spitzer		720 E Lamar St			Royse City	TX	75189	
Wiley, Grant		90 Woodbridge Center Dr.			Woodbridge	NJ	07095	
Wilkinson Center	Attn Andrea Jones	Address on File						
Wilkinson Center	Attn Cathy Rosson	PO Box 720248			Dallas	TX	75372	
Wilks, Lukoff & Bracegirdle, LLC		PO Box 720248			Dallas	TX	75372	
Will Pryor Mediation & Arbitration	Thad J. Bracegirdle	4250 Lancaster Pike, Suite 200			Wilmington	DE	19805	
		5420 LBJ Frwy Ste 626			Dallas	TX	75240	

003357

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
WILLIAM CORNELIUS		Address on File						
William Gosserand	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
William Ikard		Address on File						
William Keeney		Address on File						
William M. Cobb & Associates, Inc.		12770 Coit Rd, Ste 907			Dallas	TX	75251	
William Mabry	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
William Oliveira		Address on File						
William R. Welch		Address on File						
William Todd Westerburg		Address on File						
Williams, Andrew		Address on File						
WILLIAMS, MEREDITH		Address on File						
Willis of New York, Inc.		PO Box 4557			New York	NY	10249-4557	
Willis of Texas, Inc.		Dallas/Ft. Worth Division	PO Box 730310		Dallas	TX	75373-0310	
Willis of Texas, Inc.		PO Box 731739			Dallas	TX	75373-1739	
Willkie Farr & Gallagher LLP		787 Seventh AVE			New York	NY	10019-6099	
WILLMORE, DAVID		Address on File						
Willoughby McCabe Agents Co		3409 Rosedale Avenue			Dallas	TX	75205	
WILLOUGHBY-MCCABE, PATRICK		Address on File						
Wilmer Cutler Pickering Hale and Dorr LLP	Timothy F. Silva	60 State Street			Boston	MA	02109	
Wilmer Cutler Pickering Hale Dorr LLP		1875 Pennsylvania Avenue NW			Washington	DC	20006	
Wilmer Cutler Pickering Hale Dorr LLP		PO Box 7247-8760			Philadelphia	PA	19170-8760	
Wilmington Trust Company		Rodney Square North	1100 North Market St		Wilmington	DE	19890-0001	
Wilshire Associates Incorporated	Attn Accounts Receivable	1299 Ocean Avenue, Suite 700			Santa Monica	CA	90401-1085	
WILSON SMITH		Address on File						
WILSON, ANDREW		Address on File						
WILSON, ANTHONY		Address on File						
Wilson, Owen		Address on File						
WILSON, SCOTT		Address on File						
Wilson, Sonsini, Goodrich, & Rosati		PO Box 742866			Los Angeles	CA	90074-2866	
Wilson, Sonsini, Goodrich, & Rosati		File # 73672	PO Box 60000		San Francisco	CA	94160-3672	
WILSON, STEVE L.		Address on File						
Wilton, William		Address on File						
WINGS Ventures LLC		172304 Preston Rd	Ste 800		Dallas	TX	75252	
Winn Media		Address on File						
WINSTEAD P.C.		5400 RENAISSANCE TOWER	1201 ELM ST		Dallas	TX	75270	
WINSTEAD P.C.		2728 N Harwood Street	Suite 500		Dallas	TX	75201-1743	
Winston & Strawn LLP		2121 North Pearl Street	Suite 900		Dallas	TX	75201	
Wired		PO Box 37704			Boone	IA	50037-0704	

003358

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Wisconsin Office of Comm of Securities	Division of Securities	201 West Washington Avenue, Suite 300			Madison	WI	53703	
WISE, CHRIS		Address on File						
Wiseman & Hoffman		460 Park Ave South, 4th Fir			New York	NY	10016	
WISER, JASON		Address on File						
Withers Bergman LLP		157 Church Street, 12th Floor	PO Box 426		New Haven	CT	06502	
Withers Bergman LLP		PO Box 1685			New Haven	CT	06507	
WMI Fund Associates Co., Ltd.		Kakimi Kojimachi Annex Bldg 6F	3-2 Kojimachi, Chiyoda-ku		Tokyo	TX	102-0083	JAPAN
Wolters Kluwer		1999 Bryan Street	Ste 900		Dallas	TX	75201-0000	
Wolters Kluwer Legal & Regulatory US		PO Box 71882			Chicago	IL	60694-1882	
Wombat Security Technologies		3030 Penn Avenue	Suite 200		Pittsburgh	PA	15201	
Womens Auxiliary Childrens-Six Flags	Attn Jenny Garberding	7315 Centenary Ave			Dallas	TX	75225	
Womens Auxiliary Childrens-Six Flags	Attn Robin Wilson, Treasurer	7506 Greenbrier			Dallas	TX	75225	
Wonderlic		1795 N. Butterfield Rd			Libertyville	IL	60048-1212	
WOOD, HANNAH		Address on File						
Woodall Rodgers Park Foundation	Attn Erika White	1909 Woodall Rodgers Fwy	Suite 403		Dallas	TX	75201	
Woodbury Financial Services, Inc.	ATTN Reimb Processing	PO Box 64284			Saint Paul	MN	55164	
Woodruff-Sawyer & Co.		PO Box 45057			San Francisco	CA	94145-9950	
WOOTTON, JENNIFER		Address on File						
World Affairs Council		325 N. St. Paul St.	Suite 4200		Dallas	TX	75201	
World Data Products		M & I 196 PO Box 1414			Minneapolis	MN	55480-1414	
Worldwide Financial Solutions		16140 Northcross Drive			Huntersville	NC	28078	
Worldwide Insurance Services WP Engine	ATTN INDIVIDUAL UNDERWRITING DEPT	100 MATSONFORD RD	STE 100		Radnor	PA	19087	
		504 Lavaca Street	Suite 1000		Austin	TX	78701-0000	
WQ International Ltd.		Victoria Place, 31 Victoria Street			Hamilton		0HM10	BERMUDA
Wright Wealth Management		3181 Clearwater Dr.	Ste A		Prescott	AZ	86305	
Wrights Media		2407 Timberloch Place	Suite B		The Woodlands	TX	77380-1039	
Wurz, Brandon		Address on File						
Wyoming Secretary of State		Securities Division, State Capitol Bldg	2020 Carey Avenue, Suite 700		Cheyenne	WY	82001	
Xact Data Discovery -DATX		5800 Foxridge Dr	Suite 406		Mission	KS	66202	
Xerox		45 Glover Ave			Norwalk	CT	06856-0000	
Xerox Corporation		2553 Collections Center Dr.			Chicago	IL	60693	
Xerox Corporation		PO Box 650361			Dallas	TX	75265	
Xerox Corporation		PO Box 827598			Philadelphia	PA	19182-7598	
Xerox Corporation		PO Box 802555			Chicago	IL	60680-2555	
Xerox Corporation		PO Box 7405			Pasadena	CA	91109-7405	
Xignite, Inc		1825 South Grant St	Suite 100		San Mateo	CA	94404	
Xignite, Inc		Dept 3344	PO Box 123344		Dallas	TX	75312-3344	

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
XIOTECH CORPORATION		DEPT CH 17326			Patentine	IL	60055-7326	
XO Communications		PO Box 530471			Atlanta	GA	30353-0471	
XPISTI LLC		2807 Allen Street # 382			Dallas	TX	75204	
Xtract Research		330 Hudson Street		4th Floor	New York	NY	10013	
YAGNISIS, AIRLIA		Address on File						
YANG, JOHN		Address on File						
YAROSLAV JERRY LVOVICH		Address on File						
Yehia, Josef		Address on File						
Yelibelly, Inc.		2364 Northwest Pkwy			Southlake	TX	76092	
YINGHUI HE		Address on File						
YMCA of Metropolitan Dallas		5101 Tennyson Pkwy.			Plano	TX	75024	
YOON, CHRISTOPHER K.		Address on File						
York & Chapel, Corp.		2 Trap Falls Road		Suite 410	Shelton	CT	06484	
YOUNG CONAWAY								
STARGATT & TAYLOR, LLP	Bruce L. Silverstein	Elena C. Norman	1000 North King Street		Wilmington	DE	19801	
Young Life	C/O Lee Anne Bingham	3304 Beckham Ct			Plano	TX	75075	
YOUNG LIFE ALBUQUERQUE								
YOUNG LIFE, NORTH CENTRAL TEXAS		PO BOX 91894			Albuquerque	NM	87199-1894	
Young Womens Preparatory Network		11300 N CENTRAL EXPWY		STE 600	Dallas	TX	75243	
Young, Priya		1722 Routh Street		Suite 720	Dallas	TX	75201	
YTAC-Dallas		Address on File						
Zacks Investment Research, Inc.		2807 Allen St., Box 347			Dallas	TX	75204	
ZANG, WEIJUN		111 North Canal Street		Suite 1101	Chicago	IL	60606	
ZANG, WEIJUN		Address on File						
ZARIN, GREGORY		Address on File						
Zayo Group		Address on File						
Zayo Group, LLC		1821 30th Street		Unit A	Boulder	CO	80301-0000	
Zendesk		PO Box 952136			Dallas	TX	75395-2136	
Zenprise Inc		1019 Market St			San Francisco	CA	94103-0000	
ZEPHYR ASSOCIATES		6120 Stevenson Blvd			Fremont	CA	94538	
ZEPHYR ASSOCIATES		4 Westchester Park Dr		2nd Floor	White Plains	NY	10604	
ZEPHYR ASSOCIATES		Dept 2215		PO Box 2121	Memphis	TN	38159	
ZEPHYR ASSOCIATES		PO Box 12368		312 Dorla Court	Zephyr Cove	NV	89448	
ZEPHYR ASSOCIATES		PO Box 416014		Suite 204	Boston	MA	02241-6014	
ZIEGENHAGEN, RANDALL		P.O. Box 2153		Dept. 1899	Birmingham	AL	35287-1899	
ZIEGLER, JASON		Address on File						
ZIMMERMANN, JOHN		Address on File						
ZOHO Corporation		File No #31469		PO Box 60000	San Francisco	CA	94160	
ZOHO Corporation		PO Box 742760			Los Angeles	CA	90074-2760	
ZOHO Corporation		4900 Hopyard Road		Suite 310	Pleasanton	CA	94588-7100	
Zosel, August		Address on File						
Zscaler		110 Rose Orchard Way			San Jose	CA	95134-0000	
Zuckerman Spaeder LLP		1800 M Street NW			Washington	DC	20036-5802	
Zuluaga, Juan Camilo		Address on File						
Zurich North America	ATTN HOWARD BULGATZ	8745 PAYSAPHERE CIRCLE			Chicago	IL	60674	

003360



**Exhibit C**

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Zurich North America		8712 Innovation Way			Chicago	IL	60682-0087	
Zyrka		1408 N. Riverfront Blvd. #106			Dallas	TX	75207	

003361



**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Advisors Equity Group, LLC		300 Crescent Court, Ste. 700		Dallas	TX	75201
Canis Major Trust		300 Crescent Ct	Ste 700	Dallas	TX	75201
DONDERO, JAMES		300 Crescent Ct, Suite 700		DALLAS	TX	75201
Eagle Equity Advisors, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
ELLINGTON, SCOTT		300 Crescent Ct, Suite 700		DALLAS	TX	75201
Fanshaw Bay, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Four Rivers Co-Invest, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
Gunwale, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
HCRE Partner, LLC		300 Crescent Court Ste 700		Dallas	TX	75201
	Attn Highland Capital Management, L.P. as sole member					
HFP GP, LLC		300 Crescent Court Ste 700		Dallas	TX	75201
Highland HCF Advisor, Ltd.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Acquisition Corporation		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Funds Distributor, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Insurance Solutions, L.P.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Management (Singapore)		300 Crescent Ct.	Suite 700	Dallas	TX	75201
Highland Capital Management Fund Advisors, L.P.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Management Fund Advisors, L.P.	Attn General Counsel	300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Management Services, Inc.		300 Crescent Court Suite 700		Dallas	TX	75201
HIGHLAND CAPITAL MANAGEMENT, LP		300 Crescent Court, Suite 700		Dallas	TX	75201
Highland Capital Mgmt Fund Advisors		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland CLO Funding, Ltd.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland CLO Management, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Energy MLP Fund		300 Crescent Court, Ste 700		Dallas	TX	75201
Highland First Foundation Income Fund		300 Crescent Court	Suite 700	Dallas	TX	75201

**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Highland Fixed Income Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Floating Rate Fund		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Funds I		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Funds II		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Global Allocation Fund		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Healthcare Opportunities Fund						
Highland Income Fund HFRO		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Latin America Consulting, LTD		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Long/Short Equity Fund						
Highland Merger Arbitrage Fund		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Opportunistic Credit Fund		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Prometheus						
Highland RCP Offshore, LP		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland RCP, LP		300 Crescent Ct.	Suite 700	Dallas	TX	75201
		300 Crescent Ct.	Suite 700	Dallas	TX	75201
Highland Small-Cap Equity Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Socially Responsible Equity Fund						
Highland Tax-Exempt Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Tax-Exempt Fund	Highland Energy MLP Fund	300 Crescent Court Suite 700		Dallas	TX	75201
Highland Total Return Fund	Highland Energy MLP Fund	300 Crescent Court	Suite 700	Dallas	TX	75201
		300 Crescent Court Ste 700		Dallas	TX	75201
Highland/iBoxx Senior Loan ETF						
Honis, Trevor		300 Crescent Court	Suite 700	Dallas	TX	75201
James D. Dondero		300 Crescent Ct.	Ste. 700	Dallas	TX	75201
James D. Dondero		300 Crescent Court Ste 700		Dallas	TX	75201
James Dondero, as the successor-in-interest to the Canis Major Trust		300 Crescent Court Ste 700		Dallas	TX	75201
LEE BLACKWELL PARKER, III						
Mark K. Okada	Attn Melissa Schroth	300 Crescent Court Ste 700		Dallas	TX	75201
Mark K. Okada		300 Crescent Court, Suite 700		Dallas	TX	75201
NexBank Advisors, L.P		300 Crescent Court	Suite 700	Dallas	TX	75201
		300 Crescent Ct, Suite 700		Dallas	TX	75201

**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
NexBank Capital, Inc		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank Securities, Inc		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank SSB		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank Title, Inc.		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexPoint Advisors, L.P.		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Cap Escrow		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Capital, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Discount Strategies Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Energy and Material Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Event-Driven Fund	Highland Energy MLP Fund	300 Crescent Court Ste 700		Dallas	TX	75201
NexPoint Healthcare Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Healthcare Opportunities Fund		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Latin America Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Real Estate Strategies Fund	Highland Energy MLP Fund	300 Crescent Court Ste 700		Dallas	TX	75201
NexPoint Strategic Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
OKADA, MARK		300 Crescent Ct. Suite 700		DALLAS	TX	75201
PARKER, LEE		300 Crescent Ct. Suite 700		DALLAS	TX	75201
Penant Management GP, LLC	c/o Highland Capital Management, L.P.	300 Crescent Court Ste 700		Dallas	TX	75201
PetroCap Operating, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
PetroCap Partners II, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
PRILICK, GUSTAVO		300 Crescent Court	STE 700	Dallas	TX	75201
Ragen, Spencer		300 Crescent Ct.	Ste. 700	Dallas	TX	75201
SE Multifamily Holdings, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Strand Advisors Inc.		300 Crescent Court		Dallas	TX	75201
Strand Advisors, Inc.	Attn Isaac Leventon	300 Crescent Court, Suite 700		Dallas	TX	75201
Strand Advisors, Inc.		300 Crescent Court		Dallas	TX	75201
The Dugaboy Investment Trust		300 Crescent Court Suite 700		Dallas	TX	75201

**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
The Dugaboy Investment Trust, as successor-in-interest to the Canis Major Trust		300 Crescent Court Ste 700		Dallas	TX	75201
The Get Good Non-Exempt Trust No. 1		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Get Good Non-Exempt Trust No. 1, Individually and as Successor-In-Interest of the Canis Minor Trust		300 Crescent Court, Ste. 700		Dallas	TX	75201
The Get Good Non-Exempt Trust No. 2		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Get Good Non-Exempt Trust No. 2, Individually and as Successor-In-Interest of the Canis Minor Trust		300 Crescent Court, Ste. 700		Dallas	TX	75201
The Get Good Trust		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Mark and Pamela Okada Family Exempt Trust #1	Attn Melissa Schroth	300 Crescent Court Suite 700		Dallas	TX	75201
The Mark and Pamela Okada Family Exempt Trust #2	Attn Melissa Schroth	300 Crescent Court Suite 700		Dallas	TX	75201
The Mark and Pamela Okada Family Trust	Exempt Trust #1	300 Crescent Court	Suite 700	Dallas	TX	75201
The Mark and Pamela Okada Family Trust	Exempt Trust #2	300 Crescent Court	Suite 700	Dallas	TX	75201
The Mark and Pamela Okada Family Trust - Exempt Descendants Trust #1		300 Crescent Court		Dallas	TX	75201
The Mark and Pamela Okada Family Trust - Exempt Descendants Trust #2		300 Crescent Court		Dallas	TX	75201

003366





**Exhibit E**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	Address1	Address2	City	State	Zip
AMY JENKINS	13455 NOEL RD	STE 800	Dallas	TX	75240
Amy Mitts	13455 Noel Rd	Suite 800	Dallas	TX	75240
BENTLEY CALLAN	13455 NOEL RD	STE 800	Dallas	TX	75240
BILL CORNELIUS	13455 NOEL RD	STE 800	Dallas	TX	75240
BOYD GOSSERAND	13455 NOEL RD	STE 800	Dallas	TX	75240
CLINT GILCHRIST	13455 NOEL RD	STE 800	Dallas	TX	75240
COURTNEY ORENT	13455 NOEL RD	STE 800	Dallas	TX	75240
Cummings Bay Capital Management, LP	13455 Noel Rd, Ste 800		Dallas	TX	75240
DAVID CRULL	13455 NOEL RD	STE 800	Dallas	TX	75240
DAVID SMITH	13455 Noel Rd	Ste 800	Dallas	TX	75240
EMERALD ORCHARD	13455 NOEL RD	STE 800	Dallas	TX	75240
GUSTAVO PRILICK	13455 Noel Rd, Ste 800		Dallas	TX	75240
HCM ACQUISITION COMPANY	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND ALL CAP EQUITY VALUE FUND	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CAPITAL REAL ESTATE ADVISORS	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CDO HOLDING COMPANY	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND CDO OPPORTUNITY FUND	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND CREDIT OPPORTUNITIES FUND	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CREDIT STRATEGIES FUND RIC	13455 NOEL RD STE 800		Dallas	TX	75240
HIGHLAND CRUSADER FUND	13455 NOEL RD	STE 800	Dallas	TX	75240
Highland Employee Retention Assets LLC	13455 Noel Rd	Ste 800	Dallas	TX	75240
HIGHLAND FINANCIAL CORP	13455 NOEL RD		Dallas	TX	75240
HIGHLAND FINANCIAL REAL ESTATE CORP	13455 NOEL RD		Dallas	TX	75240
HIGHLAND FINANCIAL TRUST	13455 NOEL RD		Dallas	TX	75240
Highland Funds Asset Management	13455 Noel Rd	Ste 800	Dallas	TX	75240
HIGHLAND LOAN FUNDING V	13455 NOEL RD	STE 800	Dallas	TX	75240

**Exhibit E**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	Address1	Address2	City	State	Zip
HIGHLAND SELECT EQUITY FUND	13455 NOEL RD		Dallas	TX	75240
Highland Special Situations Fund	13455 Noel Rd		Dallas	TX	75204
JASON GREEN	13455 NOEL RD	STE 800	Dallas	TX	75240
JENNIFER JURRIUS	13455 NOEL RD	STE 800	Dallas	TX	75240
KEN KAPADIA	13455 NOEL RD	STE 800	Dallas	TX	75240
LARRY LINDSEY	13455 NOEL RD	STE 800	Dallas	TX	75240
LAURA KNIPP	13455 NOEL RD	STE 800	Dallas	TX	75240
Lauren Okada	13455 Noel Rd	suite 800	Dallas	TX	75240
LESLIE HARRIS	13455 NOEL RD	STE 800	Dallas	TX	75240
LINDY HEATHERINGTON	13455 NOELRD	STE 800	Dallas	TX	75240
Lisa Miller	13455 Noel Rd		Dallas	TX	75240
Luke Okada	13455 Noel St	Suite 800	Dallas	TX	75240
Michael Hasenauer	13455 Noel Rd	Suite 800	Dallas	TX	75240
Michael McLochlin	13455 Noel Rd. Ste 800		Dallas	TX	75240
MICKEY MINCES	13455 NOEL RD	STE 800	Dallas	TX	75240
MULTI-STRATEGY SUB FUND	13455 NOEL RD		Dallas	TX	75240
NATALIE HARALSON	13455 NOEL RD	STE 800	Dallas	TX	75240
NGUYEN, TIFFANY	13455 NOEL RD #800		DALLAS	TX	75240
REAL ESTATE FUND 2002-A	13455 NOEL RD	STE 800	Dallas	TX	75240
SCOTT BASHRUM	13455 NOEL RD	STE 800	Dallas	TX	75240
Scott Groff	13455 Noel Rd Suite 800		Dallas	TX	75240
SCOTT WILSON	13455 NOEL RD		Dallas	TX	75240
SHELBY NOBLE	13455 NOEL RD		Dallas	TX	75240
TAMRA APPELEGATE	13455 NOEL RD		Dallas	TX	75240
WILLIAM SMITH	13455 NOEL RD	STE 800	Dallas	TX	75240

003369

**EXHIBIT 9**

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

THE CHARITABLE DAF FUND, LP.,

*Plaintiff,*

v.

HIGHLAND CAPITAL MANAGEMENT,  
L.P.,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Cause No. 3:21-cv-01710-N

**PLAINTIFF’S MOTION TO STAY ALL PROCEEDINGS**

**I.**

**NECESSITY OF MOTION**

Plaintiff submits this Motion as a result of the effective date, August 11, 2021, of Defendant Highland Capital Management L.P.’s Chapter 11 plan of reorganization (the “Plan”). The Plan purports to exculpate Defendant from liability and enjoin Plaintiff from pursuing actions against them. It also contains an assertion of exclusive jurisdiction by the bankruptcy court.

An appeal of the Plan, which the Fifth Circuit certified for direct appeal under 28 U.S.C. § 158(d), is now before the Court of Appeals and captioned *In re Highland Capital Management, L.P.*, No. 21-10449 (the “Fifth Circuit Appeal”). Each of the issues noted above is raised in the appeal. If successful, the appeal will overturn the exculpation, injunction, and assertion of exclusive jurisdiction in the Plan, allowing Plaintiff to proceed with this action in this Court.

In the meantime, however, Plaintiff is enjoined from participating further in this pending case and therefore asks that it be stayed pending the outcome of the Fifth Circuit Appeal.

## II.

### BACKGROUND

On August 9, 2021, Plaintiff received notice that the Plan was now effective. *In re Highland Capital Management, L.P.*, No. 19-34054, Doc. 2700. Although one condition precedent to the effectiveness of the Plan is finality of the confirmation order, which can only happen once all appeals are resolved, that and all other conditions are waivable by the Debtor. *Id.*, Doc. 1943 at pdf 142-43 (Art. VIII at pp. 45-46). The Debtor's notice, which waived finality and any other unsatisfied conditions, makes the Plan's exculpation provisions and injunctions immediately effective.

As to exculpation, the Plan states,

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

*Id.* at pdf 144-45 (Art. IX.C at pp. 47-48 (emphasis added)). “Exculpated Parties” is a defined term in the Plan that includes the Defendant in this action. *Id.* at pdf 106 (Art. I at p. 9).

As to the injunction, the Plan states,

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation SubTrust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; provided, however, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the

date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

*Id.* at pdf 147-48 (Art. IX.F at pp. 50-51 (emphasis added)). “Enjoined Parties” is a defined term in the Plan that includes Plaintiff. *Id.* at pdf 105 (Art. I; ¶ 56 at p.8).

Because these provisions are currently in force and prohibits Plaintiff from continuing this action, and because the Fifth Circuit Appeal includes direct challenges to the validity of these very provisions, Plaintiff respectfully submits that the most efficient course of action is for this Court to stay this action until the Fifth Circuit Appeal is resolved. Plaintiff expects that any resolution of the Fifth Circuit Appeal will necessarily determine that the Plan’s exculpation and injunction provisions absolves Defendant of any liability or, alternatively, that this action can proceed.

### III.

#### ARGUMENT

This Court should exercise its inherent powers to stay all proceedings in the case until the Fifth Circuit Appeal is decided.

The Fifth Circuit has long held that “[t]he district court possesses the inherent power to control its docket.” *Marine Chance Shipping v. Sebastian*, 143 F.3d 216, 218 (5th Cir. 1998). The exercise of that power is a discretionary one. *E.g.*, *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) (“A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.”)

Here, Plaintiff asks this Court to exercise discretion in favor of efficiency and to stay all proceedings. Plaintiff respectfully submits that, until the appeal is resolved, many complex legal questions exist that may affect the viability of this action or the forum in which it should be



litigated. Those questions—including the validity of the exculpation and injunction provisions quoted above—will likely be resolved by the Fifth Circuit Appeal. And therefore, Plaintiff submits, judicial economy may be gained by staying all proceedings in this action pending that appeal.

#### IV.

#### CONCLUSION

Plaintiff appears to be wholly prohibited from participating further in this action by the now-effective terms of the Plan that purport to enjoin Plaintiff and exculpates Defendant. In light of its inability to conduct the litigation and the pending Fifth Circuit Appeal, which that court has certified for direct appeal, Plaintiff respectfully submits that the most appropriate course for this Court is to stay all proceedings until the appeal is decided. Plaintiff therefore respectfully requests a stay and all further relief to which it may be entitled.

Dated: August 26, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Jonathan Bridges*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Plaintiffs**

**CERTIFICATE OF CONFERENCE**

I hereby certify that, in a series of communications between August 13 and 26, 2021, I conferred with Defendant’s counsel regarding this Motion, and counsel indicated that they are opposed to the relief sought in this Motion.

*/s/ Jonathan Bridges*  
\_\_\_\_\_  
Jonathan Bridges

**EXHIBIT 10**

DOCKET TEXT:7 ELECTRONIC ORDER granting 6 Motion to Stay. (Ordered by Judge David C Godbey on 9/7/2021) (chmb) [ORIGINALLY FILED IN 21-CV-1710 AS #7 ON 09/7/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)

**EXHIBIT 11**

PACHULSKI STANG ZIEHL & JONES LLP

Jeffrey N. Pomerantz (CA Bar No. 143717)

Robert J. Feinstein (NY Bar No. 1767805)

John A. Morris (NY Bar No. 266326)

Gregory V. Demo (NY Bar No. 5371992)

Hayley R. Winograd (NY Bar No. 5612569)

10100 Santa Monica Blvd., 13th Floor

Los Angeles, CA 90067

Telephone: (310) 277-6910

Facsimile: (310) 201-0760

Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)

[rfeinstein@pszjlaw.com](mailto:rfeinstein@pszjlaw.com)

[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)

[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)

[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

HAYWARD PLLC

Melissa S. Hayward

Texas Bar No. 24044908

[MHayward@HaywardFirm.com](mailto:MHayward@HaywardFirm.com)

Zachery Z. Annable

Texas Bar No. 24053075

[ZAnnable@HaywardFirm.com](mailto:ZAnnable@HaywardFirm.com)

10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

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

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

THE CHARITABLE DAF FUND, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case No. 3:21-cv-01710-N

**HIGHLAND CAPITAL MANAGEMENT, L.P.’S MOTION FOR  
RECONSIDERATION OF STAY ORDER**

Highland Capital Management, L.P., a defendant in the above-captioned case (the “Debtor” or “Highland”), by and through its undersigned counsel, files this motion (the “Motion”) seeking reconsideration of the Stay Order (as defined below) that was recently entered by the Court without notice to, or opposition by, Highland. In support of its Motion, Highland states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), and Rule 59(a) of the Federal Rules of Civil Procedure.

**RELIEF REQUESTED**

4. Through this Motion, Highland requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Motion for Reconsideration of Stay Order* (the “Memorandum of Law”) filed contemporaneously with this Motion, Highland requests that the Court: (a) re-open the Stay Order, amend the findings and conclusions, and issue a new order denying the Stay Motion, and (b) grant such other and further relief as the Court deems just and proper.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of the Motion Highland is filing: (a) its Memorandum of Law, and (b) the *Appendix in*



*Support of Motion for Reconsideration of Stay Order* (the “Appendix”), together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Appendix and the arguments contained in the Memorandum of Law, Highland is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. Highland submits that no other or further notice need be provided.

WHEREFORE, Highland respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Highland such other and further relief as the Court may deem proper.

*[Remainder of Page Intentionally Blank]*

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

---

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Motion was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*

\_\_\_\_\_  
Zachery Z. Annable

**EXHIBIT A**



the Court finds and determines that Plaintiff has not met its burden of proving that a stay of the Action is warranted; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. Pursuant to Rule 59, the Court re-opens and vacates the Stay Order and enters this new Order **DENYING** the Stay Motion.

**It is so ordered** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

The Honorable David C. Godbey  
United States District Judge

**EXHIBIT 12**





Highland Capital Management, L.P. (“Highland”), the putative defendant in the above-captioned case (the “Action”), by and through its undersigned counsel, files this motion (the “Motion”) to dismiss the Action. In support of its Motion, Highland states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), and Rules 12(b)(1), (3), (4), and (6) of the Federal Rules of Civil Procedure, made applicable in this Action pursuant to Bankruptcy Rule 7012.

### **RELIEF REQUESTED**

4. Through this Motion, Highland requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Motion to Dismiss* (the “Memorandum of Law”) filed contemporaneously with this Motion, Highland requests that the Court: (a) dismiss the Action with prejudice, and (b) grant such other and further relief as the Court deems just and proper.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of the Motion Highland is filing: (a) its Memorandum of Law, and (b) the *Appendix in Support of Motion to Dismiss* (the “Appendix”), together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Appendix and the arguments contained in the Memorandum of Law, Highland is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. Highland submits that no other or further notice need be provided.

WHEREFORE, Highland respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Highland such other and further relief as the Court may deem proper.

*[Remainder of Page Intentionally Blank]*

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

---

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Motion was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*

\_\_\_\_\_  
Zachery Z. Annable

**EXHIBIT A**





valid, would constitute post-petition administrative claims; (e) the Plan provides a specific procedure through which holders of purported administrative claims, such as Plaintiff, can file an application with the Bankruptcy Court for allowance of its administrative expense claims; and (f) based on the foregoing, under the Confirmation Order and Plan, this Court is not the appropriate venue for this Action; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. The Action is **DISMISSED** with prejudice.

It is so ordered this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

The Honorable David C. Godbey  
United States District Judge

**EXHIBIT 13**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CHARITABLE DAF FUND, L.P.,

Plaintiff,

v.

HIGHLAND CAPITAL  
MANAGEMENT, L.P.,

Defendant.

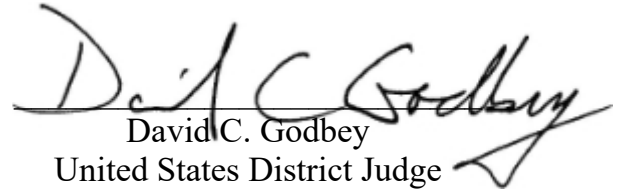
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 3:21-CV-1710-N

**ORDER**

This Order addresses Defendant Highland Capital Management, L.P.’s (“HCM”) motion for reconsideration of this Court’s earlier order staying this case [8]. This case challenges a transaction consummated in the course of a consolidated bankruptcy proceeding and names as the sole defendant the debtor in that bankruptcy. The Court therefore concludes that this case constitutes a matter “related to” a case in the bankruptcy court under the meaning of this District’s Miscellaneous Order No. 33. Accordingly, the Court grants Defendant’s motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 19-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case.

Signed May 19, 2022.

  
David C. Godbey  
United States District Judge

**EXHIBIT 14**

# **Highland Multi Strategy Credit Fund, L.P.**

A Delaware Limited Partnership

**Fourth Amended and Restated  
Limited Partnership Agreement**

November 1, 2014

---

003401

## TABLE OF CONTENTS

	<b>Page</b>
Article I DEFINITIONS .....	1
Article II ORGANIZATION.....	10
2.1 Continuation of Limited Partnership .....	10
2.2 Name of Partnership .....	11
2.3 Principal Office; Registered Office.....	11
2.4 Term of Partnership.....	11
2.5 Object and Powers of Partnership.....	11
2.6 Liability of Partners .....	12
2.7 Actions by Partnership.....	12
2.8 Reliance by Third Parties.....	12
2.9 UCC Status of Limited Partner Interests .....	12
2.10 Series of Interests.....	12
Article III CAPITAL.....	13
3.1 Contributions to Capital.....	13
3.2 Rights of Partners in Capital.....	14
3.3 Capital Accounts .....	14
3.4 Allocations of Net Profit and Net Loss.....	15
3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures .....	15
3.6 Reserves; Adjustments for Certain Future Events .....	16
3.7 Performance Allocation .....	17
3.8 Limited Participation Investments and New Issues.....	17
3.9 Allocation to Avoid Capital Account Deficits .....	18
3.10 Regulatory Allocations.....	18
3.11 Allocations for Income Tax Purposes.....	19
3.12 Individual Partner’s Tax Treatment.....	21
3.13 Distributions.....	21
Article IV MANAGEMENT .....	22
4.1 Duties and Powers of the General Partner .....	22
4.2 Expenses .....	23
4.3 Rights of Limited Partners.....	25
4.4 Other Activities of Partners.....	25
4.5 Exculpation; Indemnification.....	26
4.6 Advisory Committee.....	28
4.7 Alternative Investment Vehicles .....	29
Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS .....	29
5.1 Admission of Limited Partners .....	29
5.2 Admission of Additional General Partners .....	29
5.3 Transfer of Interests of Limited Partners .....	30
5.4 Transfer of Interest of the General Partner .....	30
5.5 Withdrawal of Interests of Partners .....	31



Article VI SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION.....	35
6.1 Soft Wind Down .....	35
6.2 Dissolution of Partnership.....	36
6.3 Liquidation of Assets .....	36
Article VII ACCOUNTING AND VALUATION; BOOKS AND RECORDS .....	37
7.1 Accounting and Reports.....	37
7.2 Valuation of Partnership Assets and Interests .....	38
7.3 Determinations by the General Partner .....	38
7.4 Books and Records .....	39
7.5 Confidentiality .....	39
Article VIII GENERAL PROVISIONS.....	41
8.1 Amendment of Partnership Agreement.....	41
8.2 Special Power-of-Attorney .....	43
8.3 Notices .....	44
8.4 Agreement Binding Upon Successors and Assigns; Delegation .....	44
8.5 Governing Law .....	44
8.6 Not for Benefit of Creditors.....	45
8.7 Dispute Resolution.....	45
8.8 Consents and Voting.....	47
8.9 Merger and Consolidation.....	48
8.10 Miscellaneous .....	48
8.11 BHCA Subject Persons .....	48
8.12 RIC Limited Partners .....	49
8.13 Bad Actor Limited Partners .....	50
8.14 Entire Agreement .....	50

THIS FOURTH AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of Highland Multi Strategy Credit Fund, L.P., dated effective as of November 1, 2014, is by and among Highland Multi Strategy Credit Fund GP, L.P., as General Partner, and certain Persons who were admitted as Limited Partners in accordance with the Prior Agreement and those Persons who are hereafter admitted as additional Limited Partners in accordance with this Agreement. Capitalized terms have the meanings set forth in Article I below.

#### PRELIMINARY STATEMENTS

- (A) The General Partner and certain of the Limited Partners have heretofore formed a limited partnership pursuant to the Act (as defined herein) by filing a Certificate of Limited Partnership with the office of the Secretary of State of the State of Delaware on December 1, 2005, and previously entered into a Limited Partnership Agreement, dated effective as of December 1, 2005, as last amended and restated by the Third Amended and Restated Limited Partnership Agreement dated as of December 31, 2007 (the “*Prior Agreement*”).
- (B) The General Partner filed an amendment to the Certificate of Limited Partnership of the Fund on August 26, 2014, changing the name of the Fund to “Highland Multi Strategy Credit Fund, L.P.”
- (C) The parties hereto desire to continue the Partnership as a limited partnership under the Act and to make certain modifications to the Prior Agreement, as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Prior Agreement is amended and restated in its entirety to read as follows:

#### Article I DEFINITIONS

For purposes of this Agreement:

“*Act*” means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17-101, et seq., as in effect on the date hereof and as amended from time to time, or any successor law.

“*Accounting Period*” means each period that starts on the day immediately following the last day of the preceding Accounting Period, and that ends on the earliest of the following dates:

- (a) the last day of a calendar month;
- (b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;

(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

“*Advisers Act*” means the U.S. Investment Advisers Act of 1940, as amended, and the rules promulgated thereunder.

“*Advisory Committee*” has the meaning set forth in Section 4.6.

“*Affiliate*” means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, “control” (including “controlled by” and “under common control”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“*Affiliated Investor*” means any Limited Partner that is an Affiliate of the General Partner or the Investment Manager, including their respective employees, members or partners and their respective immediate family members.

“*Agreement*” means this Fourth Amended and Restated Limited Partnership Agreement of the Partnership, as amended from time to time.

“*Alternative Investment Vehicle*” has the meaning set forth in Section 4.7.

“*Arbitration Rules*” has the meaning set forth in Section 8.7(b)(i).

“*Authorized Representative*” has the meaning set forth in Section 7.5(a).

“*Bad Actor Limited Partner*” means a Limited Partner that (i) would cause the disqualification of the Partnership from using Rule 506 under the Securities Act due to the operation of paragraph (d) thereof (or its successor) if such Limited Partner were to beneficially own 20% or more of the outstanding voting interest of all of the Partners (excluding any other Interests that are Non-Voting Interests) or (ii) the General Partner determines is likely to become subject to a conviction, order, judgment, finding or that would be likely to cause the disqualification described in clause (i).

“*BHCA*” means the U.S. Bank Holding Company Act of 1956, as amended.

“*BHCA Subject Person*” means any Limited Partner that is subject, directly or indirectly, to the provisions of Section 4 of the BHCA and the regulations of the Board of Governors of the Federal Reserve System promulgated thereunder.

“*Business Day*” means any day other than (a) Saturday and Sunday and (b) any other day on which banks located in New York, New York are required or authorized by law to be closed.

“*Calculation Period*” means, with respect to each Capital Account, the period commencing as of the date of the establishment of the Capital Account (in the case of the initial Calculation

Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period with respect to such Capital Account, and ending as of the close of business on the first to occur of the following:

- (a) the last day of a calendar year;
- (b) the withdrawal of all or a portion of the Interest attributable to such Capital Account (but only with respect to such withdrawn amount);
- (c) the permitted Transfer of all or any portion of such Limited Partner's Interest; or
- (d) the final distribution to such Limited Partner following the dissolution of the Partnership.

“*Capital Account*” means, with respect to each Partner, the capital account established and maintained on behalf of such Partner as described in Section 3.3.

“*Carryforward Account*” means a memorandum account to be recorded in the books and records of the Partnership with respect to each Capital Account that has an initial balance of zero and that is adjusted as follows:

(a) As of the first day after the close of each Calculation Period for such Capital Account, the balance of the Carryforward Account is (i) increased by the amount, if any, of such the Negative Performance Change with respect to such Capital Account for such Calculation Period and (ii) reduced (but not below zero) by the amount, if any, of the Positive Performance Change with respect to such Capital Account for such Calculation Period.

(b) As of the close of the Calculation Period, any positive balance of the Carryforward Account is further adjusted if such Capital Account has been reduced during such Calculation Period as a result of a distribution or withdrawal, by reducing such positive balance (but not below zero) by an amount determined by multiplying (i) such positive balance by (ii) a fraction, of which (A) the numerator is equal to the amount so distributed or withdrawn, and (B) the denominator is equal to the balance of such Capital Account immediately before giving effect to such distribution or withdrawal.

The Carryforward Account attributable to each Series A Capital Account shall be reset to zero on the Effective Date. For the avoidance of doubt, any gains or losses allocated by the Partnership to any Capital Account of a Limited Partner prior to the Effective Date will be inapplicable in the calculation of the Carryforward Account following the Effective Date.

“*Certificate*” means the Certificate of Limited Partnership of the Partnership referred to in Section 2.1(b).

“*Code*” means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

“**Dispute**” has the meaning set forth in Section 8.7.

“**Effective Date**” means the date set forth above as the effective date of this Agreement.

“**Election Notice**” has the meaning set forth in Section 8.11(c).

“**FAA**” has the meaning set forth in Section 8.7(b)(ii)

“**FATCA**” means Sections 1471 through 1474 of the Code, as amended, and any Regulations thereunder or official interpretations thereof, including any successor Regulations or interpretations, and any intergovernmental agreement implementing the foregoing.

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

“**Fiscal Year**” means each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner elects another fiscal year; provided that any such other fiscal year is permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, “**Fiscal Year**” means the portion of the calendar year ending on the date on which the Partnership is terminated.

“**GAAP**” means generally accepted accounting principles in the United States, as amended.

“**General Partner**” means Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership, any successor thereto, and any Person hereafter admitted as an additional general partner, in its capacity as general partner of the Partnership.

“**Indemnified Person**” has the meaning set forth in Section 4.5(a).

“**Interest**” means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

“**Investment Company Act**” means the U.S. Investment Company Act of 1940, as amended, and the regulations promulgated thereunder.

“**Investment Management Agreement**” means the investment management agreement between the Investment Manager, the General Partner, the Offshore Fund and the Partnership.

“**Investment Manager**” means Highland Capital Management, L.P., a Delaware limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership in accordance with the Investment Management Agreement.

“**Investments**” means investment in securities, assets and other financial or intangible investment instruments, contracts or products made as described in the Partnership’s offering memorandum.

“**Limited Partners**” means any Person who is a limited partner of the Partnership (which, except as otherwise indicated, will include a substituted Limited Partner) at the time of reference thereto, in such Person’s capacity as a limited partner of the Partnership. For all purposes of the Act, the Limited Partners of the Partnership will constitute a single class or group of limited partners.

“**Majority-in-Interest of Limited Partners**” means Limited Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all Limited Partners.

“**Management Fee**” means, with respect to each Capital Account, an amount equal to one fourth of (i) 1.5% of each Series A Capital Account balance; (ii) 1.5% of each Series B Capital Account balance; (iii) 1.0% of each Series C Capital Account balance; and (iv) 2.0% of each Series D Capital Account balance, which amounts are calculated on the first Business Day of each calendar quarter. Management Fees shall be appropriately adjusted for contributions during any partial quarter.

“**Negative Basis**” means, with respect to any Partner and as of any time of calculation, the excess of such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest) over the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership.

“**Negative Basis Partner**” means any Partner who withdraws from the Partnership and who has a Negative Basis as of the Withdrawal Date, but such Partner shall cease to be a Negative Basis Partner at such time as it has received allocations pursuant to Section 3.11(d) equal to such Partner’s Negative Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

“**Net Assets**” means the total value, as determined by the General Partner or its delegate(s) in accordance with Section 7.2, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6.). Except as otherwise expressly provided herein, Net Assets as of the first day of any Accounting Period are determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Accounting Period, but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Accounting Period, and after giving effect to Management Fee charges, and Net Assets as of the last day of any Accounting Period are determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

- (a) any Performance Allocation as of the date on which such determination is made;

(b) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(c) withholding or other taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves, holdbacks or other amounts recorded pursuant to Section 3.6 and any increases or decreases in the value of any Restricted New Issues pursuant to Section 3.8(b) and other amounts specially allocated pursuant to Section 3.8 during the Accounting Period ending as of the date on which such determination is made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Accounting Period.

“**Net Loss**” means any amount by which the Net Assets as of the first day of an Accounting Period exceed the Net Assets as of the last day of the same Accounting Period.

“**Net Profit**” means any amount by which the Net Assets as of the last day of an Accounting Period exceed the Net Assets as of the first day of the same Accounting Period.

“**New Issue Rules**” has the meaning set forth in Section 3.8(b).

“**Nonrecourse Deductions**” has the meaning set forth in Regulations Section 1.704-2(b)(1) and (c).

“**Non-Voting Interest**” means an Interest, the holder of which is not entitled to vote, consent or withhold consent with respect to any Partnership matter (including but not limited to mergers, sales of substantially all assets or consolidations of the Partnership), except as otherwise expressly provided in this Agreement.

“**Offshore Fund**” means Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company and a Limited Partner of the Partnership.

“**Orderly Realization**” has the meaning set forth in Section 6.1.

“**Other Account**” means any assets or investments of the General Partner, or any assets managed by the General Partner or any Affiliate of the General Partner for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

“**Partner**” means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and “**Partners**” means the General Partner and all of the Limited Partners.

“**Partnership**” means the limited partnership governed by this Agreement.

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



“**Partnership Percentage**” means a percentage established for each Capital Account on the Partnership’s books as of the first day of each Accounting Period. The Partnership Percentage of a Capital Account for an Accounting Period is determined by dividing the amount of such Capital Account as of the beginning of the Accounting Period by the sum of the Capital Accounts of all of the Partners as of the beginning of the Accounting Period. The numerator and denominator of the above shall be calculated after crediting all capital contributions to the Capital Account or Partnership, as appropriate, which are effective as of such date, net of all deductions, including Management Fees. The sum of the Partnership Percentages of all Capital Accounts for each Accounting Period shall equal 100%.

“**Performance Allocation**” means, for each Capital Account of a Limited Partner, 20% of the amount by which (a) the Positive Performance Change for such Calculation Period for such Capital Account, if any, exceeds (b) any positive balance in the Carryforward Account for such Capital Account as of the most recent prior date as of which any adjustment has been made thereto.

“**Performance Change**” means, with respect to each Capital Account of a Limited Partner for each Calculation Period, the difference between:

(a) the sum of (i) the balance of such Capital Account as of the close of the Calculation Period (after giving effect to Management Fees and all allocations to be made to such Capital Account as of such date, including such Capital Account’s allocable share of any profits or losses pursuant to Section 3.8 and any credits or debits of any applicable carrying charge associated therewith other than any Performance Allocation to be debited against such Capital Account), plus (ii) any debits to such Capital Account during the Calculation Period to reflect any actual or deemed distributions or withdrawals with respect to such Capital Account, plus (iii) any debits to such Capital Account during the Calculation Period to reflect any items allocable to such Capital Account pursuant to Section 3.5(b) or (c); and

(b) the balance of such Capital Account as of the commencement of the Calculation Period.

If the amount specified in clause (a) exceeds the amount specified in clause (b) such difference is a “**Positive Performance Change**,” and if the amount specified in clause (b) exceeds the amount specified in clause (a), such difference is a “**Negative Performance Change**.”

The Performance Change will be computed separately for each Capital Account (and thus each separately maintained capital sub-account created to reflect an additional contribution to a Capital Account). Thus, if a Limited Partner has multiple Capital Accounts, the Performance Change will be calculated separately for each Capital Account and the resulting “Positive Performance Change” and “Negative Performance Change” shall be separately allocated to each such Capital Account and shall not be netted against each other.

“**Person**” means any individual, partnership, corporation, limited liability company, trust or other entity or any government (including a governmental agency or political subdivision thereof).

“**Positive Basis**” means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership over such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest).

“**Positive Basis Partner**” means any Partner who withdraws from the Partnership and who has a Positive Basis as of the Withdrawal Date, but such Partner ceases to be a Positive Basis Partner at such time as it has received allocations pursuant to Section 3.11(c) equal to such Partner’s Positive Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

“**Prior Agreement**” has the meaning set forth in the Preliminary Statements to this Agreement.

“**Realization Period**” has the meaning set forth in Section 6.1.

“**Recent Amendments**” means the changes to the terms of an investment in the Partnership as contemplated in this Agreement and the constituent documents related thereto, including, but not limited to, the re-designation of all Interests held by Limited Partners on the Effective Date as Series A Interests.

“**Regulations**” means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

“**Regulatory Allocations**” has the meaning set forth in Section 3.10(d).

“**Restricted Capital Accounts**” has the meaning set forth in Section 3.8(b).

“**Restricted Issues**” has the meaning set forth in Section 3.8(b).

“**Revocation Notice**” has the meaning set forth in Section 8.11(c).

“**RIC Limited Partner**” means a Limited Partner that is registered as an investment company under the Investment Company Act.

“**Schedule of Partners**” means a schedule to be maintained by the General Partner containing the following information with respect to each Partner: (a) name; (b) address; (c) date of admission; (d) amount and date of all capital contributions and withdrawals; and (e) the amount and date of any permitted Transfers.

“**Series**” means a designated series of Interests established in accordance with this Agreement and having such terms as the General Partner determines.

“**Series A Capital Account**” means the Capital Account attributable to a Limited Partner’s Series A Interest.

“**Series A Interests**” means a Series of Interests having the rights and obligations applicable to Series A Interests as set forth in this Agreement.

“**Series A Lock-Up**” has the meaning set forth in Section 5.5(c)(i).

“**Series A Withdrawal Date**” has the meaning set forth in Section 5.5(c)(i).

“**Series B Capital Account**” means the Capital Account attributable to a Limited Partner’s Series B Interest.

“**Series B Interests**” means a Series of Interests having the rights and obligations applicable to Series B Interests as set forth in this Agreement.

“**Series B Withdrawal Date**” has the meaning set forth in Section 5.5(c)(ii).

“**Series C Capital Account**” means the Capital Account attributable to a Limited Partner’s Series C Interest.

“**Series C Interests**” means a Series of Interests having the rights and obligations applicable to Series C Interests as set forth in this Agreement.

“**Series C Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iii).

“**Series D Capital Account**” means the Capital Account attributable to a Limited Partner’s Series D Interest.

“**Series D Interests**” means a Series of Interests having the rights and obligations applicable to Series D Interests as set forth in this Agreement.

“**Series D Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iv).

“**Sub-Series of Shares**” refers to sub-series of the shares of the Offshore Fund, as created from time to time, for purposes of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received from shareholders at different times.

“**Suspension**” has the meaning set forth in Section 5.5(l).

“**Super-Majority-in-Interest of Limited Partners**” means Limited Partners whose Partnership Percentages represent more than 75% of the aggregate Partnership Percentages of all Limited Partners.

“**Transfer**” means any direct, indirect or synthetic sale, exchange, transfer, assignment, pledge, encumbrance, charge, exchange, hypothecation, placing of a lien or a security interest on an Interest or any other disposition by a Partner of its Interest to or in favor of another party, whether voluntary or involuntary (including, but not limited to, being offered or listed on or through any placement agent, intermediary, online service, site, agent or similar Person).

“*Withdrawal Date*” means, as applicable, the Series A Withdrawal Date, the Series B Withdrawal Date, the Series C Withdrawal Date, and the Series D Withdrawal Date or any other effective date of withdrawal pursuant to Section 5.5.

## **Article II ORGANIZATION**

### **2.1 Continuation of Limited Partnership**

- (a) The General Partner and the Limited Partners hereby agree to continue the Partnership as a limited partnership under and pursuant to the Act and this Agreement.
- (b) The General Partner has executed and filed with the Secretary of State of the State of Delaware a Certificate, and shall execute, acknowledge and file with the Secretary any amendments thereto as may be required by the Act, and any other instruments, documents and certificates which, in the opinion of the Partnership’s legal counsel, may from time to time be required by the laws of the United States of America, the State of Delaware or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership. The General Partner shall cause any required amendment to the Certificate to be filed promptly following the event requiring such amendment. All amendments may be signed by the General Partner (as required by the Act) and may be signed either personally or by an attorney-in-fact.
- (c) The parties hereto agree to operate the Partnership as a limited partnership pursuant to the provisions of the Act and of this Agreement and agree that the rights and liabilities of the Limited Partners and the General Partner are as provided in the Act, for limited partners and the general partner except as provided herein.
- (d) The parties hereto acknowledge and agree that the Partnership shall be classified as a “partnership” and not as an association taxable as a corporation for U.S. federal income tax purposes. No election may be made by the Partners or the Partnership to treat the Partnership as other than a “partnership” for U.S. federal, state and/or local income tax purposes and, to the extent necessary, the Partners or Partnership shall make any election to treat the Partnership as a “partnership.” The Partners shall treat the Partnership consistently with its status as a “partnership” for U.S. federal income tax purposes and agree to undertake any further action which is necessary to treat the Partnership as such, and shall not undertake any action that is inconsistent with the Partnership’s status as a “partnership” for U.S. federal, state and/or local income tax purposes.
- (e) The General Partner may change the domicile of the Partnership to another state, country or other jurisdiction where advisable due to legal, tax or other

considerations; provided that no such change of domicile would reasonably be expected to have a material adverse effect on the Limited Partners.

## **2.2 Name of Partnership**

- (a) The name of the Partnership is Highland Multi Strategy Credit Fund, L.P. or such other name as the General Partner may hereafter adopt, subject to causing an amendment to the Certificate to be filed with the Secretary of State of the State of Delaware in accordance with the Act. The General Partner shall send a notice of any change of name to the Limited Partners. All business of the Partnership shall be conducted under such name or under such other name as the General Partner deems appropriate.
- (b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's termination or at such time as there ceases to be a general partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner without payment by the assignee(s) of any consideration therefor.

## **2.3 Principal Office; Registered Office**

- (a) The Partnership's principal office shall be at such location as the General Partner may designate from time to time.
- (b) The Partnership's registered office in the State of Delaware is at 1209 Orange Street, County of New Castle, Wilmington, Delaware 19801, and the registered agent of the Partnership in the State of Delaware is The Corporation Trust Company, unless a different registered office or agent is designated from time to time by the General Partner.

## **2.4 Term of Partnership**

The term of the Partnership commenced on the date on which the Certificate was filed with the Secretary of State of the State of Delaware and continues until the Partnership is dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1). The legal existence of the Partnership as a separate legal entity continues until the cancellation of the Certificate.

## **2.5 Object and Powers of Partnership**

- (a) The object and business of the Partnership is (i) to purchase, sell (including short sales), invest and trade in Investments, (ii) to engage in financial transactions, including borrowing, financing, pledging, hedging and other derivative transactions relating thereto for the benefit of the Partnership, (iii) to engage in any lawful act or activity of which limited partnerships may be formed under the Act and (iv) to engage in any and all activities necessary or incidental to the foregoing.

- (b) The Partnership possesses and may exercise all such powers and privileges as the General Partner considers necessary, convenient or incidental to the conduct, promotion or attainment of the object of the Partnership.

## **2.6 Liability of Partners**

In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any liability for the repayment or discharge of the debts and obligations of the Partnership except to the extent provided herein or as required by the Act.

## **2.7 Actions by Partnership**

The Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out its objects.

## **2.8 Reliance by Third Parties**

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

## **2.9 UCC Status of Limited Partner Interests**

- (a) For purposes of the grant, pledge, attachment or perfection of a security interest in an Interest or otherwise, the Interests are deemed to be “securities” within the meaning of Section 8-102(a)(15) and as provided by Section 8-103(c) of the Uniform Commercial Code as in effect from time to time in the State of Delaware or analogous provisions in the Uniform Commercial Code in effect in any other jurisdiction.
- (b) Any Interest may be evidenced by a certificate of partnership interest issued by the Partnership in such form as the General Partner may approve. Every certificate representing an Interest shall bear a legend substantially in the following form:

“For the purposes of Section 8-103 of the Uniform Commercial Code of the United States of America in effect in any relevant jurisdiction, the certificates representing an interest in the Limited Partnership constitute “securities” within the meaning of Section 8-102 and Section 8-103 of the Uniform Commercial Code.”

## **2.10 Series of Interests**

- (a) The General Partner, at any time, may without notification to or consent of the other Limited Partners, create and offer different Series of Interests in the Partnership with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, Management Fees, Performance Allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other



differences) as the General Partner may determine upon the issuance of such Series; provided that such Series would not reasonably be expected to have a material adverse effect on the existing Limited Partners. The terms and rights of such Series may be set forth in a supplement to the Partnership's offering memorandum or a "side letter" or other agreement, which the General Partner may incorporate by reference.

- (b) All Interests in the Partnership held by Limited Partners (including Affiliated Investors) as of the Effective Date are hereby designated as Series A Interests.

### **Article III CAPITAL**

#### **3.1 Contributions to Capital**

- (a) The minimum required initial capital contribution of each Limited Partner is the amount determined by the General Partner. The General Partner may change the required minimum initial contribution amount at any time with respect to any, all or less than all Limited Partners.
- (b) The Partnership may accept additional contributions at such times as the General Partner may permit, but no Limited Partner shall be obligated to make any additional capital contribution to the Partnership, subject to the provisions of Section 3.5(b) and any contrary provision of the Act. The minimum required additional capital contribution of any existing Limited Partner to the Partnership shall be the amount the General Partner may determine. The General Partner may change the required minimum additional contribution amount at any time with respect to any, all or less than all Limited Partners.
- (c) The General Partner or an Affiliate has made a capital contribution to the Partnership as set forth in the Schedule of Partners. Except as required by the Act, the General Partner is not required to make any additional capital contributions to the Partnership. The General Partner may, however, make capital contributions to the Partnership in such amounts and at such times as it may determine. The General Partner or any of its Affiliates have the right at any time to make additional capital contributions as a Limited Partner or General Partner. If the General Partner or any of its Affiliates (including their associated Persons, such as officers, directors, partners, members or employees or any of their family members) makes a capital contribution as a Limited Partner, the General Partner or the Investment Manager shall have authority to waive the Management Fee and/or Performance Allocation with respect to such Limited Partner.
- (d) Except as otherwise permitted by the General Partner (i) initial or additional capital contributions by each Partner shall be paid in one installment with cash and/or Investments having an aggregate value as set forth in the Partnership's books and records, and (ii) initial contributions are due as of the date of admission of such Person as a Limited Partner of the Partnership. Whether Investments may be



accepted as a contribution to the capital of the Partnership is determined by the General Partner.

### **3.2 Rights of Partners in Capital**

- (a) No Partner shall be entitled to interest on its capital contributions to the Partnership. For the avoidance of doubt, interest income, if any, earned on subscription amounts remitted to the Partnership prior to the date that an Interest is issued to a Partner shall be payable to the Partnership and not applied toward the purchase of an Interest.
- (b) No Partner shall have the right to the return of any capital contribution to the Partnership except (i) upon withdrawal of such Partner pursuant to Section 5.5 or (ii) upon the dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return is limited to the value of the Capital Account(s) of the Partner. The General Partner shall not be liable for the return of any such amounts.

### **3.3 Capital Accounts**

- (a) The Partnership shall maintain a separate Capital Account for each Partner. In the event a Limited Partner invests in more than one Series of Interests, the Partnership will maintain a separate Capital Account with respect to each Series of Interests held by such Limited Partner, with each such Capital Account being treated as if it were the Capital Account of a separate Partner for purposes of computing the Performance Allocation, the Management Fee and the withdrawal rights attributable to the Series.
- (b) The General Partner may, in its discretion, maintain a separate sub-account for such purposes as the General Partner may determine appropriate, including for recordkeeping, accounting or reporting or to otherwise give effect to the provisions of this Agreement. Each Capital Account shall reflect the aggregate sum of the balances in such Partner's Capital Account.
- (c) If a Partner makes an additional capital contribution to an existing Capital Account, the Capital Account will be sub-divided into separate capital sub-accounts attributable to each separate capital contribution, with each capital sub-account treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights and restrictions applicable to each capital sub-account. References herein to a Partner's "Capital Account" include any such separately maintained capital sub-accounts.
- (d) The Partnership will issue to the Offshore Fund an Interest and maintain capital sub-accounts that correspond to each Sub-Series of Shares and each capital sub-account is treated separately for determining Management Fees, the Performance Allocations and withdrawal rights.

- (e) Each Capital Account has an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to such Capital Account.
- (f) Each Capital Account shall be increased by such Capital Account's allocable share of the Net Profits allocated by the Partnership to such Capital Account pursuant to Section 3.4.
- (g) Each Capital Account shall be reduced by (i) the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 5.5 or 6.3, including any amount deducted from any such withdrawal or distribution pursuant to Section 5.5(h), (ii) such Capital Account's allocable share of the Net Losses allocated by the Partnership to such Capital Account pursuant to Section 3.4, (iii) such Capital Account's *pro rata* portion of the expenses allocable (or specially allocable) by the Partnership pursuant to Section 3.5, (iv) such Capital Account's allocable share of the Performance Allocation allocable pursuant to Section 3.7, and (v) such Capital Account's *pro rata* portion of the expenses payable by the Partnership pursuant to Section 4.2(b).
- (h) The Capital Account of the Investment Manager, as a special Limited Partner of the Partnership, shall be increased by the amount of the Performance Allocation allocated to such Capital Account and the investment gains therein.
- (i) Each Capital Account shall also be adjusted to reflect all other allocations and other changes in the value of such Capital Account not otherwise described in this Section 3.3 in the manner specified in the remaining provisions of this Article III.

### **3.4 Allocations of Net Profit and Net Loss**

Subject to Sections 3.5 through 3.10, as of the last day of each Accounting Period, any Net Profit or Net Loss of such Accounting Period shall be separately allocated among and credited to or debited against the Capital Accounts of the Partners in proportion to their respective Partnership Percentages for such Accounting Period.

### **3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures**

- (a) As of the first Business Day of each calendar quarter, each Capital Account's Management Fee for such calendar quarter shall be debited against such Capital Account and paid by the Partnership to the Investment Manager. Capital contributions accepted after the commencement of the calendar quarter shall be subject to a prorated Management Fee reflecting the time remaining during that quarter. The Investment Manager may reduce or eliminate the Management Fee with respect to any Partner (or Capital Account) in its sole discretion; provided that such reduction or elimination shall not increase the Management Fee payable by any other Partner (or Capital Account).
- (b) To the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely

conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments on behalf of or with respect to any Partner or Partners (including backup withholding or withholding under FATCA), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership pays or incurs any withholding tax or other tax obligation (including under FATCA) with respect to the income allocable or distributable to one or more Partners, then the amount of such withholding tax or tax obligation shall be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount shall be debited against the Capital Account(s) of such Partner or Partners as of the close of the Accounting Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors shall make a contribution to the capital of the Partnership, within 10 days following request by the General Partner, the amount of such excess. The General Partner is not obligated to apply for or obtain a reduction of or exemption from withholding tax on behalf of any Partner that may be eligible for such reduction or exemption, or be otherwise obligated to structure Investments so as to reduce or avoid any such withholding tax.

- (c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership, to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be specially allocated only to the Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such allocations shall be debited from the relevant Capital Accounts of such Partners as of the close of the Accounting Period during which any such items were accrued by the Partnership.

### **3.6 Reserves; Adjustments for Certain Future Events**

- (a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets and proportionately against the Capital Accounts for contingent liabilities or probable losses, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be debited or credited, as the General Partner deems appropriate, to the Capital Accounts of current Partners that (i) are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or (ii) were Partners, or are transferees from Persons who were Partners, at the time of the act or omission giving rise to the contingent liability for which the reserve has been established by the General Partner.

- (b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately debited or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period.

### 3.7 Performance Allocation

- (a) The Performance Allocation shall be debited against each Capital Account of each Limited Partner as of the last day of each Calculation Period with respect to such Capital Account, and the amount so debited shall simultaneously be credited to the Capital Account of the Investment Manager, as a special Limited Partner of the Partnership.
- (b) The Investment Manager may waive or alter the Performance Allocation with respect to any Limited Partner.

### 3.8 Limited Participation Investments and New Issues

- (a) If the General Partner determines that for legal, tax, regulatory or bona fide other reasons as to which the General Partner and any Partner may agree such Partner should not participate (or should receive a reduced participation) in the Net Profit or Net Loss with respect to any Investment, the General Partner may allocate Net Profit or Net Loss, if any, with respect to such Investment only to Partners to whom the restrictions on participating in that Investment do not apply. In order to allocate Net Profit or Net Loss accordingly, the General Partner may establish and maintain a memorandum account in the accounting records of the Partnership on a Partner-by-Partner basis with respect to each such Investment. The Net Profit and Net Loss and expenses relating to such Investment will be separately calculated and allocated based on each participating Partner's balance in such memorandum account for such Investment divided by the sum of the balances of all memorandum accounts for all participating Partners. In order to compensate a Limited Partner who is not participating in an Investment pursuant to this Section 3.8 for the use of such Partner's share of Partnership capital to purchase the Investment, the General Partner may credit the non-participating Partner's Capital Account (and correspondingly debit the Capital Account of the participating Partners with a carrying charge). Any distributions from the memorandum account will be based on the participating Partner's respective percentage interest in such Investment.
- (b) Pursuant to certain rules of FINRA ("***New Issue Rules***"), members of FINRA are permitted to sell to the Partnership certain publicly-offered securities ("***Restricted Issues***") only if the Capital Accounts of Partners connected with the securities industry or executive officers or directors of investment banking clients of underwriters ("***Restricted Capital Accounts***") are not restricted from sharing a beneficial interest in such Restricted Issues in accordance with the provisions of the New Issue Rules. Notwithstanding the provisions of Section 3.4, if the Partnership chooses to invest in Restricted Issues, the Partnership shall not allocate any items

of income, gain, loss, deduction and credit that relate to investments in Restricted Issues to Restricted Capital Accounts except to the extent permitted by the New Issue Rules, and shall instead allocate such items among the other Capital Accounts on a *pro rata* basis. To the extent the New Issue Rules permit certain Persons with Restricted Capital Accounts to participate in profits and losses from Restricted Issues, the General Partner shall allocate such profits and losses from Restricted Issues among such Restricted Capital Accounts on a *pro rata* basis or on such other basis that the General Partner reasonably determines ensures compliance with the New Issue Rules. To the extent consistent with the New Issue Rules, the General Partner shall determine when all Capital Accounts may participate in the Net Profit and Net Loss from any Restricted Issue. The General Partner shall value any Restricted Issue at such time at the then-current price of the security in the secondary market.

### **3.9 Allocation to Avoid Capital Account Deficits**

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Accounting Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.9 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.9 not previously recovered.

### **3.10 Regulatory Allocations**

Notwithstanding anything to the contrary in this Agreement:

- (a) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; provided that an allocation pursuant to this Section 3.10(a) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.10(a) were not in this Agreement. This Section 3.10(a) is intended to constitute a “qualified income offset” within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations and is to be interpreted consistently therewith.
- (b) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 3.10, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, the Partners shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an

amount equal to the portion of any such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Sections 1.704-2(f) and (g). This Section 3.10(b) is intended to comply with the minimum gain chargeback requirement in such Sections of the Regulations and shall be interpreted consistently therewith.

- (c) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner shall be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 3.10(c) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.10(a) and this Section 3.10(c) were not in this Agreement.
- (d) Curative Allocations. The allocations set forth this Section 3.10 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.10. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Partnership Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).
- (e) Nonrecourse Deductions. Any Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Partners in accordance with their Partnership Percentages.
- (f) Section 704(b) Compliance. The allocations provided in this Section 3.10 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith.

### **3.11 Allocations for Income Tax Purposes**

- (a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for U.S. federal



income tax purposes in each Fiscal Year shall be allocated among the Partners in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Account, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership shall establish and maintain records which shall show the extent to which the Capital Account of each Partner comprises amounts that have not been reflected in the taxable income of such Partner as of the last day of each Fiscal Year. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Foreign tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement shall be determined by the General Partner.

- (b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations; provided that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, shall be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.
- (c) Positive Basis Allocations. If the Partnership recognized gains or items of gross income (including short-term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, *pro rata* in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the



liquidating share of any Positive Basis Partner, that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), then such Positive Basis Partner may be allocated an amount of such gains or items of gross income equal to the amount, if any, by which its or its Positive Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(c).

- (d) Negative Basis Allocations. If the Partnership recognizes net losses or items of gross loss or deduction (including short-term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Negative Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, *pro rata* in proportion to the respective Negative Basis of each such Negative Basis Partner, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner has been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its or its Negative Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(d).

### **3.12 Individual Partner's Tax Treatment**

Each Partner agrees not to treat, on any U.S. federal, state, local and/or non-U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership or which would result in inconsistent treatment, and each Partner further agrees to treat, on any U.S. federal, state, local and/or non-U.S. income tax return in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner consistent with the treatment of such item by the Partnership.

### **3.13 Distributions**

- (a) The Partnership shall make distributions in respect of withdrawals in accordance with Section 5.5 and liquidation in accordance with Section 6.3. In addition, the General Partner may make other distributions at the times and in the amounts the

General Partner determines. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

- (b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner on any account of its Interest if such distribution would violate Section 17-607 of the Act or other applicable law.

#### **Article IV MANAGEMENT**

##### **4.1 Duties and Powers of the General Partner**

- (a) Subject to the terms and conditions of this Agreement, the General Partner has complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for (i) all investment and investment management decisions to be undertaken on behalf of the Partnership and (ii) managing and administering the affairs of the Partnership, and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership, whether or not such action or authority is expressly provided for in this Agreement. Without limiting the foregoing generality, the General Partner's powers include the power to borrow, obtain leverage or otherwise incur indebtedness with respect to the Partnership's capital.
- (b) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner has full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1.
- (c) The General Partner may delegate to any other Person, including the Investment Manager, any power and authority vested in the General Partner pursuant to this Agreement.
- (d) The General Partner is the "tax matters partner" for purposes of Section 6231(a)(7) of the Code. The General Partner has the exclusive authority in its determination to make any elections required or permitted to be made by the Partnership under any provisions of the Code or any other revenue laws. The General Partner shall be entitled to be reimbursed by the Partnership for all costs and expenses incurred by it in connection with any administrative or judicial proceeding affecting tax matters of the Partnership and/or the Partners in their capacity as such and to be indemnified by the Partnership (solely out of Partnership assets) with respect to any

action brought against it in connection with any judgment in or settlement of any such proceeding.

- (e) Every power vested in the General Partner pursuant to this Agreement and any decision or determination that it is permitted to make is to be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein, and the General Partner shall be entitled to consider in making such decisions or determinations only such interests and factors as it desires, including its own interests. No provision of this Agreement is to be construed to require the General Partner to violate the Act, the Advisers Act, or any other law, regulation or rule of any self-regulatory organization. Notwithstanding any other provision of this Agreement, whenever in this Agreement, the General Partner is permitted or required to make a decision in its “good faith” or under another expressed standard, the General Partner must act under such express standard and will not be subject to any other or different standards.
- (f) Each Limited Partner shall deliver to the General Partner, upon a reasonable request, (i) an affidavit or certificate in form satisfactory to the General Partner that is sufficient to establish that the applicable Partner (and its partners, members, and/or beneficial owners, as the case may be) is not subject to withholding under the provisions of any U.S. federal, state, local, non-U.S. or other tax laws, or with respect to such Partner’s tax status under such laws, and (ii) any information or documentation prescribed under FATCA or as may be necessary, as reasonably determined by the General Partner, for the Partnership to comply with its obligations under FATCA (including, but not limited to, information with respect to citizenship, residency, ownership or control of such Partner). Each Limited Partner shall reasonably cooperate with the General Partner in connection with any tax audit of the Partnership, or any existing or former Investment.

## 4.2 Expenses

- (a) Except as otherwise provided herein, and in consideration of the Management Fee, the General Partner and the Investment Manager shall each pay all of its own operating and overhead costs, without reimbursement by the Partnership.
- (b) The Partnership shall pay, or reimburse the General Partner and the Investment Manager for, all other reasonable costs, fees and expenses arising in connection with the Partnership’s operations. Such expenses payable by the Partnership include the following:
  - (i) all costs, fees and expenses directly related to Investments or prospective Investments (whether or not consummated) of the Partnership, including research and due diligence costs related to an Investment; brokerage commissions and other execution and transaction costs, interest on, and commitment fees and expenses arising out of, debit balances or borrowings; exchange, clearing and settlement charges; fees and expenses of any third-party providers of “back office” and “middle office” services relating to

trade settlement; travel expenses; appraisal fees; investment banking fees and expenses; borrowing charges on Investments sold short; custody fees; and fees of consultants and finders relating to Investments or prospective Investments of the Partnership; the costs, fees and expenses of any appraisers, accountants or other experts engaged by the General Partner or the Investment Manager as well as other expenses directly related to the Partnership's Investments;

- (ii) any withholding, transfer or other taxes imposed on the Partnership;
- (iii) the reasonable, out-of-pocket fees, costs and expenses (including legal fees and expenses) incurred to comply with any applicable law, rule or regulation (including regulatory filings or other expenses of the Partnership and the pro rata portion of any regulatory and other expenses of the General Partner or the Investment Manager, which benefit or are attributable to the Partnership);
- (iv) the reasonable, out-of-pocket costs, fees and expenses for financial and tax accounting, bookkeeping and reporting services, and administrative services performed by any Person on behalf of the Partnership (e.g., the administrator of the Partnership), including the cost of any audit of the Partnership's financial statements and the preparation of its tax returns (including with respect to FATCA compliance);
- (v) Management Fees;
- (vi) the reasonable, out-of-pocket costs, fees and expenses of legal counsel and any other litigation or investigation involving Partnership activities;
- (vii) specific expenses incurred in obtaining, maintaining or performing systems, research and other information, including information service subscriptions, utilized with respect to the Partnership's Investments including without limitation for portfolio management, valuations and accounting purposes, including the costs of statistics and pricing services, service contracts for quotation equipment and related hardware, software, phone and internet charges;
- (viii) the reasonable, out-of-pocket costs, fees and expenses associated with the Recent Amendments, including legal and accounting fees, printing costs, reporting and providing information to existing and prospective Partners, obtaining requisite consent from Limited Partners, travel fees and expenses related to the Partnership's offering, filing fees (including any "blue sky" filing fees) and other out-of-pocket expenses and compliance with any applicable federal and state laws;
- (ix) the costs and expenses associated with meetings of Partners;

- (x) the expenses of the Advisory Committee and the members thereof, including any indemnification expenses;
  - (xi) the costs associated with maintaining “directors and officers” or similar liability insurance for the benefit of the Partnership, the General Partner, the Investment Manager, or any other Indemnified Person; and
  - (xii) any costs or expenses of winding up and liquidating the Partnership and
  - (xiii) all costs, fees and expenses associated with the ongoing offering of Limited Partner Interests.
- (c) Expenses with respect to Section 4.2(b)(viii) above will be amortized by the Partnership over a period of 36 months from the Effective Date; however, the General Partner may limit the amount of expenses amortized so that the Partnership’s audited financial statements do not contain qualification.
- (d) Except as otherwise provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6, 3.8 and 5.5(i), expenses are generally borne *pro rata* by the Partners in accordance with their respective Partnership Percentages.
- (e) If the General Partner or the Investment Manager, as appropriate, incurs any Partnership expenses for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Partnership and any Other Account, the General Partner or the Investment Manager, as appropriate, shall allocate such expense among the Partnership and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.
- (f) The General Partner and the Investment Manager may, to the extent disclosed in the Partnership’s offering memorandum or otherwise disclosed to the Limited Partners, use “soft dollars” generated by the Partnership. Use of “soft dollars” by the General Partner or the Investment Manager as disclosed herein shall not constitute a breach by either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

#### **4.3 Rights of Limited Partners**

The Limited Partners may not take any part in the management, control or operation of the Partnership’s business, and have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law.

#### **4.4 Other Activities of Partners**

- (a) The General Partner is not required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs

of the Partnership as it may determine to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

- (b) Each Partner acknowledges and agrees that the General Partner, its Affiliates and their respective partners, managers, directors, officers, shareholders, members or employees may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, Investments, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other issuers, partners of any partnership, or trustee of any trust, or entering into any other commercial arrangements, whether or not any such activities may conflict with any interest of the parties with respect to the Partnership. Without in any way limiting the foregoing, each Partner hereby acknowledges that none of the General Partner, its Affiliates or their respective partners, managers, directors, officers, shareholders, members or employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the Partnership, but may refer the same to any other party or keep such opportunities for their own benefit.
- (c) The General Partner and its Affiliates shall act in a manner that each considers fair, reasonable and equitable on an overall basis in allocating investment opportunities to the Partnership and any Other Account. The General Partner and its Affiliates shall allocate investment opportunities as set forth in their policies and procedures, as may be amended from time to time, and as communicated to Limited Partners through the Partnership's private offering memorandum for Interests or otherwise.
- (d) Each of the Partners hereby waives and covenants not to sue on the basis of any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners *inter se* which is or may be inconsistent with this Section 4.4.

#### 4.5 Exculpation; Indemnification

- (a) The General Partner, the Investment Manager, any of their Affiliates, each direct or indirect member, manager, partner, director, officer, shareholder and employee of any of the foregoing and, with the approval of the General Partner, any agent of any of the foregoing (including their respective executors, heirs, assigns, successors or other legal representatives) (each an "***Indemnified Person***") shall not be liable to the Partnership or to any of the Limited Partners for any loss or damage occasioned by any acts or omissions in the performance of services under this Agreement or the Investment Management Agreement, or otherwise in connection with the Partnership, its Investments or operations, unless such loss or damage has occurred by reason of the willful misconduct, fraud or gross negligence of such Indemnified Person or as otherwise required by law; provided that nothing in this Agreement is to be construed as waiving any legal rights or remedies which the Partnership may have under state or federal securities laws.



- (b) The Partnership (but not the Partners individually) shall indemnify each Indemnified Person to the fullest extent permitted by law against any cost, expense (including reasonable attorneys' fees), judgment or liability incurred by or imposed upon it in connection with any action, suit or proceeding (including any proceeding before any judicial, administrative or legislative body or agency) to which it may be made a party or otherwise be involved or with which it shall be threatened by reason of being or having been General Partner, having been the Investment Manager pursuant to the Investment Management Agreement or its having provided services to the Partnership; provided that the Indemnified Person is not so indemnified to the extent such cost, expense, judgment or liability has been finally determined (i) in a non-appealable decision on the merits in any such action, suit or proceeding, or (ii) on a plea of *nolo contendere*, to have been incurred or suffered by the Indemnified Person solely by reason of willful misconduct, fraud or gross negligence by the Indemnified Person.
- (i) The right to indemnification granted by this Section 4.5 shall be in addition to any rights to which the Indemnified Person may otherwise be entitled and shall inure to the benefit of the successors or assigns of such Indemnified Person. The Partnership shall pay the expenses incurred by the Indemnified Person in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by the Indemnified Person to repay such payment if there is an adjudication or determination that it is not entitled to indemnification as provided herein; provided that no such advance shall be made in connection with any action brought by a Majority-in-Interest of the Limited Partners.
- (ii) In any suit in the name of the Partnership to recover expenses advanced pursuant to the terms of an undertaking, the Partnership shall be entitled to recover such expenses upon a final adjudication that the Indemnified Person or other Person claiming a right to indemnification hereunder has not met the applicable standard of conduct set forth in Section 4.5(a). In any such suit brought to enforce a right to indemnification or to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnified Person or other Person claiming a right to indemnification shall not be entitled to be indemnified, or to an advancement of expenses, hereunder shall be on the Partnership (or any Limited Partner acting derivatively or otherwise on behalf of the Partnership or the Limited Partners) unless otherwise required by applicable law.
- (iii) Each Indemnified Person may not satisfy any right of indemnity or reimbursement granted in this Section 4.5 or to which it may be otherwise entitled except out of the assets of the Partnership, and no Partner shall be personally liable with respect to any such claim for indemnity or reimbursement. The General Partner may obtain appropriate insurance on behalf, and at the expense, of the Partnership to secure the Partnership's obligations hereunder.



- (iv) Nothing in this Agreement is to be construed as to provide for the indemnification of an Indemnified Person for any liability (including liability under U.S. federal securities laws) to the extent that such indemnification would be in violation of applicable law but is to be construed so as to effectuate this Section 4.5 to the fullest extent permitted by law.
- (v) Each Indemnified Person shall be deemed a third-party beneficiary (to the extent not a direct party hereto) of this Agreement and, in particular, the provisions of this Section 4.5. The General Partner and/or the Investment Manager may enter into agreements on behalf of the Partnership with an Indemnified Person to provide an indemnity to the same extent provided in this Section 4.5.

#### 4.6 Advisory Committee

- (a) The General Partner and/or the Investment Manager may appoint a committee (the “*Advisory Committee*”) composed of one or more individuals selected from time to time by the General Partner. No member of the Advisory Committee may be an Affiliate of the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in an Affiliate of the Partnership).
- (b) If established, the Advisory Committee will meet with the General Partner and/or the Investment Manager from time to time as requested by and deemed appropriate by the General Partner and/or the Investment Manager to consult with and advise the General Partner and/or the Investment Manager on any matter deemed appropriate by the General Partner and/or the Investment Manager, including any circumstances involving conflicts of interest between the General Partner and/or the Investment Manager (and their Affiliates), on the one hand, and the Limited Partners and the Partnership, on the other.
- (c) The General Partner and/or the Investment Manager may in its discretion seek the approval of the Advisory Committee or establish any other reasonable mechanism in connection with (i) approvals that are or would be required under the Investment Advisers Act (including Section 206(3)) or (ii) any other matter deemed appropriate by the General Partner and/or the Investment Manager. Each Limited Partner agrees that, except as otherwise specifically provided herein and to the extent permitted by applicable law, the approval of a majority of the members of the Advisory Committee at such time is binding upon the Partnership and each Partner with respect to any approval sought under this Section 4.6(c).
- (d) As determined by the General Partner and/or the Investment Manager, meetings of the Advisory Committee may be held in person or by telephone. Approval of the Advisory Committee is deemed to have been given if given by a majority of those members present at a meeting or by a majority of all members of the Advisory Committee if given pursuant to a written consent without a meeting.

- (e) The Partnership agrees to reimburse members of the Advisory Committee for their out-of-pocket expenses relating to their services as Advisory Committee members and to indemnify each Advisory Committee member to the maximum extent permitted by law
- (f) In the event an Advisory Committee is not appointed, the General Partner and/or the Investment Manager may obtain the approval of an unaffiliated third party, as is determined advisable by the General Partner and/or the Investment Manager, and any such approval by such third party shall, to the extent permitted under applicable law, serve as the approval of the Advisory Committee and shall be binding on the Partnership and the Limited Partners.

#### **4.7 Alternative Investment Vehicles**

The General Partner shall have the right in connection with any Investment to direct the capital contributions of some or all of the Partners to be made through one or more alternative investment vehicles (“*Alternative Investment Vehicles*”) and to exchange a portion of the Interests of one or more Limited Partners for similar equity interests in one or more Alternative Investment Vehicles if, in the judgment of the General Partner, the use of such vehicle or vehicles would allow the Partnership to overcome legal or regulatory constraints or invest in a more tax efficient manner and/or would facilitate participation in certain types of Investments; provided that the General Partner shall not employ the use of an Alternative Investment Vehicle in any manner that would reasonably be expected to have a material adverse effect on the participating Limited Partners. Any Alternative Investment Vehicle shall contain terms and conditions substantially similar to those of the Partnership and shall be managed by the General Partner or an Affiliate thereof, and such controlling Person is required to comply with the provisions of this Agreement applicable to Alternative Investment Vehicles. Expenses related to an Alternative Investment Vehicle on behalf of less than all of the Partners shall not be borne by the Partners that do not participate in such Alternative Investment Vehicle.

### **Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS**

#### **5.1 Admission of Limited Partners**

The General Partner may, at such times as the General Partner may determine, without advance notice to or consent from the Limited Partners, admit to the Partnership any Person who executes this Agreement or any other writing evidencing the intent of such Person to become a Limited Partner. Such admission shall be effective when the General Partner enters the name of such Person on the books and records of the Partnership as a Partner and does not require the consent or approval of any other Partner. The General Partner has the authority to reject subscriptions for Interests in whole or in part.

#### **5.2 Admission of Additional General Partners**

- (a) Except as provided in Section 5.2(b), the General Partner may admit one or more Persons as additional general partners to the Partnership. No additional general

partner shall be added unless such additional general partner agrees to be bound by all of the terms of this Agreement.

- (b) Any Person to whom the General Partner has transferred its general partner interest in accordance with Section 5.4 shall be admitted to the Partnership as a substitute General Partner without the consent of the Limited Partners unless otherwise provided for in Section 5.4.

### **5.3 Transfer of Interests of Limited Partners**

- (a) No Transfer of any Limited Partner's Interest, whether voluntary or involuntary, shall be valid or effective, and no transferee may become a substituted Limited Partner, unless the prior written consent of the General Partner has been obtained, which consent may be granted, withheld or conditioned for any reason by the General Partner. Any attempted Transfer not made in accordance with this Section 5.3, to the fullest extent permitted by law, shall be void *ab initio*.
- (b) Prior to recognizing any Transfer in accordance with this Section 5.3, the General Partner may require the transferring Limited Partner to execute and acknowledge an instrument of Transfer in form and substance satisfactory to the General Partner, and may require the transferee to make certain representations and warranties to the Partnership and Partners and to accept, adopt and approve in writing all of the terms and provisions of this Agreement.
- (c) In the event of a Transfer of a Partner's Interest or in the event of a distribution of assets of the Partnership to any Partner, the Partnership may, but shall not be required to, file an election under Section 754 of the Code and in accordance with the applicable Regulations, to cause the basis of the Partnership's assets to be adjusted for U.S. federal income tax purposes as provided by Section 734 or 743 of the Code.
- (d) In the event of a Transfer at any time other than the end of a Fiscal Year, items of income, gain, loss, deduction or credit recognized by the Partnership for U.S. federal income tax purposes shall be allocated between the transferring parties, as determined by the General Partner, using any permissible method under Code Section 706(d) and the Regulations thereunder. To the extent the transferring parties have given the General Partner written notice prior to the consent by the General Partner pursuant to Section 5.3(a) of their agreement to apply a particular and reasonable method, then the General Partner may elect to use such method. The transferring parties agree to reimburse the General Partner and the Partnership for any incidental accounting fees and other expenses incurred by the General Partner and the Partnership in making allocations pursuant to this Section 5.3(d).

### **5.4 Transfer of Interest of the General Partner**

The General Partner may Transfer its Interest as a General Partner in the Partnership; provided that if any such proposed Transfer would result in an "assignment" (as such term is

defined under the Advisers Act), the General Partner shall obtain the consent of Limited Partners constituting a Majority-in-Interest of Limited Partners that are not Affiliated Investors.

## 5.5 Withdrawal of Interests of Partners

- (a) The Interest of a Limited Partner may not be withdrawn from the Partnership prior to its dissolution except as provided in this Section 5.5.
- (b) Withdrawal rights are determined separately with respect to each Capital Account (and each capital sub-account, if applicable). Each capital contribution shall be accounted for using a separate capital sub-account, and, in the case of a Limited Partner for which more than one capital sub-account is maintained, the withdrawals from any such capital sub-accounts shall be processed on a “first-in, first-out” basis based upon the date on which each capital contribution was made, unless otherwise agreed between the General Partner and such Partner. Each capital sub-account relating to a contribution of capital from a Limited Partner will be treated as if it were the separate Capital Account of a separate Partner for the purposes of applying the withdrawal provisions of this Section 5.5.
- (c) Subject to a Suspension and the other provisions of this Section 5.5:
  - (i) A Limited Partner may make a complete or partial withdrawal from its Series A Capital Account effective on the last Business Day of each calendar quarter occurring at least 36 calendar months after the contribution of the capital to be withdrawn (each, a “**Series A Withdrawal Date**”) by providing written notice to the General Partner at least 90 days prior to the proposed Series A Withdrawal Date (such restriction, the “**Series A Lock-Up**”). For purposes of calculating the Series A Lock-Up, each Limited Partner holding Series A Interests on of the Effective Date is deemed to have made its initial contribution for Series A Interests as of the Effective Date. Additional contributions for Series A Interests after the Effective Date will also be subject to the Series A Lock-Up, which lock-up period shall commence on the date of each such additional contribution.
  - (ii) A Limited Partner may make a complete or partial withdrawal from its Series B Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series B Withdrawal Date. The “**Series B Withdrawal Date**” means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Withdrawal Date (or the last Business Day of such month).
  - (iii) A Limited Partner may make a complete or partial withdrawal from its Series C Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series C Withdrawal Date. The “**Series C Withdrawal Date**” means: (i) the end of the day on the last Business Day of

the calendar month that immediately precedes the two-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Withdrawal Date (or the last Business Day of such month).

- (iv) A Limited Partner may make a complete or partial withdrawal from its Series D Capital Account effective on the last Business Day of each calendar quarter (each, a “**Series D Withdrawal Date**”) occurring at least 12 calendar months after the contribution of the capital to be withdrawn by providing written notice to the General Partner at least 90 days prior to the proposed Series D Withdrawal Date.
- (d) Any notice of withdrawal shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. For the avoidance of doubt, if a Limited Partner notifies the General Partner of its intent to withdraw and later chooses not to withdraw (with the General Partner’s consent), any transaction costs incurred by the Partnership or the General Partner in connection therewith may be charged to such withdrawing Limited Partner. The General Partner may refuse to honor any Limited Partner’s request for a full or partial withdrawal if such request is not accompanied by such additional information as the General Partner may reasonably require, including any information required to determine the “adjusted basis” for U.S. federal income tax purposes in the Limited Partner’s Interest withdrawn.
- (e) With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Partnership or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable Withdrawal Date, and withdrawn amounts will be fixed as of the applicable Withdrawal Date, except as provided in Section 3.6. For the avoidance of doubt, none of the Partnership, the General Partner or the Investment Manager shall be liable to a Limited Partner for interest on the proceeds of any withdrawal.
- (f) At least 90% of the estimated amount due with respect to the Partnership’s marketable investments is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Partnership, within 30 Business Days after the Withdrawal Date, provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Partnership or the remaining Capital Accounts. The General Partner is entitled to deduct from such settlement payment an amount equal to the pro rata portion of any Performance Allocation (based on the portion of the withdrawal being settled) payable to the Investment Manager with respect to such withdrawn amount. Any balance will be held back and distributed, without interest thereon, promptly following completion of the audit of the Partnership’s financial statements for such Fiscal Year, or sooner in the General Partner’s discretion.
- (g) In the case of a complete withdrawal, or a partial withdrawal that cannot be fully funded out of the Limited Partner’s interest in the Partnership’s marketable

investments, no settlements occur with respect to any of such Limited Partner's interest in the Partnership's non-marketable investments until the occurrence of liquidity events with respect to such non-marketable investments after the scheduled payment date for the withdrawal (without interest thereon). Notwithstanding the foregoing, the General Partner may, however, make settlements in such cases prior to the occurrence of a liquidity event if such settlement would, in the good faith opinion of the General Partner, not have a material adverse effect on the Partnership. Generally, a liquidity event will be a sale of the relevant investment for cash, in which case the settlement will be funded in cash within 90 days after the liquidity event (without interest). If the liquidity event is not a sale for cash, the General Partner may effect the settlement either by making a distribution in kind of the Limited Partner's ratable share of the relevant investment or by distributing the net proceeds derived from a sale of such investment. The General Partner is entitled to withdraw from each such settlement an amount equal to the remaining portion of any Performance Allocation (pro rata based on the portion of such withdrawal being distributed) to be credited to the Investment Manager at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Limited Partner.

- (h) The General Partner may effect withdrawal payments (i) in cash, (ii) in kind, by transfer of marketable or non-marketable Investments to the Limited Partner, the value of which, as determined in accordance with Section 7.2, would satisfy the Limited Partner's request for withdrawal, or (iii) in any combination of the foregoing.
- (i) The General Partner may deduct from any withdrawal proceeds due to any Limited Partner pursuant to this Section 5.5 an amount representing the Partnership's actual or estimated expenses, as determined by the General Partner, associated with processing the withdrawal. Any such withdrawal deduction shall be retained by the Partnership for the benefit of the remaining Limited Partners.
- (j) The right of any Partner to withdraw or receive distributions pursuant to the provisions of this Section 5.5 is subject to all Capital Account allocations and adjustments contemplated by this Agreement and to the provision by the General Partner for all Partnership liabilities and for reserves and holdbacks for contingencies provided in Section 3.6.
- (k) The General Partner may suspend or limit, in whole or in part, (i) the right of the Partners to withdraw or receive distributions from the Partnership and/or (ii) the valuation of the Partnership's Net Assets:
  - (i) during any period when any exchange or over-the-counter market on which the Partnership's Investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended;



- (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of, or withdrawals or redemptions from, Investments by the Partnership, or the determination of the value of the assets of the Partnership, would not be reasonably practicable;
  - (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Partnership's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Partnership cannot reasonably be accurately ascertained within a reasonable time frame;
  - (iv) during any period when the transfer of funds involved in the realization or acquisition of any Investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange;
  - (v) in other circumstances where the General Partner is unable to fairly value the Partnership's assets due to extreme market conditions; or
  - (vi) automatically upon liquidation of the Partnership.
- (l) In the event of any such suspension or limitation described above in Section 5.5(k) (a "***Suspension***"), the General Partner shall promptly notify each Limited Partner. Any Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted is not given any priority with respect to the withdrawal of such Interests or portions thereof after the cause for such Suspension ceases to exist. The General Partner may, however, allow any such Partners to rescind their withdrawal requests to the extent of any portion thereof for which withdrawal proceeds have not yet been remitted. Upon the reasonable determination by the General Partner that conditions leading to Suspension no longer apply, withdrawal rights for all Limited Partners shall be promptly reinstated, and any pending withdrawal requests (or new, timely withdrawal requests) shall be honored as of the last Business Day of the calendar quarter in which withdrawals have recommenced, subject to the application of the withdrawal limitations described herein.
- (m) The General Partner may, notwithstanding any Suspension, upon not less than five days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Partnership may cause the Partnership, the Investment Manager or the General Partner to violate any applicable law), require any Limited Partner's Interest to be withdrawn in part or in its entirety from the Partnership (including, but not limited to, for reasons relating to FATCA) and for the Limited Partner to cease to be a Limited Partner of the Partnership (in the case of a withdrawal of a Limited Partner's Interest in its entirety) pursuant to this Section 5.5(m). Except as otherwise provided herein, settlements of withdrawals pursuant to this Section 5.5(m) are made in the same manner as voluntary withdrawals.



- (n) Notwithstanding the foregoing, the General Partner may waive any restrictions on any Limited Partner's ability to withdraw.

**Article VI**  
**SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION**

**6.1 Soft Wind Down**

- (a) The General Partner may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued (whether or not the General Partner has implemented a Suspension). Having made such determination, the Investment Manager may recommend to the General Partner to cause the Partnership to return the Partnership's assets to Limited Partners in an orderly manner (without proceeding with a liquidation of the Partnership) (an "***Orderly Realization***"). The General Partner may, in such circumstances, resolve to effect an Orderly Realization should it determine that doing so is in the best interests of the Partnership as a whole. Such Orderly Realization shall not constitute a dissolution or winding up of the Partnership for any purposes, but rather only the continued management of the Partnership's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Partnership to the Limited Partners.
- (b) The General Partner will notify the Limited Partners of any decision to proceed with an Orderly Realization of the Partnership. During an Orderly Realization, the Investment Manager may, in consultation with the General Partner, take such steps as are considered appropriate in the best interests of the Partnership as a whole to effect the Orderly Realization. The General Partner, in consultation with the Investment Manager, shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the "***Realization Period***"). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Partnership and may be carried out without recourse to a formal process of liquidation under Delaware law or any other applicable bankruptcy or insolvency regime.
- (c) The General Partner, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued.
- (d) Management Fees, and all other fees and expenses, shall be payable and Performance Allocations shall be made during an Orderly Realization on the same basis as provided herein.

## 6.2 Dissolution of Partnership

- (a) The Partnership shall be dissolved upon the first to occur of the following dates:
  - (i) any date on which the General Partner shall elect in writing to dissolve the Partnership; or
  - (ii) the occurrence of any other event causing (A) the General Partner (or a successor to its business) to cease to be the general partner of the Partnership or (B) the dissolution of the Partnership under the Act.
- (b) In the event an Orderly Realization lasts longer than three years, a Super-Majority-in-Interest of the Limited Partners may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Partnership. The Limited Partners will not have any other right to bring an action in court to dissolve the Partnership. The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein.

## 6.3 Liquidation of Assets

- (a) Upon dissolution of the Partnership, the General Partner shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible, except that if the General Partner is unable to perform this function, a liquidator elected by a Majority-in-Interest of Limited Partners shall liquidate the business and administrative affairs of the Partnership. Net Profit and Net Loss during any Accounting Period, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:
  - (i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith), up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);
  - (ii) such debts as are owing to the Partners as Partners are next paid; and
  - (iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the

Accounting Period ending on the date of the distributions under this Section 6.1(a)(iii).

- (b) Notwithstanding this Section 6.3 and the priorities set forth in the Act, the General Partner or liquidator may distribute ratably in kind rather than in cash, upon dissolution, any assets of the Partnership; provided, however, that if any in kind distribution is to be made, (i) the assets distributed in kind shall be valued pursuant to Section 7.2, and charged as so valued and distributed against amounts to be paid under Section 6.3(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in kind shall be included in the Net Profit or Net Loss for the Accounting Period ending on the date of such distribution.

## **Article VII**

### **ACCOUNTING AND VALUATION; BOOKS AND RECORDS**

#### **7.1 Accounting and Reports**

- (a) The Partnership may adopt for tax accounting purposes any accounting method that the General Partner shall decide is in the best interests of the Partnership and that is permissible for U.S. federal income tax purposes.
- (b) As soon as practicable after the end of each Fiscal Year thereafter, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of each such period to be made by a firm of independent accountants selected by the General Partner. As soon as is practicable thereafter, but subject to Section 7.4, the General Partner shall furnish to each Limited Partner a copy of the set of financial statements prepared in accordance with GAAP, with such adjustments thereto as the General Partner determines appropriate, including the report of such independent accountants.
- (c) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each Limited Partner properly to report for U.S. federal, state and local income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.
- (d) As soon as practicable after the end of each calendar month, but subject to Section 7.5, the General Partner shall arrange for the preparation and delivery to each Limited Partner of an interim report containing such information concerning the affairs of the Partnership (which need not include any financial statements) as the General Partner considers appropriate.

## 7.2 Valuation of Partnership Assets and Interests

- (a) The General Partner (or its delegate, including the Investment Manager or the administrator of the Partnership) shall value the assets of the Partnership as of the close of business on the last day of each Accounting Period. Such valuations will generally be in accordance with GAAP, with such adjustments thereto as the General Partner reasonably determines appropriate. In addition, the General Partner shall value the assets which are being distributed in kind as of the close of the Business Day immediately preceding the distribution date in accordance with Section 5.5(c) or Section 6.3(b). In determining the value of the assets of the Partnership, no value shall be placed on the goodwill or name of the Partnership, or the office records, files, statistical data or any similar intangible assets of the Partnership not normally reflected in the Partnership's accounting records, but there shall be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.
- (b) To the extent readily available, valuations will be based on independent market quotations obtained by the General Partner from recognized pricing services, market participants or other sources. In the case of any Investment for which a quotation from an independent source is not available or is determined by the General Partner to be unreliable or inadequate, the General Partner (i) shall be authorized, to the extent permitted by applicable law, to value such positions at their fair value in such manner as the General Partner determines in good faith, or (ii) may (but shall not be required to) obtain an appraisal, at the expense of the Partnership, by an independent third party selected by the General Partner. Except as otherwise determined by or at the direction of the General Partner, investment and trading transactions shall be accounted for on the trade date.
- (c) Accounts shall be maintained in U.S. dollars, and except as otherwise determined by or at the direction of the General Partner: (i) assets and liabilities denominated in currencies other than U.S. dollars shall be translated at the rates of exchange quoted by an independent pricing service as in effect as of the close of business on the relevant valuation dates (and exchange adjustments shall be recorded in the results of operations); and (ii) investment and trading transactions and income and expenses shall be translated at the rates of exchange in effect at the time of each transaction.

## 7.3 Determinations by the General Partner

- (a) All matters concerning the determination and allocation among the Partners of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final

and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

- (b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss or any other allocations with respect to any Limited Partner, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or sub-account as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

#### 7.4 Books and Records

- (a) The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and all transactions entered into by the Partnership. The General Partner shall afford to the Partnership's independent auditors reasonable access to such documents during customary business hours and shall permit the Partnership's auditors to make copies thereof or extracts therefrom at the expense of the Partnership.
- (b) The General Partner shall establish such standards as it deems appropriate regarding the access of Limited Partners to the books and records of the Partnership and shall not be obliged to permit access by a Limited Partner to the name or address of any other Limited Partner.

#### 7.5 Confidentiality

- (a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Interest or for purposes of filing such Limited Partner's tax returns) or disclose to any Person, any information or matter relating to the Partnership and its affairs and any information or matter related to any Investment (other than disclosure to such Limited Partner's directors, employees, agents, advisors, or representatives responsible for matters relating to the Partnership or to any other Person approved in writing by the General Partner (each such Person being hereinafter referred to as an "***Authorized Representative***")); provided that (i) such Limited Partner and its Authorized Representatives may make such disclosure to the extent that (A) the information to be disclosed is publicly available at the time of proposed disclosure by such Limited Partner or Authorized Representative, (B) the information otherwise is or becomes legally available to such Limited Partner other than through disclosure by the Partnership or the General Partner, or (C) such disclosure is required by law or in

response to any governmental agency request or in connection with an examination by any regulatory authorities; provided that such governmental agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) such Limited Partner and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners; and (iii) each Limited Partner will be permitted, after written notice to the General Partner, to correct any false or misleading information which becomes public concerning such Limited Partner's relationship to the Partnership or the General Partner. Prior to making any disclosure required by law, each Limited Partner shall use its best efforts to notify the General Partner of such disclosure. Prior to any disclosure to any Authorized Representative or beneficial owner, each Limited Partner shall advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 7.5(a) and each such Authorized Representative or beneficial owner shall agree to be bound by such obligations.

- (b) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, any information, including the identity of the Partners or information regarding the Partners or Investments, which the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or agreement with a third party to keep confidential.
- (c) Subject to applicable legal and regulatory considerations, the General Partner shall use reasonable efforts to keep confidential any information relating to a Limited Partner obtained by the General Partner in connection with or arising out of the Partnership which the Limited Partner requests to be kept confidential.
- (d) Notwithstanding the provisions of this Section 7.5, Partners (and their employees, representatives and other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Partnership and its transactions and all materials of any kind (including tax opinions or other tax analyses) that are provided to such Person by, or on behalf of the Partnership. For this purpose, "tax treatment" is the purported or claimed U.S. federal income tax treatment of a transaction and "tax structure" is limited to any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of a transaction. For this purpose, the names of the Partnership, the Partners, their affiliates, the names of their partners, members or equity holders and the representatives, agents and tax advisors of any of the foregoing are not items of tax structure.
- (e) The General Partner may disclose to prospective investors such information relating to the Partnership or the Investments as it believes in good faith will benefit the Partnership and facilitate investment in the Partnership by such prospective investors.



- (f) The Investment Manager and a Person acting as a service provider to the Partnership shall have the right to access all information belonging to the Partnership.

## **Article VIII GENERAL PROVISIONS**

### **8.1 Amendment of Partnership Agreement**

- (a) Except as otherwise provided in this Section 8.1, this Agreement may be amended, in whole or in part, with the written consent of (i) the General Partner and (ii) the consent of a Majority-in-Interest of Limited Partners (which approval may be obtained by negative consent affording the Limited Partners at least 30 calendar days to object).
- (b) Any amendment that would:
  - (i) increase the obligation of a Partner to make any contribution to the capital of the Partnership;
  - (ii) reduce the Capital Account of a Partner other than in accordance with Article III;
  - (iii) adversely alter any Partner's rights with respect to the allocation of Net Profit or Net Loss or with respect to distributions and withdrawals; or
  - (iv) change the respective liabilities of the General Partner and the Limited Partners;

may only be made if the consent of each Partner adversely affected thereby is obtained (which consent may be obtained by negative consent affording the Partner at least 30 calendar days to object).

- (c) Notwithstanding paragraphs (a) and (b) of this Section 8.1, this Agreement may be amended by the General Partner without the consent of the Limited Partners, at any time and without limitation, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Partnership as of a date determined by the General Partner that is not less than 30 calendar days after the General Partner has furnished written notice of such amendment to each affected Limited Partner and that is prior to the effective date of the amendment. The admission and withdrawal of Limited Partners will not require notice or disclosure to, or the approval of, the other Limited Partners.
- (d) The General Partner may at any time without the consent of the other Partners:



- (i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner under this Agreement, for the benefit of the Limited Partners;
  - (ii) cure any ambiguity or correct or supplement any conflicting provisions of this Agreement;
  - (iii) change the name of the Partnership;
  - (iv) make any changes required by a governmental body or agency which is deemed to be for the benefit or protection of the Limited Partners, provided, however, that no such amendment may be made unless such change (A) is for the benefit of, or not adverse to, the interests of Limited Partners, (B) does not affect the right of the General Partner to manage and control the Partnership's business, (C) does not affect the allocation of profits and losses among the Partners and (D) does not affect the limited liability of the Limited Partners;
  - (v) amend this Agreement to reflect a change in the identity of the General Partner which has been made in accordance with this Agreement;
  - (vi) amend this Agreement (other than with respect to the matters set forth in Section 8.1(b)) to effect compliance with any applicable laws, regulations or administrative actions;
  - (vii) subject to Section 8.1(b), amend this Agreement to reflect the creation, and terms, of any new Series of Interests;
  - (viii) effect any other amendment which would not, in the good faith judgment of the General Partner, adversely affect any of the existing Limited Partners; and
  - (ix) restate this Agreement together with any amendments hereto which have been duly adopted in accordance herewith to incorporate such amendments in a single, integrated document.
- (e) Following the adoption of any amendments to this Agreement pursuant to 8.1(d), the General Partner shall promptly deliver a copy of such amendments to this Agreement to the Limited Partners.
- (f) The General Partner may agree with a Limited Partner to waive or modify the application of any provision of this Agreement with respect to such Limited Partner without notifying or obtaining the consent of any other Limited Partner (other than a Limited Partner whose rights as a Limited Partner pursuant to this Agreement would be materially and adversely changed by such waiver or modification). Any such waiver or modification may be evidenced by a "side letter" or other document which will govern with respect to the applicable Limited Partner and be incorporated as part of this Agreement.

## 8.2 Special Power-of-Attorney

- (a) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner (and each of its successors and permitted assigns), with full power of substitution, the true and lawful representative and attorney-in-fact of, and in the name, place and stead of, such Limited Partner with the power from time to time to make, execute, sign, acknowledge, swear to, verify, deliver, record, file or publish:
- (i) an amendment to this Agreement that complies with the provisions of this Agreement (including the provisions of Section 8.1);
  - (ii) the Certificate and any amendment thereof required because this Agreement is amended, including an amendment to effectuate any change in the membership of the Partnership or in the capital contributions of the Partners;
  - (iii) any financing statement or other filing or document required or permitted to perfect the security interests contemplated by any provision hereof; and
  - (iv) all such other instruments, documents and certificates which, in the opinion of legal counsel to the Partnership, may from time to time be required by the laws of the United States of America, the State of Delaware, or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership as a limited partnership, exchange a portion of a Limited Partner's Interest for similar equity interests in an Alternative Investment Vehicle, or to effect the dissolution or termination of the Partnership.
- (b) Each Limited Partner is aware that the terms of this Agreement permit certain amendments to this Agreement to be effected and certain other actions to be taken or omitted by or with respect to the Partnership without that Limited Partner's consent. If an amendment of the Certificate or this Agreement or any action by or with respect to the Partnership is taken by the General Partner in the manner contemplated by this Agreement, each Limited Partner agrees that, notwithstanding any objection which such Limited Partner may assert with respect to such action, the General Partner in its sole discretion is authorized and empowered, with full power of substitution, to exercise the authority granted above in any manner which may be necessary or appropriate to permit such amendment to be made or action to be lawfully taken or omitted. Each Partner is fully aware that each other Partner relies on the effectiveness of this special power-of-attorney with a view to the orderly administration of the affairs of the Partnership. This power-of-attorney is a special power-of-attorney and is coupled with an interest in favor of the General Partner and as such:
- (i) is irrevocable and continues in full force and effect notwithstanding the subsequent death or incapacity of any party granting this power-of-attorney,

regardless of whether the Partnership or the General Partner has had notice thereof; and

- (ii) survives the delivery of an assignment by a Limited Partner of the whole or any portion of such Limited Partner's Interest, except that where the assignee thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, this power-of-attorney given by the assignor survives the delivery of such agreement for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

### **8.3 Notices**

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the register of Partners maintained by the General Partner or to such other addresses, facsimile numbers or electronic addresses as may be designated by any party hereto by notice addressed to (a) the General Partner, in the case of notice given by any Limited Partner, and (b) each of the Limited Partners, in the case of notice given by the General Partner. Notices will be deemed to have been given (i) when delivered by hand, transmitted by facsimile or transmitted electronically or (ii) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service.

### **8.4 Agreement Binding Upon Successors and Assigns; Delegation**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder are not assignable, transferable or delegable except as provided in Sections 4.1(c), 5.3 and 5.4, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections will be null and void *ab initio*.

### **8.5 Governing Law**

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in the courts located in Dallas County, Texas. Each Partner consents to service of process in any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the register of Partners maintained by the General Partner.

## 8.6 Not for Benefit of Creditors

The provisions of this Agreement are intended only for the regulation of relations among Partners and between Partners and former or prospective Partners and the Partnership. Except for the rights of the Indemnified Persons hereunder, this Agreement is not intended for the benefit of non-Partner creditors and no rights are granted to non-Partner creditors under this Agreement.

## 8.7 Dispute Resolution

The following procedures shall be used to resolve any controversy or claim (“*Dispute*”) arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Indemnified Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

### (a) Mediation

- (i) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.
- (ii) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- (iii) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (iv) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

### (b) Arbitration

- (i) If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney’s fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the

mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect (“*Arbitration Rules*”). In the event of a conflict, the provisions of this document will control.

- (ii) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the U.S. Federal Arbitration Act (“*FAA*”), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality, non-competition, non-solicitation or non-recruitment covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this Agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.
- (iii) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party’s actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.
- (iv) The party initiating arbitration shall pay all arbitration costs and arbitrator’s fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement.
- (v) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes

it. In any event, there shall be no more than (a) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (b) one non-party deposition of six hours; (c) twenty-five interrogatories; (d) twenty-five requests for admission; (e) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; and (f) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

- (vi) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.
- (vii) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

## **8.8 Consents and Voting**

- (a) Except as provided in Section 5.4, Limited Partners do not have any right to vote for the admission or removal of any General Partner and, except for the right to vote on certain amendments proposed by the General Partner and as otherwise expressly set out herein, have no other voting rights. Upon the request of any Limited Partner, the General Partner may designate an Interest as a Non-Voting Interest, in which case the Limited Partner shall not have the right to vote on any matter including amendments.
- (b) Any and all consents, agreements or approvals provided for or permitted by this Agreement shall be in writing and a copy thereof shall be filed and kept with the books of the Partnership. For the avoidance of doubt, an amendment made pursuant to Section 8.1(c) or pursuant to negative consent under Section 8.1(a) or Section 8.1(b) shall not require any affirmative written response by any Limited Partner who is not electing to withdraw from the Partnership.
- (c) In the event the Partnership seeks the approval, vote or consent of the Offshore Fund with respect to any matter to which it would be entitled to vote as a Limited



Partner of the Partnership under this Agreement, the Offshore Fund will: (i) submit such matter for the consent of the shareholders and (ii) shall vote its Limited Partner interest proportionally for and against such matter in the same proportion that the shareholders voted for and against such matter.

## **8.9 Merger and Consolidation**

- (a) The Partnership may merge or consolidate with or into one or more limited partnerships formed under the Act or other business entities pursuant to an agreement of merger or consolidation which has been approved in the manner contemplated by Section 17-211(b) of the Act.
- (b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Act may, to the extent permitted by Section 17-211(g) of the Act, (i) effect any amendment to this Agreement, (ii) effect the adoption of a new limited partnership agreement for the Partnership if it is the surviving or resulting limited partnership in the merger or consolidation, or (iii) provide that the limited partnership agreement of any other constituent partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating the merger or consolidation) shall be the limited partnership agreement of the surviving or resulting limited partnership.

## **8.10 Miscellaneous**

- (a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word “including” in this Agreement means in each case “without limitation,” whether or not such term is explicitly stated.
- (b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.
- (c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

## **8.11 BHCA Subject Persons**

Notwithstanding any other provision of this Agreement to the contrary:

- (a) Solely for purposes of any provision of this Agreement that confers voting rights on the Limited Partners and any other provisions hereof regarding consents of or action by the Limited Partners, any BHCA Subject Person that shall have given the General Partner an Election Notice and shall not thereafter have given the General Partner a Revocation Notice, and that at any time has a Partnership Percentage in



excess of 4.9% of the aggregate Partnership Percentages of the Limited Partners entitled to participate in such voting or the giving of any consent or the taking of any action, shall be deemed to hold a Partnership Percentage of only 4.9% of the aggregate Partnership Percentages of the Limited Partners (after giving effect to the limitations imposed by this Section 8.11 on all such Limited Partners), and such Partnership Percentage in excess of said 4.9% shall be deemed held by the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages; provided that this limitation shall not prohibit a Limited Partner from voting or participating in giving or withholding consent or taking any action under any provision of this Agreement up to the full amount of its Partnership Percentage in situations where such Limited Partner's vote or consent or action is of the type customarily provided by statute or stock exchange rules with regard to matters that would significantly and adversely affect the rights or preference of the Limited Partner's Interest. The foregoing voting restriction shall continue to apply with respect to any assignee or other transferee of such BHCA Subject Person's Interest; provided, however, that the foregoing voting restriction shall not continue to apply if the Interest is transferred: (i) to the Partnership; (ii) to the public in an offering registered under the Securities Act; (iii) in a transaction pursuant to Rule 144 or Rule 144A under the Securities Act in which no Person acquires more than 2% of the Partnership's outstanding Interests; or (iv) in a single transaction to a third party who acquires at least a majority of the Partnership's outstanding Interests without regard to the Transfer of such Interests.

- (b) Except as specifically provided otherwise in this Agreement, a Limited Partner that is a BHCA Subject Person that shall have given the General Partner an Election Notice, and shall not thereafter have given the General Partner a Revocation Notice, shall not be entitled to exercise any rights to consent to actions to be taken with respect to the Partnership, including rights conferred by any applicable law. Such right to consent shall be deemed granted to the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages.
- (c) A Limited Partner that is a BHCA Subject Person and that elects to be subject to Section 8.11(a) and (b) shall notify the General Partner thereof (an "***Election Notice***") and, on the General Partner's receipt of such Election Notice, such Limited Partner shall be subject to Section 8.11(a) and (b) until 10 calendar days after such Limited Partner notifies the General Partner that it elects no longer to be subject to Section 8.11(a) and (b) (a "***Revocation Notice***"), which period may be reduced by the General Partner.

## 8.12 RIC Limited Partners

An Interest of a RIC Limited Partner does not entitle the RIC Limited Partner to vote or consent with respect to any Partnership matter unless the RIC Limited Partner's vote or consent with respect to its Interest would not be considered to be "voting securities" as defined under Section 2(a)(42) of the Investment Company Act. Except as provided in this Section 8.12, an Interest held by a RIC Limited Partner as a Non-Voting Interest is identical in all regards to all other Interests held by Limited Partners.

### **8.13 Bad Actor Limited Partners**

Under Rule 506(d) under the Securities Act, the Partnership may be banned from selling Interests under Rule 506 if a Limited Partner beneficially owning 20% or more of the Partnership's voting securities engages in a "bad act" set forth in Rule 506. Accordingly, each Limited Partner agrees that the General Partner may deem the portion of any Bad Actor Limited Partner's Interests to be, or convert any Bad Actor Limited Partner's Interests into, Non-Voting Interests (except for the purposes of voting on any amendment to this Agreement that would materially and adversely change the Bad Actor Limited Partner's rights and preferences as a Limited Partner other than pursuant to an amendment under Section 8.1(c)) to the extent that the General Partner determines that such portion is in excess of 19.99% of the outstanding aggregate voting Interests of all Partners excluding any Interests that are Non-Voting Interests.

### **8.14 Entire Agreement**

The parties acknowledge and agree that, this Agreement, together with any other agreement with a Limited Partner pursuant to Section 8.1(e), constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

[Signature Page Follows]

The parties hereto have executed this Agreement as of the day and year first above written.


**GENERAL PARTNER:**

HIGHLAND MULTI STRATEGY CREDIT FUND GP,  
L.P.

By: HIGHLAND MUTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:   
Name: James Dondero  
Title: President


**LIMITED PARTNERS:**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:   
Name: James Dondero  
Title: President

**EXHIBIT 15**

**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES**

**AMENDED AND RESTATED  
MEMORANDUM AND ARTICLES OF ASSOCIATION**

**OF**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**



**003456**

**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES  
  
AMENDED AND RESTATED  
MEMORANDUM OF ASSOCIATION  
OF  
HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**

- 1 The name of the Company is **Highland Multi Strategy Credit Fund, Ltd.**
- 2 The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, or at such other place within the Cayman Islands as the Directors may decide.
- 3 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the laws of the Cayman Islands.
- 4 The liability of each Member is limited to the amount unpaid on such Member's Shares.
- 5 The share capital of the Company is US\$50,000 divided into 100 Management Shares of US\$0.01 par value each and 49,999,000 Participating Shares of US\$0.001 par value each.
- 6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.
- 7 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.



003457

**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES  
  
AMENDED AND RESTATED  
ARTICLES OF ASSOCIATION  
  
OF  
HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**

**1 Interpretation**

1.1 In these Articles, Table A in the First Schedule to the Statute does not apply and unless there is something in the subject or context inconsistent therewith:

<b>"Administrator"</b>	means the person, firm or corporation appointed and from time to time acting as administrator of the Company.
<b>"Articles"</b>	means these articles of association of the Company.
<b>"Auditor"</b>	means the person (if any) for the time being performing the duties of auditor of the Company.
<b>"Business Day"</b>	means any day normally treated as a business day in such places and/or on such markets as the Directors may from time to time determine.
<b>"Cayman Islands"</b>	means the British Overseas Territory of the Cayman Islands.
<b>"Class"</b>	means a separate class of Participating Share (and includes any sub-class of any such class).
<b>"Company"</b>	means the above-named Company.
<b>"Directors"</b>	means the directors for the time being of the Company.
<b>"Dollars" or "US\$"</b>	refers to the currency of the United States.
<b>"Electronic Record"</b>	has the same meaning as in the Electronic Transactions Law.





- "Electronic Transactions Law"** means the Electronic Transactions Law (2003 Revision) of the Cayman Islands.
- "Eligible Investor"** means a person eligible to hold Participating Shares, as determined from time to time by the Directors.
- "FATCA"** means:
- (i) sections 1471 to 1474 of the US Internal Revenue Code of 1986 and any associated legislation, regulations or guidance, or similar legislation, regulations or guidance enacted in any jurisdiction which seeks to implement similar tax reporting and/or withholding tax regimes;
  - (ii) any intergovernmental agreement, treaty, regulation, guidance or any other agreement between the Cayman Islands (or any Cayman Islands government body) and the US, the UK or any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement or implement the legislation, regulations or guidance described in paragraph (i); and
  - (iii) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding paragraphs.
- "Gross Negligence"** shall have the meaning ascribed thereto under the laws of the State of Delaware, USA.
- "Investment Manager"** means the person, firm or corporation appointed and for the time being acting as the investment manager of the Company.
- "Management Share"** means a voting non participating Share in the capital of the Company of US\$0.01 par value designated as a Management Share and having the rights provided for in these Articles.
- "Master Fund"** means Highland Multi Strategy Credit Fund, L.P., or any other entity in which all, or substantially all, of the assets of the Company are invested.
- "Member"** means each person whose name is, from time to time and for the time being, entered in the Register of Members as the holder of one or more Shares.



**"Memorandum"** means the memorandum of association of the Company.

**"Net Asset Value"** means the value of the assets less the liabilities of the Company, or of a Separate Account (as the context may require), calculated in accordance with these Articles.

**"Net Asset Value per Participating Share"** means the amount determined in accordance with these Articles as being the Net Asset Value per Participating Share of a particular Class and/or Series.

**"New Issue"** has the meaning ascribed thereto by Rule 2790 adopted by the National Association of Securities Dealers, Inc.

**"New Issue Investment"** means any New Issue acquired by the Company.

**"New Issue Shares"** means a class of Participating Shares issued and designated as "New Issue Shares" and which may be issued in any one or more Series having the rights and restrictions set out in these Articles

**"Offering Memorandum"** means an offering memorandum relating to Participating Shares of any Class and/or Series as amended or supplemented from time to time subject to and in accordance with these Articles.

**"Ordinary Resolution"** means a resolution passed by a simple majority of the votes of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution.

**"Participating Share"** means a participating redeemable Share in the capital of the Company of US\$0.001 par value and having the rights provided for in these Articles. Participating Shares may be divided into Classes in the discretion of the Directors in accordance with the provisions of these Articles and each Class may be further divided into different Series of Participating Shares and the term "Participating Share" shall include all such Classes and Series of Participating Share.

**"Prohibited Person"** means any person who is restricted from participating in a New Issue pursuant to the Free-Riding and Withholding Interpretation adopted by the Board of Governors of the National Association of Securities Dealers Inc.

**"Redemption Date"** means, in relation to any Class and/or Series of Participating Shares, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time, upon which a Member is entitled to require the redemption of Participating Shares.



of that Class and/or Series.

- "Redemption Fee"** means such fee (if any) payable by a Member to the Company on a redemption of Participating Shares, as the same may be determined by the Directors and disclosed to the Member at the time of its subscription for such Participating Shares.
- "Redemption Notice"** means a notice in a form approved by the Directors by which a holder of Participating Shares is entitled to require the Company to redeem its Participating Shares.
- "Redemption Price"** means the price determined in accordance with these Articles at which redeemable Participating Shares of the relevant Class and/or Series may be redeemed.
- "Register of Members"** means the register of Members, which shall be maintained in accordance with the Statute and includes (except where otherwise stated) any branch or duplicate Register of Members.
- "Registered Office"** means the registered office for the time being of the Company.
- "Sales Charge"** means such sales charge (if any) determined by the Directors as being payable by a subscriber on a subscription for Participating Shares of any Class and/or Series.
- "Seal"** means the common seal of the Company and includes every duplicate seal.
- "Separate Account"** means a separate internal account of the Company which the Directors may establish and cause to be maintained in accordance with these Articles.
- "Series"** means a separate series of Participating Share (and includes any sub-series of any such series).
- "Share" and "Shares"** means a share or shares of any class or series in the Company, including a Management Share, a Participating Share or a New Issue Share, as well as any fraction of a Share.
- "Share Rights"** means, with respect to the Participating Shares of any Class or Series in issue, the class rights for the time being applicable to such Participating Shares or other terms of offer for the time being applicable to such Participating Shares whether set out in the Offering Memorandum, any subscription agreement or otherwise (including any representations, warranties or other disclosure relating



to the offer or holding of such Participating Shares).

- "Special Resolution"** has the same meaning as in the Statute and includes a unanimous written resolution.
- "Statute"** means the Companies Law (2013 Revision) of the Cayman Islands.
- "Subscriber"** means the subscriber to the Memorandum.
- "Subscription Date"** means, in relation to Participating Shares of any Class and/or Series, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time upon which a person may subscribe for Participating Shares of that Class and/or Series.
- "Subscription Price"** means the price determined in accordance with these Articles at which Participating Shares of the relevant Class and/or Series may be subscribed.
- "Suspension"** means a determination by the Directors to postpone or suspend (i) the calculation of the Net Asset Value of Participating Shares of any one or more Classes and/or Series (and the applicable Valuation Date) (a "**Calculation Suspension**"); (ii) the issue of Participating Shares of any one or more Classes and/or Series (and the applicable Subscription Date) (an "**Issue Suspension**"); (iii) the redemption by Members (in whole or in part) of Participating Shares of any one or more Classes and/or Series (and the applicable Redemption Date) (a "**Redemption Suspension**"); and/or (iv) the payment (in whole or in part) of any redemption proceeds (even if Valuation Dates and Redemption Dates are not postponed) (a "**Payment Suspension**").
- "Transfer"** means, in respect of any Share, any sale, assignment, exchange, transfer, pledge, encumbrance or other disposition of that Share, and "**Transferred**" shall be construed accordingly.
- "Treasury Share"** means a Share held in the name of the Company as a treasury share in accordance with the Statute.
- "Valuation Date"** means, in relation to each Class and/or Series of Participating Shares, the day or days determined from time to time by the Directors to be the day or days on which the Net Asset Value per Participating Share of that Class and/or Series is calculated.
- "Valuation Point"** means, with respect to any Class and/or Series, the time or times on the Valuation Date of such Class and/or Series at which the Directors



determine that the Net Asset Value per Participating Share of that Class and/or Series shall be calculated.

1.2 In these Articles:

- (a) the singular number includes the plural number and vice versa;
- (b) the masculine gender includes the feminine gender;
- (c) persons includes corporations;
- (d) "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (e) "shall" shall be construed as imperative and "may" shall be construed as permissive;
- (f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;
- (g) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) the term "and/or" is used herein to mean both "and" as well as "or." The use of "and/or" in certain contexts in no respects qualifies or modifies the use of the terms "and" or "or" in others. "Or" shall not be interpreted to be exclusive, and "and" shall not be interpreted to require the conjunctive — in each case, unless the context otherwise requires;
- (i) any reference to the powers of the Directors shall include, when the context admits, the service providers or any other person to whom the Directors may delegate their powers;
- (j) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;
- (k) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Law;
- (l) sections 8 and 19(3) of the Electronic Transactions Law shall not apply; and
- (m) headings are inserted for reference only and shall be ignored in construing these Articles.



## **2 Commencement of Business**

- 2.1 The business of the Company may be commenced as soon after incorporation as the Directors shall see fit.
- 2.2 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and operation of the Company, including the expenses of registration and the initial offering of Participating Shares.

## **3 Service Providers**

- 3.1 The Directors may appoint any person, firm or corporation to act as a service provider to the Company (whether in general or in respect of any Class and/or Series of Shares) and may entrust to and confer upon any such service providers any of the functions, duties, powers and discretions exercisable by them as Directors, upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit. Without limiting the generality of the foregoing, such service providers may include managers, investment advisers, administrators, registrars, transfer agents, custodians and prime brokers.
- 3.2 Without prejudice to the generality of the preceding Article, the Directors may appoint any person, firm or corporation to act as the Investment Manager with respect to the assets of the Company (whether in general or in respect of any Class and/or Series of Shares). The Directors may entrust to and confer upon the Investment Manager any of the functions, duties, powers and discretions exercisable by them as Directors upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit.

## **4 Rights attaching to Shares**

- 4.1 The Management Shares shall have the following rights:
  - (a) as to voting: the holder of a Management Share shall (in respect of such Management Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company; and
  - (b) as to capital: a Management Share shall confer upon the holder the right in a winding up to repayment of capital as provided in these Articles but shall confer no other right to participate in the profits or assets of the Company; and
  - (c) as to income: no dividends shall be payable on the Management Shares.
- 4.2 The Participating Shares shall have the following rights:



- (a) as to voting: the holder of a Participating Share shall not (in respect of such Participating Share) have the right to receive notice of, attend at or vote as a Member at any general meeting of the Company, but may vote at a separate Class meeting convened in accordance with these Articles; and
- (b) as to capital: a Participating Share shall confer upon the holder thereof the right in a winding up to participate in the surplus assets of the Company by reference to the Separate Account attributable to the relevant Class or Series of Participating Shares as provided in these Articles; and
- (c) as to income: the Participating Shares shall confer on the holders thereof the right to receive dividends as provided in these Articles.

4.3 Notwithstanding Articles 4.1(a) and 4.2(a), if the Company, in its capacity as a limited partner of the Master Fund, is called upon to approve, vote or consent to any matter to which it would be entitled to vote as a limited partner of the Master Fund and is required to seek the consent of the holders of Participating Shares in connection with any such approval, vote or consent pursuant to the constitutional documents of the Master Fund (a "**Master Fund Consent Transaction**"), each holder of a Participating Share shall have the right (in respect of such Participating Share), to the exclusion of the holders of the Management Shares (in respect of such Management Shares), to receive notice of, and vote on, the Master Fund Consent Transaction (the "**Special Voting Right**"). The voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote. For every Master Fund Consent Transaction, the Directors shall cause the Company to vote its limited partnership interest in the Master Fund proportionally for and against such matter in the same proportion that the Members holding Participating Shares voted for and against such matter pursuant to the Special Voting Right.

4.4 In relation to any Special Voting Right pursuant to Article 4.3, unless otherwise determined by the Directors in their sole discretion, the procedure in this Article 4.4 shall be invoked. The Directors shall provide written notice of the proposed Master Fund Consent Transaction to the Members holding Participating Shares and shall specify a deadline (the "**Consent Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written refusal to consent to the proposed Master Fund Consent Transaction. The holders of Participating Shares in respect of which an express written refusal to consent has not been received by the Consent Date shall be deemed to have consented in writing to the proposed Master Fund Consent Transaction.

## 5 Share Capital

5.1 Subject to these Articles, the Directors may allot, issue, grant options or warrants over, or otherwise dispose of Shares in separate classes and/or series with different terms, preferences, privileges or special rights including, without limitation, with respect to investment strategy and/or policy, participation in assets, profits and losses of the Company, voting, fees charged (including





management, performance and incentive fees), redemption privileges, allocation of costs and expenses (including, without limitation, the costs and expenses incurred in any hedging activities and any profits and losses arising therefrom) as they think proper. Subject to the Statute, these Articles and any applicable subscription agreement, any Share Rights (other than those set out in these Articles or set out in a Special Resolution) may be varied by either the Directors or by Ordinary Resolution. Notwithstanding the foregoing, the Subscriber shall have the power to:

- (a) issue one Share to itself;
  - (b) transfer that Share by an instrument of transfer to any person; and
  - (c) update the Register of Members in respect of the issue and transfer of that Share.
- 5.2 On or before the allotment of any Participating Share the Directors shall resolve the Class and/or Series to which such Participating Share shall be classified and may, prior to the issue of any Participating Share, reclassify such Participating Share. Each Class and/or Series shall be specifically identified. Subject to the Statute and these Articles, the Directors may at any time re-name any Participating Share.
- 5.3 Notwithstanding the currency in which the par value of the Participating Shares is denominated, the Directors may specify any currency as the currency in which the Subscription Price, Redemption Price and Net Asset Value of Participating Shares of a Class and/or Series is calculated.
- 5.4 The Company shall not issue Shares to bearer.
- 5.5 Fractional Shares may be issued.
- 5.6 Shares shall only be issued as fully paid-up.
- 5.7 No right of pre-emption or first refusal shall attach to any Shares.
- 5.8 New Issue Shares shall not be issued to a Prohibited Person.

## **6 Allotment and Issue of Participating Shares**

- 6.1 The Directors may from time to time allot and issue Participating Shares of any Class and/or Series. The Directors may, in their discretion, refuse to allot and issue any Participating Shares, and shall not issue any Participating Shares to or for the account of an investor who is not an Eligible Investor. If the Directors have declared a Calculation Suspension or Issue Suspension, no Participating Shares of that Class or Series (as appropriate) shall be issued until the relevant Suspension has ended.
- 6.2 The Directors shall determine the Subscription Price at the time of issue of the first issue of Participating Shares of any Class and/or Series. Thereafter, the Directors may allot and issue



Participating Shares of the same Class and/or Series on any Subscription Date provided that such additional Participating Shares are issued at a Subscription Price equal to not less than the Net Asset Value per Participating Share of such Class and/or Series calculated on the relevant Subscription Date (or if the Subscription Date is not also a Valuation Date then on the immediately preceding Valuation Date).

- 6.3 The Directors may add to the Subscription Price per Participating Share (before making any rounding adjustment) an amount which they consider to be an appropriate allowance to reflect fiscal and purchase charges which would be incurred for the account of the Company in investing an amount equal to the Subscription Price. The Directors may also add, in their discretion, a Sales Charge and/or an amount equal to any stamp duty and any other governmental taxes or charges payable by the Company with respect to the issue of such Participating Shares.
- 6.4 An applicant for Participating Shares shall pay for such Participating Shares in such currencies, in such manner, at such time, in such place and to such person acting on behalf of the Company as the Directors may from time to time determine.
- 6.5 Subject to the terms of any subscription agreement, an application for Participating Shares shall be irrevocable by an applicant for Participating Shares once it has been received by the Company. Participating Shares shall be treated as having been issued with effect from the relevant Subscription Date notwithstanding that the subscriber for those Participating Shares may not be entered in the Register of Members until after the Subscription Date.
- 6.6 Participating Shares shall be issued in such minimum numbers as the Directors may specify either generally or in any particular case; likewise the Directors may from time to time prescribe an amount as the minimum subscription amount.
- 6.7 The Directors may resolve to accept non-cash assets in satisfaction (in whole or in part) of the Subscription Price.
- 6.8 The Directors may require an applicant for Participating Shares to pay to the Company for the benefit of any selling agent such selling commissions or such organisational charges as may have been disclosed to such applicant. The Directors may differentiate between applicants as to the amount of such selling commissions or such organisational charges.
- 6.9 The Company may, in so far as the Statute permits, pay a commission to any person in consideration of that person subscribing or agreeing to subscribe whether absolutely or conditionally for any Participating Shares. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Participating Shares. The Company may also on any issue of Participating Shares pay such brokerage as may be lawful.

## **7 Separate Accounts**

- 7.1 The Directors shall have the power to establish and maintain, with respect to Participating Shares of any Class and/or Series, a Separate Account, to record (purely as an internal accounting



matter) the allocation, on a differentiated basis, of the assets and liabilities of the Company to the holders of Participating Shares of any such Class and/or a Series in a manner consistent with the methodology set forth in the Offering Memorandum and the rights otherwise attaching to the Participating Shares.

- 7.2 The proceeds from the issue of Participating Shares of any Class and/or Series shall be applied in the books of the Company to the Separate Account established for Participating Shares of that Class and/or Series. The assets and liabilities and income and expenditure attributable to that Separate Account shall be applied to such Separate Account and, subject to the provisions of these Articles, to no other Separate Account. In the event that the assets of a Separate Account referable to any Class and/or Series are exhausted, any and all unsatisfied claims which any Members or former Members referable to that Class and/or Series have against the Company shall be extinguished. The Members or former Members referable to a Class and/or Series shall have no recourse against the assets of any other Separate Account established by the Company.
- 7.3 Where any asset is derived from another asset (whether cash or otherwise), such derivative asset shall be applied in the books of the Company to the same Separate Account as the asset from which it was derived, and on each revaluation of an asset the increase or diminution in value shall be applied to the same Separate Account and, subject to the provisions of these Articles, to no other Separate Account.
- 7.4 In the case of any asset or liability of the Company which the Directors do not consider is attributable to a particular Separate Account, the Directors shall have discretion to determine the basis upon which any such asset or liability shall be allocated between or among Separate Accounts.
- 7.5 The Directors may, in the books of the Company, allocate assets and liabilities to and from Separate Accounts if, as a result of a creditor proceeding against certain of the assets of the Company or otherwise, a liability would be borne in a different manner from that in which it would have been borne if applied under the foregoing Articles.
- 7.6 The Directors may from time to time transfer, allocate or exchange an asset or liability from one Separate Account to another Separate Account provided that at the time of such transfer, allocation or exchange the Directors form the opinion (in good faith) that the value in money or money's worth of each such asset or liability transferred, allocated or exchanged is not significantly less or more than the value in money or money's worth (referred to in these Articles as "proper value") received by the Separate Account from which such asset or liability is transferred, allocated or exchanged except only as is otherwise provided by these Articles.

## **8 Determination of Net Asset Value**

- 8.1 The Net Asset Value and Net Asset Value per Participating Share of each Class and/or Series shall be determined by or on behalf of the Directors as at the relevant Valuation Point on each relevant Valuation Date.



- 8.2 In calculating the Net Asset Value and the Net Asset Value per Participating Share, the Directors shall apply such generally accepted accounting principles as they may determine.
- 8.3 The assets and liabilities of the Company shall be valued in accordance with such policies as the Directors may determine. Absent bad faith or manifest error, any valuation made pursuant to these Articles shall be binding on all persons.
- 8.4 Unless otherwise determined by the Directors in any resolution creating a Class and/or Series of Participating Shares or as otherwise disclosed in any Offering Memorandum, the Net Asset Value per Participating Share of each Class (or Series) shall be determined by allocating *pro rata* the Net Asset Value, as at the relevant Valuation Point, of the Company and/or of the relevant Separate Account among each Class and/or Series, adjusting the amount so calculated to reflect any fees, costs, foreign exchange items or other assets or liabilities which are properly attributable to a specific Class and/or Series and then by dividing the resultant amount by the number of Participating Shares of such Class and/or Series then in issue.
- 8.5 The Directors may determine that the Net Asset Value of any Class and/or Series shall be definitively determined on the basis of estimates and that such determination shall not be modified to reflect final valuations.
- 8.6 Any expense or liability may be amortised over such period as the Directors may determine.
- 8.7 The Directors may establish such reserves as they deem reasonably necessary for Company expenses and any other contingent Company assets or liabilities, and may, upon the reversal or release of such reserves, apply any monies resulting therefrom in such manner as they may, in their absolute discretion, determine.
- 8.8 Net Asset Value per Participating Share shall be rounded to the nearest cent or such other amount as the Directors may determine and the benefit of any such roundings may be retained by the Company.
- 8.9 The Directors may cause the Company to issue new Participating Shares at par or to compulsorily redeem at par such number of Participating Shares as they consider necessary to address, in such manner as they consider equitable, any prior miscalculation of Net Asset Value or Net Asset Value per Participating Share. The Company shall not be required to pay to the holder the redemption proceeds of any such compulsorily redeemed Participating Shares, which proceeds shall be retained by the Company.

## 9 Suspensions

- 9.1 The Directors may, from time to time, in the circumstances disclosed in the Offering Memorandum, declare a Suspension with respect to any one or more Classes and/or Series of Participating Shares.



9.2 The Directors shall promptly notify all affected Members of any such Suspension and shall promptly notify such Members upon termination of such Suspension.

## **10 Transfer of Shares**

10.1 Subject to Article 5.1, Shares may not be Transferred without the prior written approval of the Directors (which may be withheld for any or no reason) provided that the Directors may waive this requirement to the extent that they deem appropriate in connection with the listing of any Class or Series of Share on a stock exchange.

10.2 The Directors shall not register any Transfer of any Share to any person who is, in the opinion of the Directors, not an Eligible Investor.

10.3 Any proposed transferee shall provide to the Directors such information and documents as the Directors may request, including, without limitation, such documents or information as the Directors deem necessary or desirable:

- (a) to enable the Directors to determine that the proposed transferee is an Eligible Investor; and
- (b) to enable the Company to comply with all applicable laws, including anti-money laundering laws.

10.4 The instrument of Transfer of any Share shall be in writing and shall be executed by or on behalf of the transferor (and, if the Directors so require, signed by or on behalf of the transferee). The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

## **11 Transmission of Shares**

11.1 If a Member dies, the survivor or survivors (where the Member was a joint holder) or his or her legal personal representatives (where the Member was a sole holder) shall be the only persons recognised by the Company as having any title to the Member's interest in the Company. The death of any Member shall not operate to relieve, waive or reduce any liabilities attaching to the Member's Shares at the time of death and such liabilities shall continue to bind any survivor or survivors, or any personal representative, as the case may be.

11.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is an Eligible Investor may, upon delivery to the Directors of such evidence as may from time to time be required by them of:

- (a) such person's entitlement to such Shares; and/or
- (b) such person's status as an Eligible Investor,



elect, either to become the holder of such Share or to have such Share Transferred to another Eligible Investor nominated by such person. If such person elects to become the holder of such Share, such person shall give notice in writing to the Directors to that effect, but the Directors shall, in either case, have the same right to decline registration of such person as a holder of such Share as they would have had in the case of a Transfer of the Share by that Member before his or her death or bankruptcy, or liquidation or dissolution, as the case may be.

- 11.3 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is not an Eligible Investor shall not be registered as the holder of such Share and shall promptly Transfer such Share to an Eligible Investor in accordance with these Articles.
- 11.4 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by Transfer), and who is an Eligible Investor, shall be entitled to the same dividends and other advantages to which such person would be entitled if such person were the registered holder of such Share. However, the person shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him become the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days the Directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

## 12 Redemption of Shares

- 12.1 Subject to any provisions relating to a specific Class and/or Series as set out in the Offering Memorandum or these Articles or in any resolution constituting a Class and/or Series or otherwise forming part of the special rights of such Participating Shares, a Member may require the redemption of all or any of such Member's Participating Shares by serving a Redemption Notice on the Company. Unless timely receipt is waived by the Directors in a particular case, a Redemption Notice shall be required to be received on or before a Redemption Date with respect to such Participating Shares (or such number of days prior to such Redemption Date as may be determined by the Directors). Any Member redeeming Participating Shares shall submit to the Directors the share certificate (if any) issued in respect of those Participating Shares. The Company shall redeem such Participating Shares at the Redemption Price, being an amount equal to the Net Asset Value per Participating Share of the relevant Class and/or Series prevailing on the relevant Redemption Date (or if the Redemption Date is not a Valuation Date then on the immediately preceding Valuation Date) subject to any deductions, holdbacks or adjustments provided for in these Articles and/or the Offering Memorandum.





- 12.2 The Directors may deduct any Redemption Fee from the Redemption Price. The Directors may also deduct such amount which they consider to be an appropriate allowance to reflect fiscal and sale charges which would be incurred for the account of the Company in realising assets or closing out positions to provide funds to meet any redemption request.
- 12.3 A Member may not withdraw a Redemption Notice once submitted to the Company unless (a) the Directors shall have declared a Calculation Suspension or Redemption Suspension or (b) the Directors determine (in their sole discretion) to permit the withdrawal of such redemption request (which they may do in whole or in part). If a relevant Suspension has been declared by the Directors, the right of a Member to have its Participating Shares redeemed shall be suspended and during the period of Suspension the Member may withdraw its Redemption Notice. Any withdrawal of the Redemption Notice shall be made in writing and shall only be effective if actually received by the Company before the termination of the period of the Redemption Suspension or Calculation Suspension, as applicable. If the Redemption Notice is not withdrawn, any Participating Shares the redemption of which has been suspended shall be redeemed once the relevant Suspension has ended at the Redemption Price for Participating Shares of the relevant Class and/or Series calculated on the next Redemption Date following the end of the relevant Suspension.
- 12.4 The Directors may impose a gate the effect of which is to limit the redemptions of Participating Shares of any Class and/or Series or to limit the redemptions of Participating Shares held by any Member or Members as of any Redemption Date to such extent and in such manner as is disclosed in the Offering Memorandum. If the Directors determine to limit redemptions, the Directors may determine the manner in which such gated redemption requests will be dealt with on any subsequent Redemption Date.
- 12.5 If the Company is required by the laws of any relevant jurisdiction to make a withholding from any redemption monies payable to the holder of Participating Shares the amount of such withholding shall be deducted from the redemption monies otherwise payable to such person.
- 12.6 No redemption of part of a Member's holding of Participating Shares of any one Class and/or Series may be made if, as a result thereof, such Member would hold fewer Participating Shares of such Class and/or Series than such minimum number or value of Participating Shares of such Class and/or Series as may from time to time be specified (either generally or in any particular case or cases) by the Directors. If such partial redemption would reduce such Member's holding of Participating Shares to less than such minimum holding, the Directors may, in their discretion, elect to compulsorily redeem all of such Member's Participating Shares.
- 12.7 The Company may, in the absolute discretion of the Directors, refuse to make a redemption payment to a Member if the Directors suspect or are advised that the payment of any redemption proceeds to such Member may result in a breach or violation of any anti-money laundering law by any person in any relevant jurisdiction, or if such refusal is necessary to ensure the compliance by the Company, its Directors, the Administrator or any other service provider of the Company with any anti-money laundering law in any relevant jurisdiction.





- 12.8 Any amount payable to a Member for the redemption of Participating Shares shall be paid in such currency or currencies as the Directors may determine. Subject to any Payment Suspension, the Company shall remit redemption proceeds (net of the costs of remittance) by cheque or wire transfer within such period or periods as the Directors shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period or periods as the Directors shall determine. In the absence of directions as to payment the Company may remit redemption proceeds by cheque to the address of the Member appearing on the Register of Members or by wire transfer to such account as the Directors deem appropriate in the circumstances. The Company shall not be liable for any loss resulting from this procedure.
- 12.9 On any redemption of Participating Shares the Directors shall have the power to satisfy (in whole or in part) the Redemption Price (and any other sums payable on redemption as provided in these Articles) owing on the redemption of such Participating Shares by dividing *in specie* the whole or any part of the assets of the Company (including, without limitation, shares, debentures, or securities of any other company whether or not held by the Company on the Redemption Date in question) and either (i) distributing such assets directly to the redeeming shareholder, and/or (ii) distributing or allocating such assets to a liquidating account or other similar mechanism to be managed and/or liquidated at the discretion of the Directors.
- 12.10 Participating Shares shall be treated as having been redeemed with effect from the relevant Redemption Date irrespective of whether or not a Member has been removed from the Register of Members or the Redemption Price has been determined or remitted. Accordingly, on and from the relevant Redemption Date, Members in their capacity as such will not be entitled to or be capable of exercising any rights arising under these Articles with respect to Participating Shares being redeemed (including any right to receive notice of, attend or vote at any meeting of the Company) save the right to receive the Redemption Price and any dividend which has been declared prior to the relevant Redemption Date but not yet paid (in each case with respect to the Participating Shares being redeemed). Such Members will be treated as creditors of the Company with respect to the Redemption Price and will rank accordingly in the priority of the Company's creditors.
- 12.11 Once a Participating Share is redeemed it shall be available for re issue and, until re issue, shall form part of the authorised and unissued share capital of the Company.
- 12.12 Upon the written request of a Member or prospective Member in a form acceptable to the Directors, the Company may, in the discretion of the Directors, accept a standing redemption request from such Member or prospective Member pursuant to which the Company shall agree (without assuming any liability for failing to do so) to use its commercially reasonable efforts to redeem such Member's Participating Shares to the extent necessary to ensure that such Member does not own over a specified percentage of the outstanding Participating Shares of the Company or any Class and/or Series thereof; such percentage to be the percentage identified by such Member or prospective Member in such written request as being the percentage which such Member's or prospective Member's ownership cannot exceed without material risk of such



Member or prospective Member being in violation of applicable law or regulation. Any such written request may be revoked by notice in writing to the Company from the affected Member.

- 12.13 No amendment to these Articles made after a Redemption Date shall affect a Member with respect to Participating Shares of that Member which have been redeemed, or are being treated as redeemed, on or prior to that Redemption Date.
- 12.14 Unless otherwise provided in the Offering Memorandum, unremitted redemption proceeds shall not bear interest against the Company and redeemed Participating Shares shall not participate in the profits and losses of the Company with effect from the relevant Redemption Date.

### **13 Compulsory Redemption**

- 13.1 The Directors may cause the Company to redeem any or all of the Participating Shares held by any person at the appropriate Redemption Price in the circumstances disclosed in the Offering Memorandum. If the Directors determine compulsorily to redeem any Participating Shares under this Article they shall give the holder of the Participating Shares such notice of the redemption as they shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period as the Directors shall determine.
- 13.2 The Directors may cause a compulsory redemption during any period for which a Redemption Suspension has been declared.
- 13.3 Without prejudice to the generality of the foregoing, the Company may (without notice) compulsorily redeem the Participating Shares of any Member and, on behalf of such Member, apply the proceeds of redemption in paying for new Participating Shares to give effect to any exchange, conversion or roll-up policy disclosed to Members pursuant to which Participating Shares of one Class or Series (the "**Old Shares**") may, at the option of the Company, be exchanged for Participating Shares of another Class or Series (the "**New Shares**") by means of the redemption of the Old Shares and the immediate re-subscription of the redemption proceeds in paying up the New Shares.

### **14 FATCA**

- 14.1 Notwithstanding any other Article, in order to comply with FATCA, any Director shall be entitled to release and/or disclose on behalf of the Company to the Cayman Islands Tax Information Authority or equivalent authority (the "**TIA**") and any other foreign government body as required by FATCA, any information in its or its agents' or delegates' possession regarding a Member including, without limitation, financial information concerning the Member's investment in the Company, and any information relating to any shareholders, principals, partners, beneficial owners (direct or indirect) or controlling persons (direct or indirect) of such Member. Any such Director may also authorise any third party agent, including but not limited to, the Investment Manager or Administrator, to release and/or disclose such information on behalf of the Company.



- 14.2 In order to comply with FATCA and, if necessary, to reduce or eliminate any risk that the Company or its Members are subject to withholding taxes pursuant to FATCA or incur any costs or liabilities associated with FATCA, the Directors may cause the Company to undertake any of the following actions:
- (a) compulsorily redeem any or all of the Shares held by a Member either (i) where the Member fails to provide (in a timely manner) to the Company, or any agent or delegate of the Company, including but not limited to, the Investment Manager or the Administrator, any information requested by the Company or such agent or delegate pursuant to FATCA; or (ii) where there has otherwise been non-compliance by the Company with FATCA whether caused, directly or indirectly, by the action or inaction of such Member, or any related person, or otherwise;
  - (b) deduct from, or hold back, redemption or repurchase proceeds, dividend payments or any other distributions, in order to:
    - (i) comply with any requirement to apply and collect withholding tax pursuant to FATCA;
    - (ii) allocate to a Member an amount equal to any withholding tax imposed on the Company as a result of the Member's, or any related person's, action or inaction (direct or indirect), or where there has otherwise been non-compliance by the Company with FATCA;
    - (iii) ensure that any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) are recovered from the Member(s) whose action or inaction (directly or indirectly, including the action or inaction of any person related to such Member) gave rise or contributed to such costs or liabilities;
  - (c) in order to give effect to the requirements imposed upon the Company by FATCA, including the actions contemplated by articles 14.2(a) and 14.2(b), the Directors may:
    - (i) create separate classes and/or series of Shares ("**FATCA Shares**"), with such rights and terms as the Directors may in their sole discretion determine, and following the compulsory redemption of some or all of a Member's Shares may immediately apply such redemption proceeds in subscribing for such number of FATCA Shares as the Directors determine; and/or
    - (ii) may re-name any number of Shares (whether issued or unissued) as FATCA Shares, create a Separate Account with respect to such FATCA Shares and apply any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) to such Separate Account; and/or



- (iii) allocate any FATCA costs, debts, expenses, obligations, liabilities or withholding tax among Separate Accounts on a basis determined solely by the Directors; and/or
- (iv) adjust the Net Asset Value per Share of any relevant Shares (including any FATCA Share).

## 15 Designated Investments

- 15.1 The Directors may, in their discretion, classify certain of the Company's investments which are deemed by the Directors or the Investment Manager to be illiquid or the value of which is not readily or reliably ascertainable or which may have a relatively long-term investment horizon as "**Designated Investments**". Once so classified, Designated Investments may, in the discretion of the Directors, be represented by a separate Class and/or Series of Participating Shares which, unless otherwise determined by the Directors, shall be allotted only to those Members who are holders of Participating Shares at the time of such designation. The gains and losses attributable to Designated Investments may, in the discretion of the Directors, be segregated and separately calculated and attributed amongst Members holding Shares of the relevant Class or Series in such manner as is consistent with the relevant provisions of the Offering Memorandum. Participating Shares of any such separate Class and/or Series may be issued by way of bonus or by way of conversion or exchange of all or part of a Member's holding of Participating Shares of another Class and/or Series. Similarly, Shares of a Designated Investment Class and/or Series may be converted or exchanged back into Participating Shares of the original Class and/or Series upon the Directors making a determination that the relevant investment no longer qualifies as a Designated Investment. The power to convert or exchange Participating Shares of one Class and/or Series into Participating Shares of another Class and/or Series may be effected by the Directors in any manner permitted by the Statute and the Articles, including the compulsory redemption of Participating Shares of one Class and/or Series and the application of the proceeds of redemption in subscribing for Participating Shares of the other Class and/or Series or by redesignating a portion of the Participating Shares of any existing Class and/or Series as thereafter belonging to a new Class and/or Series. Shares of a Class or Series of Shares which represent Designated Investments shall not, unless the Directors otherwise determine, be redeemable at the option of the Members holding such Participating Shares. Where investments are classified as Designated Investments and Participating Shares of a separate Class and/or Series are issued by way of bonus, the requirement of these Articles to ensure proper value is transferred to the Separate Account of the Participating Shares of the original Class and/or Series to which such investments were originally allocated shall not apply.

## 16 Purchase and Surrender of Shares

- 16.1 Subject to the provisions of the Statute and without prejudice to these Articles, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.



16.2 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

16.3 The Directors may accept the surrender for no consideration of any fully paid Share.

## 17 Treasury Shares

17.1 The Directors may, prior to the purchase, redemption or surrender of any Share, determine that such Share shall be held as a Treasury Share.

17.2 The Directors may determine to cancel a Treasury Share or transfer a Treasury Share on such terms as they think proper (including, without limitation, for nil consideration).

## 18 Variation of Share Rights

18.1 Subject to the Statute, these Articles and any applicable subscription agreement, all or any of the Share Rights applicable to any Class or Series of Participating Shares in issue (unless otherwise provided by the terms of issue of those Participating Shares) may (whether or not the Company is being wound up) be varied without the consent of the holders of the issued Participating Shares of that Class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation may be made with the prior consent in writing of the holders of not less than two-thirds by Net Asset Value of such Participating Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Participating Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of such Participating Shares. To any such meeting all the provisions of these Articles as to general meetings shall *mutatis mutandis* apply, but so that any holder of a Participating Share present in person or by proxy may demand a poll, and the quorum for any such meeting shall be Members holding not less than twenty per cent. by Net Asset Value of the issued Participating Shares of the relevant Class or Series. At any Class meeting, the voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote.

18.2 For the purposes of a Class consent, the Directors may treat two or more or all the Classes or Series of Participating Shares as forming one Class or Series if the Directors consider that such Classes or Series would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes or Series.

18.3 Where the Shares of any Class or Series (the "**First Class**") rank, or will on issue rank, pari passu with the Shares of another Class or Series (the "**Second Class**") with respect to participation in the same pool of profits or assets of the Company on a winding up, the rights of the First Class shall be deemed to be varied by any variation of or creation of rights in the Second



Class (including on initial issue) which gives the Second Class priority over the First Class on a winding up of the Company.

- 18.4 Subject to the foregoing Articles, the Share Rights applicable to any Class or Series of Shares in issue shall (unless otherwise expressly provided by the conditions of issue of such Shares) be deemed not to be varied by:
- (a) the creation, allotment or issue of further Shares ranking *pari passu* therewith and which may be issued with the benefit of the terms referred to below;
  - (b) the purchase or redemption of any Shares;
  - (c) the exercise of the powers to allocate assets and charge liabilities to the various Separate Accounts or any of them and to transfer the same to and from the various Separate Accounts or any of them, as provided for in these Articles;
  - (d) any reduction or waiver of any fees (including early redemption, management or performance fees) chargeable or allocable to any Class or Series of Shares;
  - (e) any reduction or waiver of any redemption notice, gate or lock-up period applicable to any Class or Series of Shares; or
  - (f) any variation or waiver contemplated by or provided for in the Offering Memorandum applicable to the relevant Class and/or Series.
- 18.5 In relation to any Class or Series consent required pursuant to Article 18.1, the Directors in their discretion may invoke the following procedure (the "**Negative Consent Procedure**"). The Directors shall provide written notice of the proposed variation (the "**Proposal**") to the Members of the affected Class or Series and shall specify a deadline (the "**Redemption Request Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written request for redemption of some or all of their Participating Shares of the affected Class and/or Series on the Redemption Date (the "**Specified Redemption Date**") specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the "**Effective Date**") shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Participating Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the "**Affected Shares**") shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the "**Negative Consent Shares**"). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under Article 18.1 with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favour of the Proposal on the Effective Date.





## 19 Variation of Terms

The Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a Member to waive or modify the terms applicable to such Member's subscription for Participating Shares (including those relating to management and performance fees and redemption terms) without obtaining the consent of any other Member; provided that such waiver or modification does not amount to a variation of the rights attaching to the Participating Shares of such other Members.

## 20 Certificates for Shares

- 20.1 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or another person authorised by the Directors. The Directors may authorise certificates to be issued with the authorised signature(s) affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and, subject to these Articles, no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.
- 20.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- 20.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) on delivery up of the old certificate.

## 21 Register of Members

- 21.1 The Company shall maintain or cause to be maintained the Register of Members.
- 21.2 The Directors may determine that the Company shall maintain one or more branch registers of Members in accordance with the Statute. The Directors may also determine which register of Members shall constitute the principal register and which shall constitute the branch register or registers, and to vary such determination from time to time.

## 22 Closing Register of Members and Fixing Record Date

- 22.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Directors may provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed thirty days.





- 22.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of, or to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any dividend or in order to make a determination of Members for any other proper purpose.
- 22.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to receive payment of a dividend, the date on which notice of the meeting is sent or the date on which the resolution of the Directors declaring such dividend is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

### **23 Non Recognition of Trusts**

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the registered holder.

- 23.1 if it is not paid all the provisions of these Articles shall apply as if that amount had become due and payable by virtue of a call.
- 23.2 The Directors may issue Shares with different terms as to the amount and times of payment of calls, or the interest to be paid.
- 23.3 The Directors may, if they think fit, receive an amount from any Member willing to advance all or any part of the monies uncalled and unpaid upon any Shares held by it, and may (until the amount would otherwise become payable) pay interest at such rate as may be agreed upon between the Directors and the Member paying such amount in advance.
- 23.4 No such amount paid in advance of calls shall entitle the Member paying such amount to any portion of a dividend declared in respect of any period prior to the date upon which such amount would, but for such payment, become payable.

### **24 Lien on Shares**

- 24.1 The Company shall have a first and paramount lien on all Shares (whether fully paid-up or not) registered in the name of a Member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such Member or such Member's estate, either alone or jointly with any other person, whether a Member or not, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The registration of a Transfer of any such Share shall operate as a waiver of the Company's lien thereon. The Company's lien on a Share shall also extend to any amount payable in respect of that Share.



- 24.2 The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, if a sum in respect of which the lien exists is presently payable, and is not paid within fourteen clear days after notice has been given to the holder of the Shares, or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold.
- 24.3 To give effect to any such sale the Directors may authorise any person to execute an instrument of Transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The purchaser or such purchaser's nominee shall be registered as the holder of the Shares comprised in any such Transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Shares be affected by any irregularity or invalidity in the sale or the exercise of the Company's power of sale under these Articles.
- 24.4 The net proceeds of such sale after payment of costs, shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and any balance shall (subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

## **25 Amendments of Memorandum and Articles and Alteration of Capital**

- 25.1 The Company may, by Ordinary Resolution:
- (a) increase its share capital by such sum and with such rights, priorities and privileges annexed thereto, as the resolution shall prescribe;
  - (b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;
  - (c) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum; and
  - (d) cancel any Shares that at the date of the passing of the resolution have not been taken or agreed to be taken by any person.
- 25.2 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of these Articles with reference to liens, Transfer, transmission and otherwise as the Shares in the original share capital.
- 25.3 Subject to the provisions of the Statute and the provisions of these Articles as regards the matters to be dealt with by Ordinary Resolution the Company may, by Special Resolution:
- (a) change its name;
  - (b) alter or add to these Articles;



- (c) alter or add to the Memorandum with respect to any objects, powers or other matters specified therein; and
- (d) reduce its share capital or any capital redemption reserve fund.

## **26 Registered Office**

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

## **27 General Meetings**

- 27.1 All general meetings other than annual general meetings shall be called extraordinary general meetings. The Directors may call general meetings.
- 27.2 The Company may but shall not be obliged to hold a general meeting in each year as its annual general meeting, and shall specify the meeting as such in the notice calling it. Any annual general meeting shall be held at such time and place as the Directors shall determine.

## **28 Notice of General Meetings**

- 28.1 At least five Business Days' notice shall be given of any general meeting. Every notice shall be exclusive of the day on which it is given or deemed to be given and of the day on which the meeting is to be held and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of these Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:
  - (a) in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and
  - (b) in the case of an extraordinary general meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety five per cent. in par value of the Shares giving that right.
- 28.2 The accidental omission to give notice of a general meeting to, or the non receipt of notice of a meeting by, any person entitled to receive notice thereof shall not invalidate the proceedings of that meeting.

## **29 Proceedings at General Meetings**

- 29.1 No business shall be transacted at any general meeting unless a quorum is present. A quorum shall be one or more Members (present in person, by proxy or authorised corporate



representative, as the case may be) entitled to attend and vote and representing not less than twenty per cent. in par value of all of the Shares in issue and carrying the right to vote at the meeting.

- 29.2 A person may, with the consent of the Directors, participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.
- 29.3 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.
- 29.4 If a quorum is not present within half an hour from the time appointed for the meeting or if during such a meeting a quorum ceases to be present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time or such other place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
- 29.5 The chairman, if any, of the board of Directors shall preside as chairman at every general meeting of the Company, or if there is no such chairman, or if the chairman shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.
- 29.6 If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairman of the meeting.
- 29.7 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice.
- 29.8 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, the chairman or any Member present in person or by proxy (or in the case of a non-natural person, by its duly authorised representative or by proxy) demands a poll.
- 29.9 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority,



an entry to that effect in the minutes of the proceedings of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 29.10 The demand for a poll may be withdrawn.
- 29.11 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.
- 29.12 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.
- 29.13 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a second or casting vote.

### **30 Votes of Members**

- 30.1 Subject to any rights or restrictions attached to any Shares, on a show of hands every Member holding Shares carrying the right to vote on the matter in question who (being an individual) is present in person or by proxy or (if a corporation or other non-natural person) is present by its duly authorised representative or by proxy, shall have one vote and on a poll every such Member shall have one vote for every Share of which he is the holder.
- 30.2 In the case of joint holders of record, the vote of the senior holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. Seniority among joint holders shall be determined by the order in which the names of the holders stand in the Register of Members.
- 30.3 A Member of unsound mind, or in respect of whom an order has been made by any court or authority having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the Member's committee, receiver, curator bonis, or other similar person appointed on such Member's behalf by that court or authority and any such committee, receiver, curator bonis or other similar person may vote by proxy.
- 30.4 No person shall be entitled to vote at any general meeting unless such person is registered as a Member on the record date for such meeting, nor unless all calls or other monies then payable by such person in respect of such Shares have been paid.
- 30.5 No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is purported to be given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.



- 30.6 On a poll or on a show of hands votes may be cast either personally or by proxy. A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall state which proxy is entitled to vote on a show of hands.
- 30.7 A Member holding more than one Share need not cast the votes in respect of its Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain (any such abstentions to count neither for nor against the resolution) from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing it, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which such proxy is appointed either for or against a resolution and/or abstain from voting.

### **31 Proxies**

- 31.1 The instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of such appointor's attorney duly authorised in writing or, if the appointor is a corporation or other non-natural person, under the hand of an officer or other person duly authorised for that purpose. A proxy need not be a Member of the Company.
- 31.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the place and the time (being not later than the time for holding the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting, the instrument appointing a proxy shall be deposited at the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.
- 31.3 The chairman may in any event, at the chairman's discretion, declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted and which has not been declared to have been duly deposited by the chairman, shall be invalid.
- 31.4 The instrument appointing a proxy may be in any usual or common form and may be incorporated within any subscription agreement or other document signed by or on behalf of the Member. An instrument appointing a proxy may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.
- 31.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the Transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or Transfer was received by the





Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

### **32 Corporate Members**

Any corporation or other non-natural person which is a Member of the Company may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as the corporation could exercise if it were an individual Member.

### **33 Shares Beneficially Owned by the Company**

Shares of the Company that are beneficially owned by the Company shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.

### **34 Directors**

There shall be a board of Directors consisting of not less than one person (exclusive of alternate Directors) provided however that the Company may from time to time by Ordinary Resolution increase or reduce the limits in the number of Directors. The first Directors of the Company shall be determined in writing by, or appointed by a resolution of, the Subscriber.

### **35 Powers of Directors**

- 35.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- 35.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.
- 35.3 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. Notwithstanding the foregoing, the Directors shall not exercise the powers specified in this Article in breach of any limits or restrictions specified in the Offering Memorandum.





### **36 Appointment and Removal of Directors**

- 36.1 The Company may, by Ordinary Resolution, appoint any person to be a Director and may, by Ordinary Resolution, remove any Director.
- 36.2 The Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with these Articles as the maximum number of Directors.

### **37 Vacation of Office of Director**

The office of a Director shall be vacated if:

- (a) the Director gives notice in writing to the Company that such Director resigns the office of Director;
- (b) the Director is absent (without being represented by proxy or an alternate Director appointed by such Director) from three consecutive meetings of the board of Directors without special leave of absence from the Directors, and they pass a resolution that such Director has by reason of such absence vacated office;
- (c) the Director dies, becomes bankrupt or makes any arrangement or composition with such Director's creditors generally;
- (d) the Director is or becomes of unsound mind;
- (e) the Director ceases to be a Director by virtue of, or is prohibited from being a Director by, an order made pursuant to any law or regulation binding on the Company; or
- (f) all the other Directors of the Company (being not less than two in number) resolve that such Director should be removed as a Director.

### **38 Proceedings of Directors**

- 38.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be two if there are two or more Directors, and shall be one if there is only one Director. A person who holds office as an alternate Director shall, if such person's appointor is not present, be counted in the quorum. A Director who also acts as an alternate Director shall, if such Director's appointor is not present, count twice towards the quorum.
- 38.2 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall not have a second or casting vote. A Director who is also an alternate Director shall be entitled in the absence of such Director's appointor to a separate vote on behalf of such Director's appointor in addition to such Director's own vote.



- 38.3 A person may participate in a meeting of the Directors or any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors, the meeting shall be deemed to be held at the place where the chairman is located at the start of the meeting.
- 38.4 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of Directors (an alternate Director being entitled to sign such a resolution on behalf of such alternate Director's appointor) shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.
- 38.5 A Director or alternate Director may, or other officer of the Company at the direction of a Director or alternate Director may call a meeting of the Directors by at least two days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held.
- 38.6 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
- 38.7 The Directors may elect a chairman of their board and determine the period for which the chairman is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
- 38.8 All acts done by any meeting of the Directors or of a committee of Directors (including any person acting as an alternate Director) shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or alternate Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director or alternate Director as the case may be.
- 38.9 A Director but not an alternate Director may be represented at any meetings of the board of Directors by a proxy appointed in writing by such Director. The proxy shall count towards the quorum and the vote of the proxy shall for all purposes be deemed to be that of the appointing Director.

### **39 Presumption of Assent**

A Director who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless the Director's dissent shall be entered in the minutes of the meeting or unless the Director shall file such



Director's written dissent from such action with the person acting as the chairman or secretary of the meeting before the close or adjournment thereof or shall forward such dissent by personal delivery, courier or registered post to such person immediately after the close or adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

#### **40 Directors' Interests**

- 40.1 A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with such Director's office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
- 40.2 A Director may act alone or by such Director's firm in a professional capacity for the Company and the Director or such Director's firm shall be entitled to remuneration for professional services as if such Director were not a Director or alternate Director.
- 40.3 A Director or alternate Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by such Director or alternate Director as a director or officer of, or from such Director or alternate Director's interest in, such other company.
- 40.4 No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or transaction by reason of such Director holding office or of the fiduciary relationship thereby established. A Director (or such Director's alternate Director in such Director's absence) shall be at liberty to vote in respect of any contract or transaction in which such Director is interested provided that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by such Director at or prior to such Director's consideration and any vote thereon.
- 40.5 A general notice that a Director or alternate Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or transaction in which such Director has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

#### **41 Minutes**

The Directors shall cause minutes to be made in books kept for the purpose of recording all appointments of officers made by the Directors, all proceedings at meetings of the Company or



the holders of any Class of Shares and of the Directors, and of committees of Directors including the names of the Directors or alternate Directors present at each meeting.

## **42 Delegation of Directors' Powers**

- 42.1 The Directors may delegate any of their powers to any committee consisting of one or more Directors or such other persons as the Directors may designate. They may also delegate to any managing director or any Director holding any other executive office such of their powers as they consider desirable to be exercised by such managing director or any Director provided that an alternate Director may not act as managing director and the appointment of a managing director shall be revoked forthwith if such managing director ceases to be a Director. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers, and may be revoked or altered. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.2 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees or local boards. Any such appointment may be made either collaterally with or to the exclusion of the Directors' powers, shall be subject to any conditions the Directors may impose, and may be revoked or altered. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.3 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised person to delegate all or any of the powers, authorities and discretions vested in such attorney or authorised person.
- 42.4 The Directors may appoint such officers as they consider necessary on such terms, at such remuneration (if any) and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of such officer's appointment an officer may be removed by resolution of the Directors or Members.

## **43 Alternate Directors**

- 43.1 Any Director (other than an alternate Director) may by written notice to the Company appoint any other Director, or any other person willing to act, to be an alternate Director and by written notice to the Company may remove from office an alternate Director so appointed by the Director.



- 43.2 An alternate Director shall be entitled to receive notice of all meetings of Directors and of meetings of committees of Directors of which such alternate Director's appointor is a member, to attend and vote at every such meeting at which the Director appointing such alternate Director is not personally present, and generally to perform all the functions of such alternate Director's appointor as a Director in such Director's absence.
- 43.3 An alternate Director shall cease to be an alternate Director if such alternate Director's appointor ceases to be a Director.
- 43.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.
- 43.5 Subject to the provisions of the Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for such alternate Director's own acts and defaults and shall not be deemed to be the agent of the Director appointing such alternate Director.

#### **44 No Minimum Shareholding for Directors**

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director shall not be required to hold Shares.

#### **45 Remuneration of Directors**

- 45.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any Class of Shares or debentures of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.
- 45.2 The Directors may by resolution approve additional remuneration to any Director for any services other than such Director's ordinary routine work as a Director. Any fees paid to a Director who is also counsel to the Company, or otherwise serves it in a professional capacity, shall be in addition to such Director's remuneration as a Director.

#### **46 Seal**

The Company may, if the Directors so determine, have a Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some officer or other person authorised by the Directors for the purpose.



## 47 Dividends, Distributions and Reserves

- 47.1 Subject to the Statute, these Articles, and the special rights attaching to Participating Shares of any Class and/or Series, the Directors may, in their absolute discretion, declare dividends and distributions on Participating Shares of any Class and/or Series in issue and authorise payment of the dividends or distributions out of the relevant Separate Account in respect of such Participating Shares. No dividend or distribution shall be paid except out of the realised or unrealised profits of the Company, or out of the share premium account attributable to Participating Shares of the Class and/or Series in respect of which the dividend or distribution is proposed to be paid, or as otherwise permitted by law.
- 47.2 Except as otherwise provided by the rights attached to Participating Shares, or as otherwise determined by the Directors, all dividends and distributions in respect of Participating Shares of a particular Class and/or Series shall be declared and paid according to Net Asset Value of the Participating Shares of the Class and/or Series that a Member holds. If any Participating Share is issued on terms providing that it shall rank for dividend or distribution as from a particular date, that Participating Share shall rank for dividend or distribution accordingly.
- 47.3 The Directors may deduct and withhold from any dividend or distribution otherwise payable to any Member all sums of money (if any) then payable by it to the Company on account of calls or otherwise or any monies which the Company is obliged by law to pay to any taxing or other authority.
- 47.4 Under no circumstances may the assets (or the income derived from such assets) attributed to a Separate Account in respect of any Class and/or Series be used to pay a dividend in respect of a Separate Account that is attributed to any other Class and/or Series.
- 47.5 The Directors may declare that any dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of shares, debentures or securities of any other company or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.
- 47.6 Any dividend, distribution, interest or other monies payable in cash in respect of Participating Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall (unless the Directors in their sole discretion otherwise determine) be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the Participating Share held by them as joint holders.





- 47.7 Any dividend or distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date of declaration of such dividend or distribution may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the dividend or distribution shall remain as a debt due to the Member. Any dividend or distribution which remains unclaimed after a period of six years from the date of declaration of such dividend or distribution shall be forfeited and shall revert to the Company.
- 47.8 No dividend or distribution shall bear interest against the Company.

#### **48 Capitalisation**

The Directors may capitalise any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members of any Class and/or Series in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and to apply such sum on their behalf in paying up in full unissued Participating Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power to the Directors to make such provisions as they think fit for the case of Participating Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter into an agreement with the Company, on behalf of all of the Members interested, providing for such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

#### **49 Books of Account**

- 49.1 The Directors shall cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account must be retained for a minimum period of five years from the date on which they are prepared. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.
- 49.2 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute, or authorised by the Directors or by the Company in general meeting.





49.3 The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

## **50 Audit**

50.1 The Directors may appoint an Auditor of the Company who shall hold office on such terms as the Directors determine.

50.2 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.

50.3 Any Auditors of the Company shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an ordinary company, and at the next extraordinary general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an exempted company, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

## **51 Notices**

51.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to the Member or to the address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent airmail.

51.2 Where a notice is sent by courier, service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in the Cayman Islands) following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient.



- 51.3 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under these Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 51.4 Notice of every general meeting shall be given in the manner authorised by these Articles to every person shown as holding Shares carrying an entitlement to receive such notice in the Register of Members on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of such person being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for such Member's death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.

## 52 Winding Up

- 52.1 If the Company shall be wound up the liquidator shall apply the assets of the Company in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. The liquidator shall in relation to the assets available for distribution among the Members make in the books of the Company such transfers thereof to and from Separate Accounts as may be necessary in order that the effective burden of such creditors' claims may be shared among the holders of Participating Shares of different Classes and/or Series in such proportions as the liquidator in such liquidator's absolute discretion may think equitable.
- 52.2 Subject to the special rights attaching to Participating Shares of any Class or Series, the balance shall then be applied in the following priority:
- (a) first, to the holders of Management Shares, an amount equal to the par value of such Management Shares; and
  - (b) second, the balance shall be paid to the holders of Participating Shares in proportion to the Net Asset Value of Participating Shares held, subject to a deduction from those Participating Shares in respect of which there are monies due, of all monies due to the Company for unpaid calls, or otherwise.
- 52.3 If the Company shall be wound up (whether the liquidation is voluntary or by or under the supervision of the Court) the liquidator may, with the authority of a resolution or resolutions passed by the holders of Participating Shares (whether as a whole or at separate Class meetings), divide among the Members in specie the whole or any part of the assets of the Company, and whether or not the assets shall consist of property of one kind or shall consist of property of different kinds, and may for such purposes set such value as the liquidator deems fair upon any one or more class or classes of property, and may determine how such division shall be



carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator, with the like authority, shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no Member shall be compelled to accept any shares or other property in respect of which there is a liability.

### **53 Indemnity and Insurance**

- 53.1 Every Director and officer of the Company (which for the avoidance of doubt, shall not include any Auditor), together with every former Director and former officer of the Company (each an "**Indemnified Person**") shall be indemnified out of the assets of the Company against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud, wilful default or Gross Negligence. No Indemnified Person shall be liable to the Company for any loss or damage incurred by the Company as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud, wilful default or Gross Negligence of such Indemnified Person. No person shall be found to have committed actual fraud, wilful default or Gross Negligence under this Article unless or until a court of competent jurisdiction shall have made a finding to that effect.
- 53.2 The Company shall advance to each Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defence of any action, suit, proceeding or investigation involving such Indemnified Person for which indemnity will or could be sought. In connection with any advance of any expenses hereunder, the Indemnified Person shall execute an undertaking to repay the advanced amount to the Company if it shall be determined by final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification pursuant to this Article. If it shall be determined by a final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification with respect to such judgment, costs or expenses, then such party shall not be indemnified with respect to such judgment, costs or expenses and any advancement shall be returned to the Company (without interest) by the Indemnified Person.
- 53.3 The Directors, on behalf of the Company, may purchase and maintain insurance for the benefit of any Director or other officer of the Company against any liability which, by virtue of any rule of law, would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which such person may be guilty in relation to the Company.
- 53.4 Pursuant to the foregoing provisions, the Company may enter into a service or other agreement with any Director (or any entity providing one or more persons to the Company to act as Directors) upon such terms and conditions (including as to indemnification and exculpation) as the Directors shall, in their absolute discretion, determine. Any such indemnification and exculpation provisions may be specified to a standard equal to or more favourable (but not less favourable) to the Company than any standard specified in these Articles.



**54 Disclosure**

If required to do so under the laws of any jurisdiction to which the Company, the Investment Manager, the Administrator or any other service provider is subject, or in compliance with the rules of any stock exchange upon which the Company's Shares are listed, or to ensure the compliance by any person with any anti-money laundering law in any relevant jurisdiction, any Director, Officer, the Investment Manager, the Administrator or Auditor of the Company shall be entitled to release or disclose any information in its possession regarding the affairs of the Company or a Member including, without limitation, any information contained in the Register of Members or subscription documentation of the Company relating to any Member.

**55 Financial Year**

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

**56 Transfer by way of Continuation**

The Company shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

**57 Mergers and Consolidations**

The Company shall, with the approval of a Special Resolution, have the power to merge or consolidate with one or more constituent companies (as defined in the Statute), upon such terms as the Directors may determine.



**EXHIBIT 16**

**THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT**

**by and among**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**

**and**

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

**November 1, 2013**

**003499**

**THIS THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT** (this “*Agreement*”), is dated effective as of November 1, 2014, by and among:

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**, a Cayman Islands exempted company (the “*Offshore Fund*”);

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**, a Delaware limited partnership (the “*Domestic Fund*,” and together with the Offshore Fund, the “*Clients*”) acting through its general partner, Highland Multi Strategy Credit Fund GP, L.P. a Delaware limited partnership (the “*General Partner*”); and

**HIGHLAND CAPITAL MANAGEMENT, L.P.**, a Delaware limited partnership (the “*Investment Manager*”).

### PRELIMINARY STATEMENTS

A. The Domestic Fund previously retained the Investment Manager as its investment manager pursuant to an investment management agreement dated as of December 1, 2005, as amended and restated as of December 29, 2005 and as further amended and restated as of September 1, 2006 (the “*Original Agreement*”).

B. The Offshore Fund will invest all of its investable assets in the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and will serve merely as a steward thereof. The Investment Manager will conduct its investment activities at the Domestic Fund level as the investment manager to the Domestic Fund.

C. The Domestic Fund desires to continue to retain the Investment Manager and the Offshore Fund desires to retain the Investment Manager to provide certain discretionary advisory services relating to the assets and liabilities of the Domestic Fund and the Investment Manager desires to accept such appointment, all subject to the terms and conditions hereinafter set forth.

### AGREEMENT

This Agreement amends and restates in its entirety the Original Agreement as set forth below. For good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

#### 1. Appointment.

The Clients hereby appoint the Investment Manager as investment manager with respect to the assets and liabilities of the Domestic Fund and the Investment Manager hereby accepts such appointment and agrees to perform its obligations in accordance with the terms hereof and of the Fourth Amended and Restated Limited Partnership Agreement of the Domestic Fund, dated effective as of November 1, 2014, as amended from time to time (the “*Domestic Fund Partnership Agreement*”), and the investment objectives, policies,



guidelines and restrictions that from time to time are set forth in the Governing Documents of the Clients as applicable. “**Governing Documents**” mean, with respect to:

- (a) the Offshore Fund: the Memorandum and Articles of Association of the Offshore Fund, as amended from time to time, and the Confidential Private Offering Memorandum dated November 2014, as may be supplemented from time to time (the “**POM**”);
- (b) the Domestic Fund: the Domestic Fund Partnership Agreement and the Private Placement Memorandum dated November 2014, as may be supplemented from time to time (the “**PPM**”).

## **2. Authority and Duties of the Investment Manager.**

- (a) All of the investable assets of the Offshore Fund must be invested in, and the investment program of the Offshore Fund is to be conducted by the Investment Manager through, the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and the investment activities of the Investment Manager will be conducted at the Domestic Fund level as the investment manager to the Domestic Fund.
- (b) The Domestic Fund’s investment program will be conducted by the Investment Manager in accordance with the PPM.
- (c) The Investment Manager serves as the investment manager to the Domestic Fund and in that capacity has full discretion and authority, without obtaining the prior approval of any officer or other agent of the Domestic Fund:
  - (i) to continuously supervise the investment program of the Domestic Fund and the composition of its investment portfolio including, without limitation, determining from time to time what investments will be purchased, retained or sold, what contracts will be entered into by the Domestic Fund and what portion of its assets will be retained as cash, and to engage consultants and analysts in connection therewith; to cause the Domestic Fund to purchase or sell any asset, enter into any other investment-related transaction, including (directly or through subsidiaries or affiliates of the Domestic Fund) borrowing money, entering into swap transactions, lending securities, exercising control over a company, exercising voting or approval rights and selecting brokers and dealers for execution of portfolio transactions; and to undertake to do anything incidental to the foregoing to facilitate the performance of its obligations hereunder;
  - (ii) to invest within or outside the United States of America in “Investments” (as defined in, and subject to the provisions of, the Domestic Fund Limited Partnership Agreement);
  - (iii) to effect any and all transactions in Investments, including collateralized loan obligations, asset-backed securities, commodities, total return swaps,

credit default swaps, synthetic securities and other financial instruments and assets (and options and other contracts thereon), and everything connected therewith in the broadest sense, including, without limitation, the full discretion and authority to make short sales, to purchase or write options (including uncovered options) and to trade on margin;

- (iv) to, on behalf of the Clients, exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the Investments and other property and funds held or owned by the Domestic Fund, including without limitation the right to possess, lend, transfer, mortgage, pledge or otherwise deal in, and to secure the payment of obligations of the Domestic Fund by mortgage upon, or hypothecation or pledge of, all or part of the property of the Domestic Fund, whether at the time owned or thereafter acquired, and to vote Investments, participate in arrangements with creditors, institute and settle or compromise suits and administrative proceedings and other similar matters;
- (v) to select brokers, dealers, banks and other intermediaries by or through whom such transactions will be executed or carried out and to open, maintain and close accounts with brokers, which power shall include the authority to issue all instructions and authorizations to brokers regarding securities and money therein and to cause the Domestic Fund to pay, or authorize the payment and reimbursement of, brokerage commissions;
- (vi) to open, maintain and close bank accounts and authorize the drawing of checks or other orders for the payment of monies;
- (vii) to borrow or raise monies or utilize any other forms of leverage and to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness and otherwise to utilize any lines of credit, credit balances or overdraft privileges available to the Domestic Fund;
- (viii) to value the Client's assets as of the close of each fiscal period and any other date selected by the respective Client;
- (ix) to direct any administrator of the Clients, banks, brokers or other custodians to effect deliveries of funds or assets, but only in the course of effecting portfolio transactions for the account of the Clients;
- (x) to remove or replace any administrator of the Clients and/or any accountant of the Clients at any time; and
- (xi) to make and execute all such documents and to take all such other actions as the Investment Manager considers necessary or appropriate to carry out its investment management duties hereunder.

- (d) In furtherance of the foregoing, the Board of Directors, on behalf of the Offshore Fund, and the General Partner, on behalf of the Domestic Fund, has delegated certain rights and responsibilities with respect to the operation of their respective partnerships and funds to the Investment Manager, as more fully set forth in the Governing Documents.
- (e) Each Client hereby designates the Investment Manager as the commodity pool operator (the “*CPO*”) for such Client with complete authority and responsibility for compliance with the U.S. Commodity Exchange Act and the regulations promulgated thereunder, including to perform any and all duties required of a CPO (i) that is exempt from registration under the regulations of the U.S. Commodity Futures Trading Commission (the “*CFTC*”) and (ii) that is in compliance with CFTC Rule 4.13(a)(3), including the filing of a notice of exemption under said Rule 4.13(a)(3) with the CFTC.
- (f) Additionally, each of the Clients hereby designates and appoints the Investment Manager as its agent and attorney-in-fact, with full power and authority and without the need for further approval of the Clients (except as may be required by law) to complete and execute all such documents and to take any and all actions that the Investment Manager, in its discretion, may deem advisable to carry out the foregoing with respect to the assets of the Clients; provided, however, that the Investment Manager is not intended to have actual or constructive custody of any assets of the Clients. In connection with any of the foregoing, the Investment Manager is further authorized to transfer or tender for cash or exchange such assets. In all such purchases, sales or trades the Clients authorize the Investment Manager to act for the Clients, and at their risk, and in their name and on their behalf, in the same manner and with the same force and effect as the Clients might or could do with respect to such purchases, sales or trades without prior consultation with the Clients. The Clients also appoint the Investment Manager as their agent and attorney-in-fact to vote, and to execute proxies, waivers, consents and other instruments with respect to, the assets of the Clients.
- (g) At the request of a Client, in any wind down of such Client, the Investment Manager will manage the realization of the Client’s assets and the distribution thereof to investors.
- (h) In connection with the execution of transactions on behalf of the Domestic Fund, the Domestic Fund hereby acknowledges and agrees that in the course of selecting brokers, dealers, futures commission merchants, banks and financial intermediaries to effect transactions for the Domestic Fund’s account, the Investment Manager may agree to such commissions, fees and other charges on behalf of the Domestic Fund’s account as it may deem reasonable in the circumstances, taking into consideration all such factors as the Investment Manager deems relevant, including the following: the ability to effect prompt and reliable executions at favorable prices; the operational efficiency with which transactions are effected; the financial strength, integrity and stability of the broker; the quality, comprehensiveness and frequency of available research and other services considered to be of value; and

the competitiveness of commission rates in comparison with other brokers satisfying the Investment Manager's other selection criteria. It is understood that the costs of such services will not necessarily represent the lowest costs available and that the Investment Manager is under no obligation to combine or arrange orders so as to obtain reduced charges.

### **3. Fees and Expenses.**

- (a) For its services to the Domestic Fund, the Domestic Fund will pay the Investment Manager the Management Fee (as defined in the Domestic Fund Partnership Agreement), calculated and payable monthly in advance. The Investment Manager may waive or reduce the management fees with respect to capital account and capital sub-accounts of the Domestic Fund in its discretion.
- (b) The Clients will pay, or will reimburse the Investment Manager, for all costs and expenses arising in connection with their operations, including without limitation, with respect to the Domestic Fund, all costs and expenses directly related to portfolio investments or prospective investments (whether or not consummated) of the Domestic Fund.
- (c) The Clients will not have their own separate employees or office, and they will not reimburse the Investment Manager for salaries, office rent and other general overhead costs of the Investment Manager. The Investment Manager will pay all of its own operating and overhead costs (except liability insurance) without reimbursement by the Clients. The Investment Manager is entitled to reimbursement from the Clients for any expenses paid by it on behalf of the Clients; provided that, the Investment Manager in its sole discretion may absorb any or all of such expenses incurred on behalf of the Clients. If the Investment Manager incurs any such expenses for the account of the Clients and any Customers (as defined below), the Investment Manager will allocate such expenses among the Clients and each such Customer in proportion to the size of the investment made by each in the activity or entity to which the expense relates, or in such other manner as the Investment Manager in its sole discretion considers fair and reasonable.

### **4. Other Activities and Investments.**

- (a) The Investment Manager is not required to devote its full time to the affairs of the Clients, but must devote such of its time to the business and affairs of the Clients as it may determine, in its discretion exercised in good faith, to be necessary to conduct the affairs of the Clients for the benefit of the Clients, the shareholders of the Offshore Fund and the partners of the Domestic Fund. Subject to this limitation, the Investment Manager, its partners and principals and their affiliates are not precluded from engaging in or owning an interest in other business ventures or investment activities of any kind. It is expressly understood that the Investment Manager and its affiliates may effect investment transactions for their own accounts and for the accounts of other customers (generally, "*Customers*"), and the Clients further understand and agree that nothing herein restricts the ability of the

Investment Manager and its affiliates to engage in any such transactions notwithstanding the fact that the Clients may enter into or engage in such transactions so long as such transactions are in the best interests of the Clients.

- (b) The Investment Manager will act in a manner that it considers fair, reasonable and equitable in allocating investment opportunities to the Clients. It is understood that when the Investment Manager determines that it would be appropriate for the Clients and one or more of the Customers to participate in an investment opportunity, the Investment Manager will seek to execute orders for, or otherwise allocate such opportunities to, the Clients and such Customers on an equitable basis. In such situations, the Investment Manager may place orders for the Clients and each Customer simultaneously, and if all such orders are not filled at the same price, the Investment Manager may cause the Clients and each Customer to pay or receive the average of the prices at which such orders were filled for the Clients and all other Customers. If all such orders cannot be fully executed under prevailing market conditions, the Investment Manager may allocate among the Clients and the Customers the investments traded in a manner which the Investment Manager considers equitable, taking into account the size of the order placed for the Clients and each such Customer as well as any other factors which the Investment Manager deems relevant.

## 5. **Account and Other Information.**

- (a) The Investment Manager must furnish such information concerning activities undertaken for the account of the Clients as the Clients may reasonably request.
- (b) The Clients agree to keep confidential and not to disclose to any person any information or matter relating to the Clients' investments (other than disclosure to the Clients' shareholders, partners, directors and employees, legal counsel, administrator, registrar and accountant in connection with the preparation and review of financial statements and with the filing of any tax returns or to any other person approved in writing by the Investment Manager (each such person being hereinafter referred to as an "***Authorized Representative***")); provided that the Clients and their Authorized Representatives may make such disclosure to the extent that (x) the information to be disclosed is publicly known at the time of proposed disclosure by the Clients or Authorized Representative, (y) the information otherwise is or becomes legally known to the Clients other than through disclosure by the Investment Manager or (z) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities, provided that such agency, regulatory authorities or association is aware of the confidential nature of the information disclosed. Prior to making any disclosure required by law, the Clients will use their best efforts to notify the Investment Manager of such disclosure. Prior to any disclosure to any Authorized Representative, the Clients must advise such Authorized Representative of the obligations set forth in this Section 5(b) and are responsible for any breach of these obligations made by an Authorized Representative.

- (c) The Investment Manager retains, or arranges for the retention of, for a period of at least 5 years, copies of any documents generated or received by the Investment Manager in the ordinary course of business pertaining to the financial condition of the account of the Clients or to the compensation payable to the Investment Manager. At the request of the Clients, the Investment Manager will afford to the Clients' independent auditors reasonable access to such documents during customary business hours and will permit the Clients' auditors to make copies thereof or extracts therefrom at the expense of the Clients.

## **6. Custody.**

The assets of the Clients must be held in the custody of one or more custodians (or other independent institutions performing the functions of custodian, with respect to the assets which are held by such institutions) selected by the Investment Manager. The Investment Manager will notify the Clients promptly of the proposed selection of any custodians.

## **7. Scope of Liability.**

The Clients agree that the Investment Manager is not liable to the Clients or any of their partners or shareholders for any losses, damages, expenses or claims occasioned by any act or omission of the Investment Manager in connection with the performance of its services hereunder, other than as a result of the Investment Manager's willful misconduct, fraud or gross negligence, or as otherwise prescribed by applicable law. The Clients explicitly recognize that the investment advisory opinions, recommendations and actions of the Investment Manager will be based on advice and information deemed to be reliable but not guaranteed by or to the Investment Manager.

## **8. Indemnification.**

- (a) The Clients must indemnify and hold harmless the Investment Manager, each member, shareholder, partner, manager or director of, or any person who controls, the Investment Manager, each of the respective affiliates of the foregoing and each of the respective executors, heirs, assigns, successors or other legal representatives of the foregoing (each, an "*indemnitee*") from and against any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted against such indemnitee in connection with the Investment Manager's serving or having served as such pursuant to this Agreement; provided, however, that the indemnitee is not entitled to any such indemnification with respect to any expense, loss, liability or damage that was caused by the indemnitee's willful misconduct, fraud or gross negligence.
- (b) In the event that the Investment Manager or any other indemnitee entitled to indemnification pursuant to paragraph (a) above is or becomes a party to any action or proceeding in respect of which, or there otherwise exists a claim pursuant to which, it may be entitled to seek indemnification hereunder, the indemnitee must promptly notify the respective Client thereof. The respective Client is entitled to participate in any such suit or proceeding and, to the extent that it may wish, to



assume the defense thereof with counsel reasonably satisfactory to the indemnitee. After notice of an election by the Client so to assume the defense thereof, the Client will not be liable to the indemnitee hereunder for any legal or other expenses subsequently incurred by the indemnitee in connection with the defense thereof other than reasonable costs of investigation or reasonable legal expenses incurred as a result of (i) potential conflicts of interest between the indemnitee and the Client or (ii) the protection of proprietary or privacy interests of other clients of or parties in interest with the indemnitee. The Client must advance to the indemnitee the reasonable costs and expenses of investigating and/or defending such claim, subject to receiving a written undertaking from the indemnitee to repay such amounts if and to the extent of any subsequent determination by a court or other tribunal of competent jurisdiction that the indemnitee was not entitled to indemnification hereunder.

- (c) A Client is not liable hereunder for any settlement of any action or claim effected without its written consent thereto.

#### **9. Independent Contractor.**

For all purposes of this Agreement, the Investment Manager is an independent contractor and not an employee or dependent agent of any Client. Nothing herein is to be construed as making any Client a partner or co-venturer with the Investment Manager or any of its affiliates or Customers. Except as provided in this Agreement, the Investment Manager has no authority to bind, obligate or represent the Clients.

#### **10. Term; Termination; Renewal.**

- (a) This Agreement will remain in full force and effect for a period commencing on the date first above written and ending on December 31, 2014, and thereafter will renew automatically for successive one-year periods. This Agreement may be terminated by any party hereto, without penalty, upon 75 days' prior written notice to the other parties.
- (b) The termination of this Agreement does not extinguish the obligations of the Clients for the payment of fees and expenses in respect of services rendered by the Investment Manager prior to the effective date of such termination.

#### **11. Acknowledgement.**

Each of the Clients certifies and acknowledges to the Investment Manager that it:

- (i) has fully disclosed to potential investors the fee provisions and other arrangements relating to the Client's account with the Investment Manager and is satisfied that the potential investors have received sufficient information from the Investment Manager to enable them to evaluate the terms of this Agreement; and
- (ii) fully understands the method of compensation provided herein and its associated risks, including the risk that the performance compensation arrangements with



affiliates of the Investment Manager may create an incentive for the Investment Manager to engage in transactions that are riskier or more speculative than would be the case in the absence of performance compensation and that such risk has been disclosed to potential investors.

**12. Amendment; Modification; Waiver.**

Except as otherwise expressly provided herein, this Agreement may not be amended, nor may any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by the party to be charged with such amendment, waiver or modification.

**13. Binding Effect; Assignment.**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations hereunder are not, except as otherwise expressly provided herein, assignable, transferable or delegable without the written consent of the other parties hereto and any attempted assignment, transfer or delegation thereof without such consent is null and void, except that the Investment Manager may assign its rights and obligations hereunder to an entity that controls, is controlled by or is under common control with the Investment Manager; provided, however, that such entity assumes the obligations of the Investment Manager hereunder.

**14. Governing Law.**

This Agreement is governed by and construed in accordance with the substantive laws of the State of Delaware which are applicable to contracts made and entirely to be performed therein, without regard to the place of performance hereunder.

[SIGNATURE PAGE FOLLOWS]

The parties have executed this Agreement as of the day and year first above written.

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, LTD.**

By: 

Name: James Dondero  
Title: Director

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT  
GP, LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT,  
L.P.  
its sole member

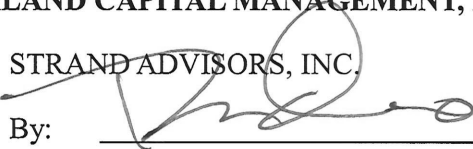
By: STRAND ADVISORS, INC.  
its general partner

By: 

Name: James Dondero  
Title: President

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

By: STRAND ADVISORS, INC.

By: 

Name: James Dondero  
Title: President

**EXHIBIT 17**

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

HAYWARD PLLC  
Melissa S. Hayward (Texas Bar No. 24044908)  
Zachery Z. Annable (Texas Bar No. 24053075)  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

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

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
THE CHARITABLE DAF FUND, L.P.,	§	
	§	
Plaintiffs,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

**DECLARATION OF JAMES P. SEERY, JR., IN SUPPORT OF HIGHLAND CAPITAL  
MANAGEMENT, L.P.'S AMENDED MOTION TO DISMISS**

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

I, James P. Seery, Jr., pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declare as follows:

1. During the bankruptcy case, I was first appointed as a member of the Board of Directors (the “Board”) of Strand Advisors, Inc. (“Strand”), the general partner of Highland Capital Management, L.P. (the “Highland” or the “Debtor,” as applicable), and later as the Debtor’s Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”).

2. In August 2021, upon the occurrence of the effective date of Highland’s Plan, I became Highland’s CEO.

3. I submit this Declaration in support of *Highland Capital Management, L.P.’s Amended Motion to Dismiss* (the “Motion”),<sup>2</sup> being filed concurrently with this Declaration. Unless stated otherwise, this Declaration is based on my personal knowledge, my review of the documents described below, and my communications with certain of Highland’s employees and counsel.

4. Highland is the investment manager for Multi-Strat (defined below) pursuant to the terms of the *Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P.*, dated November 1, 2013.

5. Multi-Strat is a pooled investment fund structured as a “mini master” and consists of Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “Master Fund”), and Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “Feeder Fund”). We refer to the Master Fund and the Feeder Fund collectively as “Multi-Strat.”

---

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed in the Motion.

6. Multi-Strat is managed by Highland, as its investment manager, and its general partner, Highland Multi Strategy Credit Fund GP, L.P. (“MSCF GP”). MSCF GP is wholly-owned by Highland Multi Strategy Credit GP, LLC, which is in turn wholly-owned by Highland. I am the sole officer of MSCF GP. I am also a director of the Feeder Fund.

7. Multi-Strat’s investors include both the limited partners in the Master Fund and the shareholders of the Feeder Fund (which itself is a limited partner of the Master Fund). The ultimate investors, whether direct or through the Feeder Fund, are commonly referred to as Multi-Strat’s limited partners. Multi-Strat’s current limited partners on a consolidated basis are:

<b>Limited Partner</b>	<b>Ownership %</b>
Highland	58.70%
CLO Holdco, Ltd.	4.06%
The Dugaboy Investment Trust	1.71%
Highland Capital Management Services, Inc.	35.10%
Mark Okada	0.43%

8. In addition to the limited partners, there are a number of former “redeemed” limited partners of Multi-Strat.

9. The Charitable DAF Fund, L.P., is not a Multi-Strat limited partner, investor, or “redeemed” limited partner in Multi-Strat.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

I declare under penalty of perjury OF the laws of the United States that the foregoing is true and correct.

Dated: May 27, 2022

/s/ James P. Seery, Jr.  
James P. Seery, Jr.



**EXHIBIT 18**

[1992–93 CILR 372]

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED

GRAND COURT (Smellie, Ag. J.): July 6th, 1993

Civil Procedure—joinder of parties—party who “ought to have been joined”—Grand Court (Civil Procedure) Rules, r.26 permits joinder of defendant who ought to have been joined at commencement of proceedings only if established link between original cause of action and that against party to be joined—joinder not permitted for purpose of expanding original cause, e.g. to join party not privy to contract forming subject of original cause Civil Procedure—pleading—amendment—application to amend under Rules of Supreme Court, O.20, r.5 to be decided on merits and effect on action against original defendant—normally allowed unless applicant causing injury for which no compensation or acting mala fide—inconsistent, useless or futile claims or those constituting new cause of action not permitted

Landlord and Tenant—characteristics of relationship—exclusivity—if landlord/tenant relationship and remedy for breach comprehensively covered by lease agreement, court will not impose equitable or agency relationship—court will also not impose duties not strictly and necessarily incidental to relationship expressly created by parties

Landlord and Tenant—breach of covenant—forfeiture—notice—Registered Land Law (Revised), s.56 requirements for notice before forfeiture applicable only if breach capable of remedy

The plaintiff sought leave to amend its writ and statement of claim in an action against the defendant for breach of a lease.

The plaintiff leased premises to the defendant for the operation of its jewellery retail business. The form of lease was based on a Canadian model and provided for the payment of an annual basic rent and an annual percentage rent based on sales. The lease contained extensive provisions dealing with the defendant’s obligations to report and account to the plaintiff and specified the relief available in the event of breach of those provisions.

The defendant failed to keep full and faithful records and refused to comply with the directions of an independent auditor engaged by the plaintiff to obtain a reconstruction or compilation of those records. The plaintiff also obtained evidence of at least one sale of a valuable item which had not been recorded. The plaintiff claimed forfeiture of the lease and gave notice

---

1992–93 CILR 373

to that effect. It brought proceedings for recovery of possession and for rent claiming that the defendant had repudiated the lease.

The plaintiff subsequently sought leave to amend its writ and statement of claim (a) to add four more defendants who it alleged conspired with and facilitated or assisted the defendant in its falsification of accounts and disclosures; (b) to plead claims against those defendants; and (c) to effect substantial amendments of the pleadings against the primary defendant to include *inter alia* a claim for an account from the defendant to ascertain the amount owed to it, a claim for a declaration that the lease was duly forfeited and a claim in the alternative for damages for breach of the covenant to pay rent.

The plaintiff submitted that (a) the joinder of the additional defendants was permitted under r.26 of the Grand Court (Civil Procedure) Rules because the proper test was whether they could have been joined in some way at the time the original action was brought irrespective of whether they could have been joined in the action as it was actually brought. Accordingly, though the original action sought recovery of possession and mesne profits from the defendant, it could have instituted proceedings in damages at the same time against the other parties for having procured and conspired with the defendant to breach the lease; (b) the justification for giving leave to amend to include a claim for an account from the defendant consisted in the fiduciary relationship of principal and agent which should be implied as existing between it and the defendant having regard to the lease agreement which demanded a duty of trust from the defendant as tenant; further, an action for an account was an established remedy available to a principal against his agent in lieu of damages; (d) it was entitled to forfeit the lease on the basis that the breach was incapable of being remedied; and (e) it was entitled to make an alternative claim for damages for breach of the covenant to pay rent.

The defendant submitted in reply that (a) the joinder of the proposed defendants under r.26 was not permissible as they were not party to any contract with the plaintiff; (b) the court had no jurisdiction to permit the plaintiff to amend its writ and statement of claim to include new causes of action or inconsistent or useless amendments; (c) no fiduciary relationship existed between itself and the plaintiff; theirs was strictly a relationship of landlord and tenant to be governed by the clearly express terms of the lease; and (d) the plaintiff’s application should be

dismissed in its entirety for the most important reason that the cause of action was bound to fail, for though it might have breached the lease, that breach was not irremediable. Accordingly, by virtue of s.56 of the Registered Land Law (Revised) it was entitled to notice requiring it to remedy the breach. As there had been no such proper notice nor any proper demand to remedy, the forfeiture was wrong in law and the cause of action based on it, for recovery of possession, rent and, latterly, damages, could not succeed. Further, the lease was still intact despite the plaintiff's claim to forfeiture.

**Held**, granting the application in part:

(1) The Grand Court (Civil Procedure) Rules, r.26 provided for the

---

1992–93 CILR 374

joinder of defendants who ought to have been joined at the commencement of the proceedings where there was an established link between the original cause and the cause against those to be joined. It did not permit joinder for the purpose of expanding the original cause of action. Since the original action between the plaintiff and the defendant was based on the lease agreement between them as landlord and tenant and the plaintiff's claim to recovery of possession and mesne profits arising from the defendant's breach, there could have been no other parties to the action as instituted because privity of contract existed only between those two (page 381, lines 13–15; lines 21–28; page 383, line 37 – page 384, line 9).

(2) In general, a plaintiff's application to amend pleadings to vary or add claims was to be decided on the merits to the extent that they might affect the action brought against the original defendant. The applicable principles were embodied in the Rules of the Supreme Court, O.20, r.5, by which amendments should normally be allowed unless it was apparent that the plaintiff applicant was acting *mala fide* or that by his omission or by the amendment he had done or would cause injury to his opponent which could not be compensated for by costs or otherwise; a plaintiff would not be permitted to raise entirely new claims amounting to a new cause of action or those that were inconsistent or useless or which sought to support a case that was bound to fail (page 385, line 27 – page 386, line 26).

(3) The court should not search for liability in tort or in equity where the parties were in a contractual relationship and this was particularly so in commercial relationships. More specifically it should not impose duties which were not strictly and necessarily incidental to that relationship. Since the lease agreement between the parties was a commercial transaction and it specified expressly and comprehensively their intentions with regard to the defendant's duties as well as an appropriate remedy for breach of the agreement, the court would not invoke the rules of equity so as to impose a relationship where there was no true need for the special protection that equity afforded. Similarly, no relationship of principal and agent could be found in what was strictly a landlord and tenant relationship. Furthermore, the proposition that the court should impose a fiduciary duty on the defendant because of the self-dealing manner in which he had breached the agreement was not acceptable since the equitable rules about self-dealing were based on a pre-existing fiduciary duty. Accordingly, no separate fiduciary duty on the defendant to account was to be implied from their relationship and the plaintiff's application to amend the pleadings on this basis would therefore be refused (page 387, lines 12–30; page 388, line 28 – page 389, line 36).

(4) The plaintiff had satisfied the court that it had a good, arguable case for forfeiture on the merits since even though it had omitted to address the question of whether the defendant's breach could be

---

1992–93 CILR 375

remedied, it was at least objectively arguable that it should be entitled to treat the circumstances existing at the time it purported to forfeit the case as irremediable because (a) the defendant's falsifications were deliberate; (b) its failure to assist the independent auditor betrayed an intention to continue its dissemblance; and (c) the continued performance of the lease depended on the good faith and willingness of the defendant, not only to remedy the breach but also to keep faithful accounts and make full and frank disclosure of sales and income. Although s.56 of the Registered Land Law (Revised) and its requirements for proper notice superseded any provisions in the lease to the contrary, the section would apply only if it were to be determined on the facts that the breaches were capable of remedy. Since the plaintiff's contention was that the breach was irremediable and repudiatory and entitled him to repudiate the lease without notice, it should be allowed to present that claim for determination on its merits. Given the interlocutory nature of these proceedings, the plaintiff needed to show no more than that it had a good, arguable case in this respect. Accordingly, the leave to amend would be granted to

include the claim for a declaration that the lease had been duly forfeited (page 390, lines 3–10; page 390, line 21 – page 392, line 20; page 392, lines 33–41).

(5) Leave would also be granted to include a claim in the alternative for damages for breach of the covenant to pay rent. This was sustainable in light of the evidence of at least one instance in which the defendant had failed to declare the sale of a valuable item which would have generated income to be assessed for percentage rent (page 393, lines 14–19).

Cases cited:

- (1) *Baker (G.L.) Ltd. v. Medway Building & Supplies Ltd.*, [1958] 1 W.L.R. 1216; [1958] 3 All E.R. 540, observations of Jenkins, L.J. applied.
- (2) *Bank of Nova Scotia v. Becker*, 1988–89 CILR 12, applied.
- (3) *Cayman Arms (1982) Ltd. v. English Shoppe Ltd.*, 1988–89 CILR 383; on appeal, Cause No. 16 of 1989, September 20th, 1989, unreported.
- (4) *Clarapede v. Commercial Union Assn.* (1883), 32 W.R. 262, observations of Brett, M.R. applied.
- (5) *Executive Air Servs. Ltd. v. MacDonald*, 1990–91 CILR N-4.
- (6) *Empire Clothing Serv. & Sales Ltd. v. Hillgate House Ltd.*, [1986] Ch. 340; [1985] 2 All E.R. 998, *dicta* of Slade, L.J. applied.
- (7) *Iorgulescu v. Swiss Bank & Trust Corp. Ltd.*, 1990–91 CILR 163.
- (8) *Jones v. Hughes*, [1905] 1 Ch. 180, observations of Vaughan Williams, L.J. applied.
- (9) *Ketteman v. Hansel Properties Ltd*, [1987] A.C. 189; [1988] 1 All E.R. 38, observations of Lord Griffiths applied.
- (10) *Kurtz v. Spence* (1887), 36 Ch. D. 770.
- (11) *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 R.C.S. 574, applied.
- (12) *Molnlycke AB v. Procter & Gamble Ltd.*, [1992] 1 W.L.R. 1112; [1992] 4 All E.R. 47, distinguished.

---

1992–93 CILR 376

- (13) *Norwich Pharmacal Co. v. Customs & Excise Commrs.*, [1974] A.C. 133; [1973] 2 All E.R. 943.
- (14) *Paradise Manor Ltd. v. Bank of Nova Scotia*, 1984–85 CILR 437, considered.
- (15) *Raleigh v. Goschen*, [1898] 1 Ch. 73.
- (16) *Salomon v. A. Salomon & Co. Ltd.*, [1897] A.C. 22; [1895–99] All E.R. Rep. 33, considered.
- (17) *Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd.*, [1986] A.C. 519; [1985] 2 All E.R. 947; [1985] 2 Lloyd’s Rep. 313, followed.
- (18) *Tildesley v. Harper* (1878), 10 Ch. D. 393, observations of Bramwell, L.J. applied.
- (19) *Tito v. Waddell (No.2)*, [1977] Ch. 106; [1977] 3 All E.R. 129, *dicta* of Megarry, V.-C. applied.

#### Legislation construed:

Grand Court (Civil Procedure) Rules, r.25: The relevant terms of this rule are set out at page 380, lines 29–34.

r.26: The relevant terms of this rule are set out at page 380, line 35 – page 381, line 9.

Registered Land Law (Revised) (Law 21 of 1971, revised 1976), s.37(1): The relevant terms of this section are set out at page 392, lines 25–27.

s.55(1):

“Subject to the provisions of section 57 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee—

(a) commits any breach of, or omits to perform any agreement or condition on his part expressed or implied in the lease. . . .”

s.56:

“Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease whether expressed or implied, until the lessor has served on the lessee a notice—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.”

Rules of the Supreme Court, O.20, I.5.  
“Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to

1992–93 CILR 377

amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.”

M. Parkinson for the plaintiff;

P. Lamontagne, Q.C. and P. Boni for the defendant.

10 SMELLIE, Ag. J.: By summons dated March 1st, 1993 the landlord/plaintiff sought leave to re-amend its writ and statement of claim in this matter to achieve three main objectives. The first was to add parties—the proposed second to fifth defendants. The second was to plead claims against those additional defendants and the third, to effect consequential amendments of the pleadings against the original defendant. Submissions were taken on March 31st, April 1st and April 5th and an order made on April 16th, 1993 with written reasons to be delivered at a later date. These are the reasons.

15 The original parties stand in the position of landlord and tenant by virtue of a lease dated August 16th, 1990. In the action the plaintiff’s case is that the tenant/defendant has falsified records of accounts and disclosures required to be respectively kept and made by the defendant pursuant to the lease and that the defendant has falsified those records in order to deprive the plaintiff of rents lawfully due under the lease. The proposed additional defendants are parties who, the plaintiff alleges, conspired with and actually facilitated or assisted the defendant in

20 its falsification of the accounts and disclosures.

25 The lease is not typical of the forms in use in this jurisdiction and I am informed by counsel that it follows a Canadian model. It is unusual in that, among other things, it includes a provision for “annual percentage rent” as well as a provision for “basic rent.” Central to the dispute is the issue whether the defendant has made full and frank disclosure as to its income from sales as the basis for arriving at the annual percentage rent.

30 Article III of the lease contains the following provisions:

“3.01 *Basic rent*

35 The tenant shall pay to the landlord in each lease year \$45,000 *per annum* (in this lease referred to as ‘basic rent’) by equal monthly instalments in advance, commencing upon the commencement date and on the first day of each calendar month thereafter during the term (provided that if the term commences on a day which is not the first day of a calendar



1992–93 CILR 378

commencement date for the broken portion of the calendar month at the beginning of the term shall be calculated at a rate per day of 1/365 of the annual basic rent).

3.02 *Percentage rent*

5 The tenant shall pay to the landlord in each lease year during the term the annual percentage rent for such lease year. Such annual percentage rent shall be payable in monthly instalments of estimated monthly percentage rent which shall be payable 20 days after the close of each 10 calendar month in each and every lease year (including any portion of a calendar month at the commencement of the term if the term commences on a day other than the first day of a calendar month) *the amount of such estimated monthly percentage rent to be calculated by the tenant and accom 15 panied by a statement certified as correct by the tenant showing in such detail as the landlord shall reasonably require, the amount of gross revenue for such calendar month and the amount of estimated monthly percentage rent payable.*

3.03 *Adjustment of annual percentage rent*

20 Within 120 days after the end of each lease year *the tenant shall deliver to the landlord a statement in writing and certified by the tenant, and which shall also be certified as being audited by an independent chartered accountant acceptable to the landlord, setting forth accurately and with reasonable 25 detail and particulars and in such form as the landlord may require the gross revenue both monthly and in the aggregate, for such lease year and its annual percentage rent payable for such lease year. If the aggregate annual percentage rent set forth in such statement differs from the annual percentage rent set forth in such statement, the tenant shall pay or the 30 landlord shall refund the difference within 30 days after such statement is provided.* [Emphasis supplied.]

In the definitions in Article I, the following appears:

35 “ ‘Annual percentage rent’ means 6% of gross revenue plus 1.5% of extraordinary off premises revenue (derived from sales by the tenant of stock kept on the leased premises or sold off-premises having been placed for display on the leased premises) minus the basic rent. Annual percentage rent shall only be payable in the event such calculation from 40 time to time produces a net positive figure.”

By virtue of those provisions the plaintiff claims that special

duties and responsibilities are created and are owed to him by the defendant and that they give rise to an implied relationship of trust which is not to be found in an ordinary lease where liabilities for rent are essentially stipulated as a pre-determined sum. Here  
5 the plaintiff argues that the lease contains covenants that the tenant must keep proper accounts of its income in order to ensure that the proper amounts of annual percentage rent are known and payable to the plaintiff.

A most important issue centered on this argument. It is  
10 whether this implied relationship of trust is so germane to the landlord/tenant relationship in this lease that the manner in which it was dishonoured by the tenant gave rise to an irremediable breach of the lease. If so the consequence would be that the plaintiff should be entitled to claim that the lease has been duly  
15 forfeited and in the manner which the plaintiff has purported to do so in a letter and notice which it sent to the defendant dated November 17th, 1992.

The plaintiff having raised these allegations of breach of contract and breach of faith, the court was invited by counsel for  
20 the defendant to reject any suggestion of fraudulent conduct on the part of the defendant as fraud had not been specifically pleaded at the outset. Instead, and without any admission on the part of his client, counsel for the defendant invited the court to make the following assumptions for the purposes of the hearing  
25 of this summons that (a) there is no dispute as to the tenant's contractual obligations to pay basic rent and annual percentage rent, although the amount owed may be disputed; (b) there is no dispute that the tenant is in breach of the lease in not having kept full and faithful records as required by Articles 3:03, 3:04 and  
30 3:05 of the lease; (c) despite efforts on the part of the landlord to obtain a reconstruction or compilation of the records of the revenue of the defendant, through an independent auditor engaged for the purpose by the landlord, the tenant had failed to comply with the directions of the auditor to provide names and  
35 addresses of customers from whom verification of sales transactions might be obtained, and that such verification was essential to that exercise of reconstruction or compilation of the records; and (d) in at least one instance a certain named customer had  
40 purchased an expensive item of jewellery from the tenants' on-premises shop and that the tenant had failed to declare that item of revenue for the purposes of the accounting records.



Despite those assumptions which I was invited to make, counsel for the defendant submitted ultimately that the plaintiff's application on his summons should be dismissed in its entirety for the most important reason that the cause of action was bound to fail. This submission was based on the position taken by the defendant that though it may have breached the lease, those breaches were not irremediable; it was entitled to notice requiring it to remedy them; and as there was no such proper notice nor any proper demand to remedy, the forfeiture was wrong in law and the cause of action based on it, for recovery of possession, rent and, latterly, damages, could not succeed. Further, that the lease was still intact despite the landlord's claim to forfeiture. The landlord's claim was therefore bound to fail.

For the reasons which will follow, I was unable to accept the defendant's submissions that the plaintiff will inevitably fail to establish that it was entitled to forfeit the lease. Although that is the central issue underlying the action as it stands between the plaintiff and the defendant, the plaintiff sought leave by its summons to do a number of things, some of which were allowed by my order of April 16th and others disallowed. I will proceed to set out my reasons for the order in respect of each issue separately.

(A) *Application for leave to re-amend to join the proposed second,*

*third, fourth and fifth defendants. Leave refused.*

For the purposes of joinder of defendants to an existing cause of action, rr. 25 and 26 of the Grand Court (Civil Procedure) Rules are applicable. The text of the rules is as follows:

"25. All persons may be joined as defendants against whom the right of any relief is alleged to exist, whether jointly, severally or in the alternative, and any judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

26. No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court may, at any stage of the proceedings, either upon or without the application of any party and upon such terms as may seem just, order the names of any parties

improperly joined, whether as plaintiffs or defendants, to be struck out and the names of any parties added who *ought to have been joined*, whether as plaintiffs or defendants, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter:

Provided that no person shall be added as a plaintiff, or as the next friend of a plaintiff under a disability, without his own consent in writing thereto.” [Emphasis supplied.]

Rule 25 deals with the joinder of defendants in a single action. Rule 26 addresses the principles and circumstances which determine the joinder of a party to proceedings already instituted. As to joinder of plaintiffs or defendants, r.26 provides for the addition of two categories of persons: (a) those who ought to have been joined at the commencement of the proceedings, and (b) those whose presence may be necessary to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter. Mr. Parkinson sought the joinder of the additional defendants on the basis that they came within the first category of persons.

The original action is between the landlord and tenant based on the lease agreement between them. The claim at the time that action was brought was against the tenant for recovery of possession, for rent and for mesne profits and arose from the tenant’s alleged repudiation of the lease. Privity of contract existed only between those parties and in the cause of action as it was thus framed, there could have been no other parties to the action as originally instituted. Notwithstanding those circumstances Mr. Parkinson submitted that amendments ought to be allowed to add the proposed second to fifth defendants because the proper test is whether they could have been joined as defendants in some way, *at the time* the original action was brought, irrespective of whether they could have been joined as defendants in the action *as it was actually brought*.

The plaintiff’s claim against the proposed second to fifth defendants was, *inter alia*, for damages for having procured and conspired with the defendant to breach the lease. As such a claim could have been brought originally and *at the same time* as the original action, Mr. Parkinson submitted the requirements of rr. 25 and 26 were met, notwithstanding that the rules of privity of contract would have precluded joinder of the proposed

defendants in the action as originally framed. He relied primarily on the judgment of the Court of Appeal in *Executive Air Servs. Ltd. v. MacDonald* (5).

5 In that case the Court of Appeal upheld the decision of this court in allowing amendments to join a party as a joint tortfeasor in a statement of claim which originally raised allegations of tortious conduct as well as of breach of contract. In so doing it is significant that the court disallowed amendments seeking to join the same party as defendant to the claim based on allegations of  
10 breach of contract. In that case it was urged that the additional defendant was someone who fell within the first of the two categories of persons covered by r.26 of those who ought to have been joined at the commencement of the proceedings. From my reading of that case it appears clear that the court regarded the  
15 additional defendant as a party who “ought to have been joined” in the original action as framed in tort and within the meaning of that expression as it appears within r.26. It follows that the Court of Appeal disallowed the further pleadings as the additional defendant was not a party who ought to have been joined in the  
20 contractual claim as originally pleaded; as such an amendment would have been contrary to the principles of privity of contract, the additional defendant not having been a party to the contract and therefore against the principles established by *Salomon v. A. Salomon & Co. Ltd.* (16). I therefore did not think the case  
25 supported Mr. Parkinson’s position.

Although rr. 25 and 26 may be outmoded, they still apply and I consider that the applicable principles were settled by the Court of Appeal in the earlier case of *Bank of Nova Scotia v. Becker* (2) which was cited in argument by Mr. Lamontagne on behalf of the  
30 proposed defendants.

In that case, the applicant and third defendant, a company in liquidation which had been joined as a party in the suit between the plaintiff bank and the other defendants, applied for an order to join its own receivers as parties. The company had been  
35 granted a loan by the plaintiff bank for which collateral had been provided by the other defendants. It had defaulted in payment and the bank had appointed receivers who took possession of the company’s property. In an action by the bank against the other defendants as guarantors, the company was itself made a  
40 co-defendant upon the successful application of one of the other defendants. It was joined for the purpose of setting off any

damages it might recover for the wrongful acts of the receivers (whom it alleged to be agents or servants of the bank) against any relief granted to the bank in relation to it as principal debtor and the other defendants as guarantors.

5 The company then sought to counterclaim against the bank alleging that the receivers, as the bank’s agents or servants, had trespassed upon the company’s land, wrongfully taken possession of it and wrongfully converted the company’s chattels. The company also applied for leave to join the receivers as added parties in the counterclaim contending that (a) as it was entitled to damages from the bank or the receivers or both, the receivers were, under the Grand Court (Civil Procedure) Rules, r.26 “necessary parties to the proceedings”; and (b) in any event, since by virtue of r.25 it could have initiated proceedings against the bank and joined the receivers as co-defendants, it was “only just and convenient” that it should be able to counterclaim against them both at the same time.

10 The Court of Appeal, in refusing to order the joinder of the receiver, held (a) the court was obliged to have regard to the terms of the Grand Court (Civil Procedure) Rules and was only entitled to consider whether joinder was “just and convenient” as an aspect of the application of those rules. It was not entitled to use the “just and convenient” principles to give itself an unfettered discretion to order joinder; (b) as the bank had originally made no claim against the receivers they could not be added as defendants in the bank’s writ against the guarantors. Consequently, so far as that action was concerned, the receivers could not qualify as persons who “ought to have been joined” at the beginning of the proceedings. Nor did they so qualify when the company was introduced into the proceedings as an added party and counterclaimed against the bank. The application had therefore failed the first criterion for joinder in r.26; and (c) nor did the receivers qualify under the second criterion as parties “whose presence before the court may be necessary to enable the court effectually and completely to adjudicate upon the issue involved within the meaning of r.26. . . .”

25 30 35 40 From the second head of the *ratio decidendi* of the case as extracted above from the report and from the judgment itself, it seems to me that parties can only be joined pursuant to r.26 as persons “who ought to have been joined” if that nexus is established with the action as originally commenced. It is

impermissible to join parties for the purpose of expanding the original cause of action.

In the case before me, there was no privity of contract between the proposed additional defendants and the plaintiff. The action  
5 based on the lease for recovery of possession and mesne profits as commenced could have joined no other parties. It rested entirely between the plaintiff as landlord and the defendant as tenant. For those reasons I was unable to allow the joinder of the proposed second to fifth defendants.

I should also mention in passing that Mr. Parkinson also placed  
10 great reliance on the case of *Molnlycke AB v. Procter & Gamble Ltd.* (12) as authority for two propositions. The first was that other members of a corporate group besides the defendant (as were the proposed second and third defendants in relation to the defendant herein) may be brought in as defendants in the same  
15 action if they are in some way shown to have facilitated the conspiracy whereby the original defendant was able to commit the wrongdoing complained of and that is so whether or not the others are willing parties to the conspiracy. The second proposition was that the *Molnlycke* case confirms it is not an abuse of  
20 process to join other parties for the purpose only of obtaining discovery where that discovery will assist in proving the claims against the original defendant and assist in the later claim against the added defendants and further that that approach would not  
25 be in breach of the principles laid down in *Norwich Pharmacal Co. v. Customs & Excise Commrs.* (13).

My reading of the *Molnlycke* case leads me to a different view of it. To my mind it deals with a situation where a plaintiff sought  
30 to join as an alleged tortfeasor a German company which was an affiliate of the defendant company. By virtue of certain provisions of the Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments 1968, joinder in the circumstances of that case was as of right provided the plaintiff met the preliminary  
35 criterion of showing it had a good arguable case against the alleged defendant by satisfying the court that there was a serious question which called for a trial for its proper determination in respect of an alleged defendant company domiciled in a country which was party (as was Germany) to the convention. That  
40 criterion is premised on a basis entirely distinct from those criteria laid down by rr. 25 and 26 of the Grand Court (Civil Procedure) Rules and which are clearly set out in the judgment of

the Court of Appeal in *Bank of Nova Scotia v. Becker* (2) which I regard as applicable here. It follows I did not regard the *Molnlycke* case as persuasive authority for either proposition in the circumstances of this case.

5 I should also make it clear that leave to amend to join the additional defendants was not refused on the basis that the plaintiff's case was doomed to failure in its entirety. Had that been my view of the case I would have been obliged to invoke also the principles stated in *Raleigh v. Goschen* (15) that leave should not be given to add parties to an action which is bound to fail and where such leave would allow the plaintiff to mount a substantially different cause of action against added parties.

10 (B) *Leave for consequential re-amendments in respect of the proposed additional defendants, including an amendment seeking orders for discovery against them. Leave refused.*

15 It followed from the refusal of leave to join the proposed additional defendants that leave for consequential re-amendments to plead claims against them had also to be refused. I note further that in any event Mr. Parkinson for the plaintiff indicated he would have been prepared to seek discovery from them separately had they been joined as defendants and to have done so by separate process. As joinder was refused, on the merits, that recourse would also fail to materialize. I have set out above the reasons for the decision not to allow further amendments which sought to add new parties.

20 The remaining issues related to the application to re-amend the pleadings to vary or add claims. Such applications still fell to be decided on the merits to the extent that they might affect the action brought against the original defendant. There was no dispute as to the general principles which the court should apply in deciding on an application to amend pleadings for the purposes

25 of adding or varying claims. They are set out at O.20, r.5 of the Rules of the Supreme Court and, as they apply to this case, I summarize them as follows:

30 (a) Generally speaking, all amendments ought to be allowed which are for the purpose of determining the real question in controversy between the parties to any proceedings or for correcting any defect or error in any proceedings (*per* Jenkins, L.J. in *G.L. Baker Ltd. v. Medway Building & Supplies Ltd.* (1) ([1958] 1 W.L.R. at 1231).



(b) Leave should be given to amend unless the court is satisfied

that the party applying was acting *mala fide*, or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise. However negligent or careless may have been the omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs (*per* Bramwell, L.J. in *Tildesley v. Harper* (18) (10 Ch. D. at 397) and *per* Brett, M.R. in *Clarapede v. Commercial Union Assn.* (4) (32 W.R. at 263).

(c) An amendment ought to be allowed if thereby “the real substantial question” can be raised between the parties and multiplicity of legal proceedings avoided: see *Kurtz v. Spence* (10).

(d) On the other hand, it should be remembered that there is a clear difference between allowing amendments to clarify the issues in dispute and those that provide distinct defences or claims to be raised for the first time (*per* Lord Griffiths in *Ketteman v. Hansel Properties Ltd.* (9) ([1987] A.C. at 220)).

(e) Furthermore, the court will always look at the materiality of the proposed amendment; inconsistent or useless amendments will not be allowed nor will amendments be allowed to raise a case which must fail: see 1 *The Supreme Court Practice 1991*, para. 20/5 – 8/23; *Jones v. Hughes* (8) ([1905] 1 Ch. at 187 *per* Vaughan Williams, L.J.) and the judgment of the Court of Appeal of the Cayman Islands in *Iorgulescu v. Swiss Bank & Trust Corp. Ltd.* (7).

I now turn to deal with the application for re-amendments to the claims.

(C) *Leave to re-amend the writ and the statement of claim to include a claim for an account from the defendant to be taken in order to ascertain the ultimate amount which the defendant owes the plaintiff by way of annual percentage rent. Leave refused.*

This aspect of the application had proceeded on the basis that a fiduciary relationship of principal and agent should be implied as existing between the plaintiff and defendant having regard to the lease arrangement which demanded a duty of trust from the defendant as tenant. Mr. Parkinson had submitted further that an action for an account is an established remedy available to a principal against his agent (in lieu of damages) and that such an action arose here. I need not provide reasons at length for this



correct the principles cited by Mr. Lamontagne in his response

5 but as considerable time was taken on it and as a distinction needs to be struck between the duty to account prescribed by the lease and the remedy in equity which was sought here, I will provide a brief minute of reasons.

10 Two considerations were paramount bearing in mind that the lease agreement embodies a commercial arm's length transaction between the parties. It contains extensive provisions as set out in Articles 3:01 – 3:05 as to the tenant's obligations to report and account to the landlord. It also specifies the relief available in the event of breach of those provisions. The two questions which arose were (a) whether there was the necessity and therefore a basis for implying as between the parties, a term or condition of the lease that there existed a further fiduciary relationship and arising from it that there should be accounting, as a separate remedy, beyond that expressly provided in the lease in the event the tenant acted in breach of the lease; and (b) could there be a need or basis for finding a relationship of principal and agent and a resulting duty to account, where the written agreement between the parties is a complete code of the intentions of the parties.

15 The decision of the Privy Council in *Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd.* (17) was cited in opposition to Mr. Parkinson's submissions and is clear authority for the proposition that the court should not search for a liability in tort or in equity where the parties are in a contractual relationship and that this is particularly so in commercial relationships. It is not permissible, on the contractual analysis of the relationship between the parties, to imply duties which are not strictly and necessarily incidental to that relationship.

20 Mr. Parkinson had conceded there was no English authority directly on point to support his submissions but had cited extracts from Underhill & Hayton, *Law relating to Trusts & Trustees*, 14th ed., at 14 (1987), 1(2) *Halsbury's Laws of England*, 4th ed., para. 86, at 62, and from 1 *Atkin's Court Forms*, 2nd ed., at 601 *et seq.* (1992 Issue) in support of his general submissions that the categories of circumstances which may give rise to a fiduciary relationship are not closed and that a principal/agent relationship might be inferred from the nature of the relationship between the parties as was evident in this case from the lease. Further, that an action for an account is a remedy arising from that relationship.

---

1992–93 CILR 388

Mr. Lamontagne in opposition relied also on the decision of the Supreme Court of Canada in *Lac Minerals Ltd. v. Interna*

principles which are extracted from the headnote to the case in the *Canada Supreme Court Reports* ([1989] 2 R.C.S. at 577–578):

“The following common features provide a rough and ready guide to whether or not a fiduciary obligation should be imposed on a new relationship: (1) the fiduciary has scope for the exercise of some discretion or power; (2) the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary’s legal or practical interests; and (3) the beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.”

This description of the fiduciary relationship accords with the treatment of the subject in the textbooks which were cited in argument and especially as regards the relationship of principal and agent the following definition of agency is to be found in *Fridman’s Law of Agency*, 6th ed., at 9 (1990):

“Agency is the relationship that exists between two persons when one, called the *agent*, is considered in law to represent the other, called the *principal*, in such a way as to be able to affect the principal’s legal position in respect of strangers to the relationship by the making of contracts or the disposition of property.”

That definition does not accord with the relationship created between the landlord and tenant in the context of the lease which is the subject of this action.

The very helpful and exhaustive treatment of the subject in the *Lac Minerals* case also demonstrates that no relationship of principal and agent could properly be implied into the commercial arm’s length transaction which was the lease agreement between the parties herein. It would not be appropriate to invoke the rules of equity so as to impose a relationship in a situation such as this where there is no true need for the special protection that equity affords.

I also observe that the plaintiff’s submissions were based not on any suggestion of a pre-existing fiduciary duty but on the proposition that the court might find one having regard to the self-dealing manner in which the contractual duties of the defendant had been breached. In that regard I was specifically guided by the opinion of Megarry, V.-C. in *Tito v. Waddell (No. 2)* (19) in

---

1992–93 CILR 389

commenting on this approach to identifying a fiduciary obligation

“I cannot see why the imposition of a statutory duty to perform certain functions, or the assumption of such a duty, should as a general rule impose fiduciary obligations, or even be presumed to impose any. Of course, the duty may be of such a nature as to carry with it fiduciary obligations. . . . Impose a fiduciary duty and you impose fiduciary obligations. But apart from such cases, it would be remarkable indeed if in each of the manifold cases in which statute imposes a duty, or imposes a duty relating to property, the person on whom the duty is imposed were thereby to be put in a fiduciary relationship with those interested in the property, or towards whom the duty could be said to be owed. . . .

Furthermore, I cannot see that coupling the job to be performed with self-dealing in the performance of it makes any difference. If there is a fiduciary duty, the equitable rules about self-dealing apply: but self-dealing does not impose the duty. Equity bases its rules about self-dealing on some pre-existing fiduciary duty: it is a disregard of this pre-existing duty that subjects the self-dealer to the consequences of the self-dealing rules. I do not think that one can take a person who is subject to no pre-existing fiduciary duty and then say that because he self-deals he is thereupon subjected to a fiduciary duty.”

Notwithstanding the assumptions I was invited by Mr. Lamontagne to make and which lead irresistibly to the conclusion that the defendant was in breach of the lease and thereby guilty of “self-dealing,” I was unable to conclude, having regard to the foregoing statements of principles, that there could be found to be a principal/agent relationship between the landlord and tenant as parties to the lease. Accordingly, no separate fiduciary duty to account was to be implied. The plaintiff had no arguable case for a claim in that regard and the re-amendments could not have been allowed.

(D) *Application for leave to re-amend to include a claim for a declaration that the lease was properly rescinded. Leave refused.*

This aspect of the application was abandoned by Mr. Parkinson and I see no need to comment further on it.

---

1992–93 CILR 390

(E) *Leave to re-amend to include a claim for a declaration against the defendant that the lease was duly forfeited. Leave granted.*

Having regard to the assumptions which I should make for

5 present purposes that the defendant was in breach of the lease, the real point in dispute, as I earlier mentioned, was whether the breaches committed by the defendant were repudiatory, that is irremediable breaches giving rise to a right in the plaintiff to repudiate the lease without first giving notice as required by the lease and more importantly as required by ss. 55 and 56 of the Registered Land Law (Revised).

10 Mr. Lamontagne submitted that leave should not be granted because the plaintiff's claim for a declaration that the lease was duly forfeited was bound to fail. This was so, he urged, because in purporting to forfeit the lease the plaintiff treated as irremediable breaches which were patently capable of being remedied and because it failed to give notice to remedy as mandatorily prescribed by s.56 of the Law. Furthermore, he submitted, it was not for the plaintiff unilaterally and subjectively to decide whether the breach was remediable; it was obliged to give notice and see whether the defendant complied within the reasonable time to be set in the notice. Acceptance of Mr. Lamontagne's submissions in this regard would result in the disallowance of the plaintiff's application to re-amend to include a claim for a declaration that the lease was duly forfeited as, having regard to the principles earlier cited, amendments should not be allowed in aid of futile claims. This would be the result as no right of action in forfeiture could have accrued to the plaintiff, if the breach had been capable of remedy.

20 I was satisfied the plaintiff had at least an arguable case that the breaches complained of were not capable of remedy. On the basis of the authorities the plaintiff need not show more than that, at this stage, in order to render his claim strike-out proof. In arriving at that conclusion I was guided by the following passage from the judgment of the English Court of Appeal given by Slade, L.J. in *Empire Clothing Serv. & Sales Ltd. v. Hillgate House Ltd.* (6) ([1985] 2 All E.R. at 1010):

35 "In my judgment, on the remediability issue, the ultimate question for the court was this: if the s.146 notice had required the lessee to remedy the breach and the lessors had then allowed a reasonable time to elapse to enable the lessee fully to comply with the relevant covenant, would such

---

1992–93 CILR 391

compliance, coupled with the payment of any appropriate monetary compensation, have effectively remedied the harm which the lessors had suffered or were likely to suffer from

5 No would the failure of the s.146 notice to require remedy of  
the breach have been justifiable. In the *Rugby School*,  
*Esplanade* and *Hoffman* cases the answer to this question  
plainly would have been No. In the present case, however,  
for the reasons already stated, I think the answer to it must  
10 have been Yes.”

Essentially, given the interlocutory nature of the proceedings  
before me, the issue is whether the plaintiff has an arguable case.  
The answer to that question is No. There is no dispute that the  
plaintiff’s notice did not afford an opportunity to the defendant to  
15 remedy the breach.

I took the view, in the light of the assumptions I was invited to  
draw by the defendant and having regard to the affidavit of Mr.  
Mark Chapman, the independent auditor engaged by the plaintiff  
to examine the records of the defendant, in which Mr. Chapman  
20 expressed the view that there had been no proper records of  
accounts at all maintained by the defendant, that the plaintiff had  
at least an arguable case that the harm had been irretrievably  
done and that the breaches of the positive covenants to keep and  
maintain proper accounts and to enable full disclosure of income  
25 are breaches which in the context of this case may be shown to  
be  
incapable of remedy. This is, in my view, arguable notwithstand-  
ing that Mr. Chapman’s affidavit dealt with the situation as he  
found it and did not specifically address the question whether it  
would be possible for the defendant to rectify the breach by  
30 reconstruction of the records.

To my mind it must be at least objectively arguable that the  
plaintiff should be entitled to treat the circumstances existing at  
the time it purported to forfeit the lease as irremediable because  
the defalcations were deliberate, because the defendant’s failure  
35 to assist Mr. Chapman’s audit betrayed its intention to continue  
its dissemblance and because the continued performance of the  
lease depended on the good faith, willingness and ability of the  
defendant not only to remedy the breach but also to keep faithful  
accounts and make full and final disclosure of sales and income.

40 Put another way, it will be an arguable matter whether a notice  
in keeping with s.56 of the Law, specifying the breach and

---

1992–93 CILR 392

requiring remedy, should have been issued in circumstances  
where it would have been clear no proper records existed and that  
their creation would depend upon the recall and co-operation of

5 the officers or employees of the defendant which, from all indications, would likely be convenient to the defendant's own interests and which records may have therefore been predisposed to falsification. Whether the plaintiff as landlord could reasonably and objectively apprehend such an outcome as the inevitable result of a notice to remedy is an issue to be tried.

10 On account of the unusual nature of this lease, none of the cases cited in argument provided a full answer by way of precedent to these factual issues which remain to be resolved on the question whether the plaintiff was entitled to forfeit this lease. It should also be clear that in arriving at this view of the matter I proceeded on the basis that the requirements of ss. 55 and 56 of the Registered Land Law (Revised), in respect of the exercise of the right of forfeiture of leases, are paramount, and specifically as regards the requirements set out in s.56 for proper notice, this is so regardless whether there are provisions to the contrary  
15 contained in the lease itself.

20 The primacy of the s.56 requirements is confirmed by the pronouncements of this court in *Cayman Arms (1982) Ltd. v. English Shoppe Ltd.* (3) and by their confirmation by the Court of Appeal. Moreover, s.37(1) of the Registered Land Law (Revised) also expressly states that "no land, lease or charge registered under this Law shall be capable of being disposed of except in accordance with this Law. . . ." Henry, J.A. stated in the Court of Appeal case of *Paradise Manor Ltd. v. Bank of Nova Scotia* (14) (1984-85 CILR at 480) that under s.37 of the Registered  
25 Land Law (Revised), "no right of a proprietor in or over his land, lease or charge registered under the Law shall be capable of being affected except in accordance with the Law. . . ."

30 Nonetheless, as the plaintiff's primary contention is that it was entitled to forfeit the lease on the basis that the breaches were incapable of being remedied and as I decided it should be allowed  
35 to present that claim for determination on its merits, there was no need for me to consider whether the requirements of s.56 as to notice had been met, as those requirements would apply in the factual circumstances of this case only if it is determined that the breach is capable of remedy or that the defendant should have  
40 been afforded an opportunity to remedy.

---

1992-93 CILR 393

(F) *Leave to re-amend to include a claim in respect of auditor's*

The lease in Article 3:04 provides that the cost of “any special audit or an examination by an accountant designated by the landord pursuant to this section shall be chargeable to and paid by the tenant” in circumstances like those which led to Mr. Chapman’s audit. Accordingly Mr. Lamontagne for the defendant conceded that the plaintiff’s claim in that regard was not prone to being struck out and did not oppose the amendment.

(G) *Leave to re-amend to include a claim, in the alternative to the claim for a declaration of forfeiture, for damages for breach of the covenant to pay rent. Leave granted.*

In light of the proof of at least one instance where the defendant failed to declare the sale of a valuable item which would have generated income which would be subject to being assessed for percentage rent, a claim in the alternative for damages for breach of the covenant to pay rent is sustainable.

This re-amendment was therefore allowed without opposition.

*Order accordingly.*

Attorneys: *Ritch & Connolly* for the plaintiff; *Ian Boxall & Co.* for the defendant.



**EXHIBIT 19**

CAYMAN ISLANDS



Supplement No. 5 published with Extraordinary  
Gazette No. 35 dated 21<sup>st</sup> May, 2014.

**THE CONTRACTS (RIGHTS OF THIRD PARTIES) LAW, 2014**

**(LAW 4 OF 2014)**

003537

**THE CONTRACTS (RIGHTS OF THIRD PARTIES) LAW, 2014**

**ARRANGEMENT OF SECTIONS**

1. Short title
2. Interpretation
3. Application
4. Rights of third party to enforce contractual term
5. Variation and rescission of contract
6. Defences
7. Enforcement of contract by promisee
8. Protection of promisor from double liability
9. Exceptions
10. Supplementary provisions relating to third party
11. Arbitration provisions

CAYMAN ISLANDS

Law 4 of 2014.

I Assent

Franz Manderson

Acting Governor.

14<sup>th</sup> May, 2014

**A LAW TO MAKE PROVISION FOR THE ENFORCEMENT OF  
CONTRACTUAL TERMS BY THIRD PARTIES; AND FOR INCIDENTAL  
AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Contracts (Rights of Third Parties) Law, 2014. Short title
2. (1) In this Law - Interpretation  
  
“contract of employment” has the meaning assigned to that expression under section 2 of the Labour Law (2011 Revision); (2011 Revision)  
  
“employee” has the meaning assigned to that expression under section 2 of the Labour Law (2011 Revision);  
  
“set off” includes netting of claims; and  
  
“third party” means a person who is not a party to a contract.  
  
(2) In relation to a term of a contract which is enforceable by a third party -
  - (a) “promisor” means a party to the contract against whom the term is enforceable by the third party; and

(b) “promisee” means a party to the contract by whom the term is enforceable against the promisor.

Application

3. (1) This Law shall apply to any contract which, on or after the date on which this Law comes into force, includes terms which comply with section 4.

(2) A contract made on, before or after the date on which this Law comes into force may be amended to include terms which comply with section 4.

(3) If, after this Law comes into force, a contract is amended to include terms which comply with section 4, a third party may only enforce a right which accrues on or after the date on which the contract is amended.

(4) If, prior to the date on which this Law comes into force, a contract included terms which comply with section 4, a third party may only enforce a right which accrues on or after the date on which this Law comes into force.

Rights of third party to enforce contractual term

4. (1) Subject to section 9, a third party may in his own right enforce a term of the contract if -

(a) he is expressly identified in the contract by name, as a member of a class or as answering a particular description, which includes a person nominated or otherwise identified pursuant to the terms of the contract but the third party need not be in existence when the contract is entered into; and

(b) the contract expressly provides in writing that he may.

(2) This section does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.

(3) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly.

(4) Where a term of a contract excludes or limits liability in relation to any matter, references in this Law to the third party enforcing the term shall be construed as references to his availing himself of the exclusion or limitation.

Variation and rescission of contract

5. (1) Where a third party has a right under section 4 to enforce a term of the contract, the parties to the contract may not, by agreement, rescind the contract, or

vary it so as to extinguish or alter his entitlement under that right, without his consent if -

- (a) the third party has communicated his assent to the term to the promisor;
- (b) the promisor is aware that the third party has relied on the term; or
- (c) the promisor can reasonably be expected to have foreseen that the third party would rely on the term and the third party has in fact relied on it.

(2) The assent referred to in subsection (1)(a) -

- (a) may be by words or conduct; and
- (b) if sent to the promisor by post or other means, shall not be regarded as communicated to the promisor until received by him.

(3) Subsection (1) is subject to any express term of the contract under which -

- (a) the contract may be rescinded or varied without the consent of the third party; or
- (b) the consent of the third party is required in circumstances specified in the contract instead of those set out in subsection (1)(a) to (c).

(4) Where the consent of a third party is required under subsection (1) or (3), the court may, on the application of one or more of the parties to the contract, dispense with his consent if satisfied that it is just and equitable to do so having regard to all the circumstances.

(5) The court may, on the application of one or more of the parties to a contract, dispense with any consent that may be required under subsection (1)(c) if satisfied that it cannot reasonably be ascertained whether or not the third party has in fact relied on the term.

(6) If the court dispenses with a third party's consent, it may impose the conditions it thinks fit, including a condition requiring the payment of compensation to the third party.

6. (1) Subsections (2) to (5) apply where, in reliance on section 4, proceedings for the enforcement of a term of a contract are brought by a third party. Defences

(2) The promisor shall have available to him by way of defence or set-off any matter that -

- (a) arises from or in connection with the contract and is relevant to the term; and
  - (b) would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.
- (3) The promisor shall also have available to him by way of defence or set-off any matter if -
- (a) an express term of the contract provides for it to be available to him in proceedings brought by the third party; and
  - (b) it would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.
- (4) The promisor shall also have available to him -
- (a) by way of defence or set-off any matter; and
  - (b) by way of counterclaim any matter not arising from the contract,
- that would have been available to him by way of defence or set-off or, as the case may be, by way of counterclaim against the third party if the third party had been a party to the contract.
- (5) Subsections (2) and (4) are subject to any express term of the contract as to the matters that are not to be available to the promisor by way of defence, set-off or counterclaim.

(6) Where in any proceedings brought against him a third party seeks in reliance on section 4 to enforce a term of a contract including, in particular, a term purporting to exclude or limit liability, he may not do so if he could not have done so, whether by reason of any particular circumstances relating to him or otherwise, had he been a party to the contract.

Enforcement of contract  
by promisee

7. Section 4 does not affect any right of the promisee to enforce any term of the contract.

Protection of promisor  
from double liability

8. Where under section 4 a term of a contract is enforceable by a third party and a promisee has recovered from the promisor a sum in respect of -

- (a) the third party's loss in respect of the term; or
- (b) the expense to the promisee of making good to the third party the default of the promisor,

then, in any proceedings brought in reliance on that section by the third party, the court shall reduce any award to the third party to the extent it thinks appropriate to take account of the sum recovered by the promisee.



9. (1) Section 4 confers no rights on a third party in the case of a contract on a bill of exchange, promissory note or other negotiable instrument. Exceptions

(2) Section 4 confers no rights on a third party in the case of any contract binding on a company and its members under sections 12 and 25 of the Companies Law (2013 Revision). (2013 Revision)

(3) Section 4 confers no rights on a third party to enforce any term of a contract of employment against an employee.

(4) Section 4 confers no rights on a third party in the case of -

- (a) a contract for the carriage of goods by sea;
- (b) a contract for the carriage of goods by road, or for the carriage of cargo by air; or
- (c) letters of credit.

(5) In subsection (4) -

“contract for the carriage of goods by sea” means a contract of carriage -

- (a) contained in or evidenced by a bill of lading, sea waybill or a corresponding electronic transaction; or
- (b) under or for the purposes of which there is given an undertaking which is contained in a ship’s delivery order or a corresponding electronic transaction.

10. (1) Section 4 does not affect any right or remedy of a third party that exists or is available apart from this Law. Supplementary provisions relating to third party

(2) In sections 7 and 10 of the Limitation Law (1996 Revision) the references to an action founded on a simple contract and an action upon a specialty shall respectively include references to an action brought in reliance on section 4 relating to a simple contract and an action brought in reliance on that section relating to a specialty. (1996 Revision)

(3) Except to the extent provided in section 11(1) or (2), a third party shall not, by virtue of section 4(4), 6(4), 6(6), 11(1) or 11(2) be treated as a party to the contract for the purposes of any other Law or any instrument made under any other Law.

11. (1) Where a right under section 4 to enforce a term is subject to an arbitration agreement, the third party shall be treated for the purposes of the Arbitration Law, 2012 as a party to the arbitration agreement as regards disputes (Law 3 of 2012)

between himself and the promisor relating to the enforcement of the term by the third party.

(2) Where -

- (a) a third party has a right under section 4 to enforce an arbitration agreement; and
- (b) the third party does not fall to be treated under subsection (1) as a party to the arbitration agreement,

the third party shall, if he exercises the right, be treated for the purposes of the Arbitration Law, 2012 as a party to the arbitration agreement in relation to the matter with respect to which the right is exercised, and be treated as having been so immediately before the exercise of the right.

(3) In this section -

“arbitration agreement” has the meaning assigned to that expression under section 2 of the Arbitration Law, 2012.

Passed by the Legislative Assembly the 11<sup>th</sup> day of April, 2014.

Juliana Y. O’Connor-Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.

**EXHIBIT 20**

# \*366 Ebbw Vale Urban District Council v South Wales Traffic Area Licensing Authority.



No Substantial Judicial Treatment

## Court

Court of Appeal

## Judgment Date

16 March 1951

## Report Citation

[1951] 2 K.B. 366



Court of Appeal

Cohen , Asquith and Birkett , L.JJ.

1951 March 16.

*Road Traffic—Omnibus company—100 per cent. subsidiary of British Transport Commission—Company's application to vary fares made to licensing authority—Jurisdiction of authority— Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 72 — Transport Act, 1947 (10 & 11 Geo. 6, c. 49), ss. 2, sub—ss. 1, 2 (f) (g) (i), 3, 63—5, 76 .*

By s. 65, sub-s. 1, of the Transport Act, 1947 , ss. 72 to 76 of the Road Traffic Act, 1930 , do not apply to any passenger road transport service provided by the British Transport Commission or by any person acting as agent for the commission.

The commission, acting under the Transport Act, 1947 , acquired all the shares of a passenger road transport company with power to appoint and dismiss all their directors, the company thus becoming a 100 per cent. subsidiary of the commission. There was no evidence that the commission had in fact appointed the company to act as their agent. The company applied to a licensing authority for public service vehicles under s. 72, sub-ss. 1 and 4, of the Road Traffic Act, 1930 , to vary the conditions of road service licences then held by them, i.e., to increase the existing scale of fares.

\*367

Held, that the licensing authority had jurisdiction to hear the application of the company, since the service in question was not a passenger road transport service provided by the commission or by any person acting as agent for the commission. The commission, in acquiring the shares of the company in the exercise of their general duty as stated in s. 3 of the British Transport Act, 1947 , were not "providing", but "securing or promoting" the provision of, an efficient, adequate, economical and properly integrated system of public inland transport.

*Salomon v. Salomon & Co. LD.[1897] A. C. 22* followed.

Observations of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.[1924] 2 Ch. 33 , 38, 40*, referred to.

Decision of the Divisional Court reversed.

Appeal from the Divisional Court.

The applicants, Ebbw Vale Urban District Council, sought an order to prohibit the licensing authority for public service vehicles for the South Wales Traffic Area from hearing and determining an application by Red and White Services Ld. under s. 72 of the Road Traffic Act, 1930 <sup>1</sup>, to vary the conditions of road service licences then held by them, that was, to increase their existing scale of fares. The ground for the application was that the licensing authority had no jurisdiction to hear the application by the omnibus company by reason of s. 65 of the Transport Act, 1947 <sup>2</sup>.

\*368

The Divisional Court (Lord Goddard, C.J., Hilbery and Hallett, JJ.) held that s. 72 of the Act of 1930 on the facts of the case had ceased to apply, because the services afforded by the omnibus company were provided "by the commission" or by a "person acting as agent for the commission" within the meaning of sub-s. 1 of s. 65 of the Transport Act, 1947.

The omnibus company had been a private enterprise concern when, under the Transport Act, 1947, the British Transport Commission had acquired all their shares and the power to appoint and dismiss all their directors. The omnibus company, therefore, became a 100 per cent. subsidiary of the British Transport Commission. Lord Goddard, C.J., said that the commission were providing the road passenger service of the omnibus company, though he was rather inclined to think that the omnibus company in the circumstances were acting as agents for the commission. The British Transport Commission and the omnibus company appealed.

Before the Court of Appeal, counsel for the urban district council did not see fit to support the order of prohibition made by the Divisional Court on the ground that the omnibus company provided the services as agents of the British Transport Commission: he contended that the services were provided by the commission.

*Heald, K.C.*, and *R. J. Parker* for the commission.

*Fox-Andrews, K.C.*, and *King-Hamilton* for the omnibus company.

*Cyril Morgan* for the urban district council.

The argument, based on the relevant sections of the Transport Act, 1947, appears fully from the judgment of Cohen, L.J. Counsel for the appellants cited *Salomon v. Salomon & Co. LD.* <sup>3</sup>; the speech of Lord Buckmaster in *Rainham Chemical Works LD. (In Liquidation) v. Belvedere Fish Guano Co. LD.* <sup>4</sup>; the judgment of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.* <sup>5</sup>; *Railway Executive v. Henson* <sup>6</sup>; and *Smith v. London Transport Executive* <sup>7</sup>.

COHEN, L.J.

This appeal raises a question as to the jurisdiction of the licensing authority under s. 72 of the Road Traffic Act, 1930, to hear an application by Red and White Services Ld. for the modification of the conditions of their licence in such a way as to enable them to increase the fares which they are entitled to charge for the services that they supply in a district in South Wales.

Section 72, sub-s. 1, provides: "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. It is under that last provision that Red and White Services Ld. made the application which gives rise to the present proceedings.

When the application came before the authority, the suggestion was made, and it has since been decided by the Divisional Court, that the jurisdiction of the authority had been taken away, so far as the point then under discussion was concerned, by s. 65 of the Transport Act, 1947. [His Lordship read sub-s. 1 of s. 65]. The Divisional Court decided that s. 72 of the Road Traffic Act, 1930, had ceased to apply on the facts of this case, because the services in question were services provided "by the commission", or by a "person acting as agent for the commission", within the meaning of s. 65.

I will refer to two passages in the judgment of Lord Goddard, C.J., in order to explain the ratio decidendi of the court. He said: "It seems to me, when one gives s. 65 the ordinary meaning of the English language, that the transport commission, having acquired the whole of the undertaking and share-holding of this company, and running the omnibuses of that company for the purpose of providing a passenger service through the Ebbw Vale, are providing a road transport service. The vehicles are not their own: they still belong to the legal entity which is the company; but it seems to me that the commission are in effect providing the road passenger transport, though I am rather inclined to think that the omnibus company in the circumstances are acting as agents for the commission". Then, in the last paragraph he said: "Mr. \*370 Heald has relied on the well-known case of *Salomon v. Salomon & Co. LD.* <sup>8</sup>, which decided that in what is commonly called a one-man company, the company is a different entity from the man who holds the whole of the shares. and I have no doubt here that the omnibus company are a different entity from the commission; but it seems to me that the commission are providing this road passenger transport service, because the company are put there by the Transport Commission to do what otherwise it is the privilege of the commission to do. For these reasons I think that the order of prohibition must go".

Colloquially speaking, it may be true to say that the British Transport Commission are running the omnibuses of the company; but I am unable to agree, with all respect to the Divisional Court, that so broad a construction can properly be placed on the material phrase in s. 65: "any passenger road transport service provided ... by the commission or by any person acting as agent for the commission".

Under the ordinary rules of law, a parent company and a subsidiary company, even a 100 per cent. subsidiary company, are distinct legal entities, and in the absence of an agency contract between the two companies one cannot be said to be the agent of the other. That seems to me to be clearly established by *Salomon v. Salomon & Co. LD.* <sup>9</sup>, and by the observations of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.* <sup>10</sup>.

Tomlin, J., said <sup>11</sup>: "I do not think that any such inference" - that is, an inference of agency between the directors and the company - "can be or ought to be drawn. It has been made plain by the House of Lords that for the purpose of establishing contractual liability it is not possible, even in the case of the so-called one-man companies, to go behind the legal corporate entity of the company and treat the creator and controller of the company as the real contractor merely because he is the creator and controller. If he is to be fixed with liability as principal, the agency of the company must be established substantively and cannot be inferred from the holding of director's office and the control of the shares alone: see *Salomon v. Salomon & Co. LD.* <sup>12</sup>. Any other conclusion would have nullified the purpose for which the creation of limited companies was authorized by the legislature".

\*371

Tomlin, J., continued: "Nor does the matter stand otherwise in regard to liability for tortious acts". and later <sup>13</sup>: "There is no evidence from which it ought or can be inferred that the defendant directors have authorized the wrongful acts. To draw that inference from the fact that they are sole directors and shareholders of the defendant company would be manifestly wrong and contrary to the principles enunciated by the House of Lords in the cases already referred to, and there is no evidence of any other facts at all in relation to the matter".

So I think that it can clearly be said here that there is no evidence to justify the inference which apparently Lord Goddard, C.J., was inclined to draw, that the omnibus company in the circumstances of the case are acting as agents for the British Transport Commission. In fairness to Mr. Morgan I add that he did not seek to support the order on the ground of agency. He did, however, strongly urge that, on a business view of the matter, the services which were provided in South Wales by the company were services provided by the commission.

I can find nothing in the Act to negative or exclude the ordinary rules of law so far as this question is concerned. I think that the proper approach to the question is to construe s. 65, sub-s. 1, in the light of the other relevant provisions of the Act; and, as Mr. Fox-Andrews said, the proper starting point is s. 3, which lays down the general duty of the commission and states the objects, as distinct from the powers, which the commission was incorporated to perform. By sub-s. 1: "It shall be the general duty of the commission so to exercise their powers under this Act as to provide, or secure or promote the provision of, an efficient, adequate, economical and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods with due regard to safety of operation".

I would emphasize the distinction that is plainly drawn there between "providing", on the one hand, and "securing or promoting" on the other, the provision of an efficient system of transport. It seems to me that those words clearly visualize that the commission may either provide the system themselves or may secure or promote its provision by others. With that in mind I turn back to s. 2, which concerns the powers which the commission are to \*372 have to enable them to fulfil their object. Section 2, sub-s. 1, provides: "Subject to the provisions of this Act, the commission shall have power - (a) to carry goods and passengers by rail, road and inland waterway, within Great Britain". By sub-s. 2: "Subject to the provisions of this Act, the powers conferred by sub-s. 1 of this section include power", and then follow a series of powers lettered in paragraphs from (a) to (i). I need only refer to paragraphs (f), (g) and (i). Paragraph (f): "to acquire by agreement (whether absolutely or for any period) the whole or any part of any undertaking of any other person, being an undertaking, or a part of an undertaking, the activities whereof are wholly or mainly such activities as are specified in the said sub-s. 1". Paragraph (g): "to enter into and carry out agreements with any person for the carrying on by that person, whether as agent for the commission or otherwise, of any of the activities specified in the said sub-s. 1, or for the provision by that person, whether as agent for the commission or otherwise, of clearing house facilities in connexion with the transport of goods". Paragraph (i): "to lend money to, or give guarantees for the benefit of, any person carrying on or about to carry on any of the activities specified in the said sub-s. 1", and then, omitting immaterial words, "and to acquire by agreement any securities of any body corporate which is carrying on or about to carry on or which directly or indirectly controls another body corporate which is carrying on or about to carry on any such activities".

I pause here to observe that it is plain as regards the omnibus company that it is under this latter power to acquire the securities of a body corporate which is carrying on transport activities that the acquisition was made. I pause also to observe that both sub-s. 1 and sub-s. 2 are subject to provisoes prohibiting the commission from doing certain things which might otherwise be within the wide words of the enabling power.

Sub-s. 3 provides: "Where, whether by agreement or otherwise, the commission acquire the whole or any part of any undertaking of any other person, they may, subject to the provisions of this Act, carry on any activities, whether mentioned in sub-s. 1 of this section or not, which were theretofore carried on for the purposes of that undertaking or part of an undertaking or were authorized by any statutory provision to be carried on for the purposes thereof". There again that is followed by a proviso restricting the generality of the foregoing Sub-s. 4 also contains certain restrictive powers.

\*373

It is clear from that section, and I think that it also appears clear from ss. 63 and 64, which concern the preparation and approval of area road transport schemes and the contents of area road transport schemes, that the Act contemplates that the commission may either provide services itself or may secure the provision of those services by or through other bodies, and not only by or through agents of the commission. That being so, prima facie, it would seem necessary to see whether what is being done in any particular case is an act done to provide transport facilities, or is an act done to secure the provision of transport facilities. Where a service is provided through a subsidiary company of the commission, it seems to me that prima facie, having regard to the general rule of law, what the commission are doing is to secure the provision of road transport facilities, and not to provide them.

That the commission can act by providing them themselves is made clear by the decision of this court to which our attention was called by Mr. Heald and Mr. Morgan, namely, *Smith v. London Transport Executive* <sup>14</sup>.

That the commission can act through an agent is also clear under the express provisions of sub-s. (2) (g); but, as I have said, there is no question of agency here. It seems to me quite plain that it can also arrange with independent concerns to provide a service, in which case it will be performing its function of securing or promoting the provision of an efficient, adequate, economical and properly integrated system of public inland transport. In the present case, I think, the commission were securing the provision of an efficient, adequate, economical and properly integrated system of public inland transport within the meaning of s. 3, sub-s. 1, of the Act, through the omnibus company - not an independent concern, but a separate legal entity.

That conclusion, it seems to me, is rendered more certain by sub-s. 6 of s. 2 of the Act. That provides: "For the purposes of sub-s. 4 and of the provisoes to sub-ss. 2 and 3 of this section, where a body corporate is directly or indirectly controlled by the commission, anything done by that body shall be deemed to be done by the commission, and the undertaking of the body shall be deemed to form part of the undertaking of the commission". The importance of that provision seems to me to be that it is quite plain that Parliament when it passed this Act had in mind the general rule of law to which I have \*374 referred as laid down in *Salomon v. Salomon & Co. LD.* <sup>15</sup>, and many other cases, that a subsidiary company is not the agent of the parent company, but is an entirely separate entity. Its acts are not the acts of the parent company, and the parent company is not responsible for its acts or defaults, in the absence of special provisions in some contract between the parties. Parliament, with that in mind, has gone out of its way to prescribe that for certain limited purposes the acts of the subsidiary company shall be



deemed to be the acts of the commission. It seems to me an inevitable inference from that provision that, except to that extent, the intention was that the ordinary rule of law should prevail and that the acts of the subsidiary company should be its own acts and not the acts of the commission.

Mr. Morgan was compelled to admit that if there were a road accident the victim would have a remedy, if he had a remedy at all, not against the commission, but only against the omnibus company. That seems to me to lead to, or support, the conclusion that the services here were provided, not by the commission, but by the company.

There is another argument of Mr. Morgan's to which I ought to refer. He laid some stress on the words in sub-s. 1 of s. 65, "any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise". He relied upon those words as in some way enlarging the meaning to be given to the word "provided". I am unable to follow him in this part of his argument. It seems to me that, in the context in which they appear, the words "or otherwise" are merely in contrast to the words "under a scheme", and mean no more than "provided, whether or not under a scheme under the preceding provisions of this Part of this Act". It does not assist us in determining whether or not as a matter of fact any particular service is provided by the commission.

There is still one other argument to which I must refer. It was said that it would lead to a ridiculous, or at any rate to an artificial, situation if there were to be two bodies dealing with the same subject-matter. Section 76 of the Transport Act, 1947, contains the provisions under which the commission "shall from time to time prepare, and submit to the transport tribunal for confirmation, drafts of schemes (hereafter in this Act referred to as 'charges schemes') for determining, as respects the \*375 services and facilities provided by the commission to which the schemes respectively relate - (a) the charges which are to be made by the commission". So, said Mr. Morgan, it is plain that in one case not the licensing authority under the Road Traffic Act, 1930, but the transport tribunal under the Transport Act, 1947, will have to determine the fares and charges which are to be made by the commission. Is it not, he said, most unlikely that the legislature intended that, as regards other cases, where in substance the service was provided by the commission, the reference should be to the licensing authority? It does not seem to me that that objection really has any substance, and in a sense it begs the question, because it is only where the services are provided by the commission that the obligation to set up a charging scheme arises; and it seems to me that Parliament, having, as it clearly had, in mind the prospect that the commission might discharge their obligations either by providing or by securing provision of the requisite services, should have visualized a different method of settling the charges according to whether the commission provided the services themselves or secured their provision. It seems to me quite natural that the charging scheme should only apply where the commission were providing the services themselves, leaving the matter to be dealt with under the Road Traffic Act, 1930, in cases where the part played by the commission was merely to secure the provision of the services.

For these reasons, I think that the proper inference from the facts proved before the Divisional Court was that this was a case where the services were not provided by the commission but the commission merely secured their provision. I therefore think that it is not a case for prohibition, and I would allow the appeal.

ASQUITH, L.J.

I agree, and I would add only a word or two out of deference to the judgment from which we are differing. The case originally raised two distinct issues: did the commission within the meaning of sub-s. 1 of s. 65 "provide" these services? Or, short of that, did the omnibus company provide them as agents for the commission?

Mr. Morgan has not pressed the second point on the appeal, but, as the Divisional Court based its judgment partly on an affirmative answer to it, it is desirable to glance at it briefly. The only relevant fact before the court is that the commission own substantially all the shares in the company. The two bodies are admittedly separate legal personæ. Admittedly a subsidiary is not necessarily, as such, an agent for the controlling corporation. \*376 There is, of course, nothing to prevent a controlling body from constituting a controlled body its agent if it chooses to do so, but there is no evidence of any such thing having happened here.

I turn, therefore, to the other question: did the commission provide these services themselves? The Divisional Court took a broad, common-sense view of the meaning of the word "provide", but in my view it has to be construed in the light of its context and the general structure of the Act. The other sections of the Act do draw a firm and sharp distinction between services "provided by" the commission themselves, and services of which they "secure the provision", presumably by other people. My Lord has read the first two or three lines of s. 3, sub-s. 1, of the Transport Act, 1947, in support of that proposition, and I will not repeat them, but the same distinction reappears in a salient form in ss. 63 and 64, concerning schemes. Sub-s. 1 of s. 63

provides: "(1) The commission may, at any time, prepare and submit to the Minister a scheme". Sub-s. 1 of s. 64 provides: "A scheme under the last preceding section may provide for all or any of the following matters, that is to say - (a) for constituting or specifying the body or bodies who are to provide passenger road transport services operating within or partly within the area ...". Then by sub-s. 2: "The commission may be the body specified, or one of the bodies specified, in a provision included in a scheme by virtue of paragraph (a) of sub-s. 1 of this section"; so that it is not to be assumed that the distinction between services provided by the commission themselves and services which they cause other bodies to provide - a distinction which is so clearly present in the draftsman's mind when drafting ss. 63 and 64 - has entirely escaped his mind when he passes on to draft s. 65. It would appear to me that the commission have not in fact themselves provided passenger road services up to this time; but it is quite clear that they could, if they wished to do so, purchase a fleet of omnibuses tomorrow and run them themselves under powers given by s. 2, sub-s. 1 (a) and sub-s. 2 : see *Smith. v. London Transport Executive* <sup>16</sup> . If the commission in this case had bought, not shares in the omnibus company, but the physical assets of that company, and had engaged the company's staff to run the undertaking, in that case the commission would have been "providing" the services themselves. But it is, in my view, only if and to the extent that the commission do provide such services by themselves (or by an \*377 "agent" within the meaning of sub-s. 1 of s. 65 ) that the jurisdiction as to fares of the licensing authority is displaced; and as neither of these conditions is fulfilled in the present case I agree with my Lord that the appeal ought to be allowed.

BIRKETT, L.J.

I agree with both the judgments which have just been delivered. The point in this case was described by the Lord Chief Justice in the Divisional Court as being a short point, and a short point it assuredly is.

The Lord Chief Justice said: "I think, therefore, for the reasons which I have endeavoured to express - it is a very short point - that this is a road transport service provided by the commission, or by persons acting as agents for the commission, and that accordingly the Road Traffic Act no longer applies". Also, in the Divisional Court the grounds upon which this order for prohibition was asked were these: "The relief sought is an order of prohibition that the licensing authority for public service vehicles for the South Wales Traffic Area be prohibited from hearing and determining an application by Red and White Services Ltd. to vary the conditions attached to road service licences now held by the Red and White Services Ltd., that is to say, to increase their present scale of fares. The grounds upon which relief is sought are that the said licensing authority has no jurisdiction to hear and determine the said application".

The short question, therefore, is: is it shown, on the true construction of the statutes, and on the facts which have been proved, that the British Transport Commission are providing these road services in South Wales so that ss. 72 to 76 of the Road Traffic Act, 1930 , no longer apply?

Mr. Morgan invited the court to take a broad view, as he termed it, of the word "provide" in sub-s. 1 of s. 65, and, of course, that, I think, is the gist of the whole matter. Section 65, sub-s. 1, of the Transport Act, 1947 , provides: " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the commission or by any person acting as agent for the commission". Quite naturally, Mr. Morgan said that you must take a broad view of that word "provide". If I may say so, with all respect, it was the acceptance of that invitation in the Divisional Court which led to error. The meaning of the word "provide" cannot be interpreted quite on those lines, but must be ascertained with \*378 some precision, having regard to the wording of the various sections of the Transport Act, 1947 .

I think that Mr. Fox-Andrews was quite right in saying that the section which sheds most light on this matter is s. 3. There the general duty of the commission is set out. Sub-section 1 provides: "It shall be the general duty of the commission so to exercise their powers under this Act as to provide, or secure or promote the provision of, an efficient, adequate, economical and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods with due regard to safety of operation; and for that purpose it shall be the duty of the commission to take such steps as they consider necessary for extending and improving the transport and port facilities within Great Britain in such manner as to provide most efficiently and conveniently for the needs of the public, agriculture, commerce and industry". That is the general duty of the commission, and it is to be observed that one can conceive all sorts of matters as within the power of the Transport Commission under that section: they can provide services themselves; they can, in lieu of providing services themselves, secure the provision of services; or they can, instead of doing that, promote services, all to the end that their general duty under the section shall be fulfilled.

In this case it was shown that the commission in fact controlled the omnibus company, in this sense, that they owned all the shares, with the possible exception of two, and that they had the controlling power over the appointment and the dismissal of directors. In relation to that, sub-s. 6 of s. 2 is very important, because it is contemplated that the commission shall control, directly or indirectly, corporate bodies. The sub-section provides: "For the purposes of sub-s. 4 and of the provisoes to sub-ss. 2 and 3 of this section, where a body corporate is directly or indirectly controlled by the commission, anything done by that body shall be deemed to be done by the commission", thus limiting this provision most carefully to the matters which are set out in the section, i.e., for the purposes of sub-s. 4 and the provisoes of sub-ss. 2 and 3 of s. 2. Therefore, in this case, although the commission do control the omnibus company, though they do own the shares, though they have the power to control the appointment and dismissal of directors, they do not own the property of the company and the vehicles which actually run upon the roads. As my Lord pointed out, there is no power to sue the commission either in contract or in tort. Therefore, popularly, \*379 or, if I may use Mr. Morgan's phrase, "in a broad sense", one may say, of course, that the commission provide the services, as one man might say to another, because they control the company, they own the shares; yet in fact what they are really doing here is, not to provide the services, but, as my Lord has already stated, to secure that those services are provided.

Asquith, L.J., discussed the matter of agency, which clearly influenced the Divisional Court, but which is no longer relied upon here; and Cohen, L.J., disposed of the argument raised on the use of the words "or otherwise" in the words of sub-s. 1 of s. 65: "any passenger road transport service provided whether under a scheme under the preceding provisions of this Part of this Act or otherwise".

In all these circumstances, I am clearly of opinion that this was not a case where the commission in fact provided the services, and, that being so, sub-s. 1 of s. 65, which eliminated ss. 72 to 76 of the Road Traffic Act, 1930, in the case of any passenger road transport service *provided* by the commission, has no application, and I agree that this appeal should be allowed.

## Representation

Solicitors: M. H. B. Gilmour ; M. H. B. Gilmour ; Lewin, Gregory, Torr, Durnford & Co. , for J. L. J. Price, Merthyr Tydfil .

*Appeal allowed. (C. G. M.)*

## Footnotes

- 1 Road Traffic Act, 1930, s. 72, sub-s. 1 : "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. Transport Act, 1947, s. 65, sub-s. 1 : " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the Commission or by any person acting as agent for the Commission, but neither the Commission nor any such person as aforesaid shall use any public service vehicle for the conveyance of passengers for hire or reward at separate fares except - (a) on a route approved, as respects so much thereof as falls within any traffic area, by the licensing authority for public service vehicles for that area; and (b) in accordance with such restrictions as may be imposed by that authority as to the class or description of vehicles which may be used on the route and as to the portions of the route on which, and the points at which, passengers may be taken up or set down ...".
- 2 Road Traffic Act, 1930, s. 72, sub-s. 1 : "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the

provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. Transport Act, 1947, s. 65, sub-s. 1 : " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the Commission or by any person acting as agent for the Commission, but neither the Commission nor any such person as aforesaid shall use any public service vehicle for the conveyance of passengers for hire or reward at separate fares except - (a) on a route approved, as respects so much thereof as falls within any traffic area, by the licensing authority for public service vehicles for that area; and (b) in accordance with such restrictions as may be imposed by that authority as to the class or description of vehicles which may be used on the route and as to the portions of the route on which, and the points at which, passengers may be taken up or set down ...".

- 3 *[1897] A. C. 22 .*
- 4 *[1921] 2 A. C. 465 , 475.*
- 5 *[1924] 2 Ch. 33 , 38 and 40.*
- 6 *(1949) 65 T. L. R. 336; 113 J. P. 333 .*
- 7 *[1949] Ch. 685; [1951] W. N. 157 .*
- 8 *[1897] A. C. 22 .*
- 9 *[1897] A. C. 22 .*
- 10 *[1924] 2 Ch. 33 .*
- 11 **Ibid. 38.**
- 12 *[1897] A. C. 22 .*
- 13 *[1924] 2 Ch. 33 , 40.*
- 14 *[1949] Ch. 685; [1951] W. N. 157 .*
- 15 *[1897] A. C. 22 .*
- 16 *[1949] Ch. 685; [1951] W. N. 157*

(c) Incorporated Council of Law Reporting for England & Wales

**EXHIBIT 21**

## **EXHIBIT 21**

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

3 In Re: ) **Case No. 19-34054-sgj-11**  
4 ) Chapter 11  
5 )  
6 HIGHLAND CAPITAL ) Dallas, Texas  
7 MANAGEMENT, L.P., ) Friday, June 25, 2021  
8 ) 9:30 a.m. Docket  
9 Debtor. )  
10 ) EXCERPT: MOTION FOR  
11 ) MODIFICATION OF ORDER  
12 ) AUTHORIZING RETENTION OF JAMES  
13 ) P. SEERY, JR. DUE TO LACK OF  
14 ) SUBJECT MATTER JURISDICTION  
15 ) (2248)  
16 )

10 TRANSCRIPT OF PROCEEDINGS  
11 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
12 UNITED STATES BANKRUPTCY JUDGE.

12 WEBEX APPEARANCES:

13 For the Debtor: Jeffrey Nathan Pomerantz  
14 PACHULSKI STANG ZIEHL & JONES, LLP  
15 10100 Santa Monica Blvd.,  
16 13th Floor  
Los Angeles, CA 90067-4003  
(310) 277-6910

17 For the Debtor: John A. Morris  
18 PACHULSKI STANG ZIEHL & JONES, LLP  
19 780 Third Avenue, 34th Floor  
New York, NY 10017-2024  
(212) 561-7700

20 For CLO Holdco, Ltd. and Jonathan E. Bridges  
21 The Charitable DAF Fund, Mazin Ahmad Sbaiti  
22 LP: SBAITI & COMPANY, PLLC  
23 JP Morgan Chase Tower  
24 2200 Ross Avenue, Suite 4900 W  
25 Dallas, TX 75201  
(214) 432-2899

24 For Get Good Trust and Douglas S. Draper  
25 Dugaboy Investment Trust: HELLER, DRAPER & HORN, LLC  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
(504) 299-3300

003556



1 APPEARANCES, cont'd.:

2 For the Official Committee Matthew A. Clemente  
3 of Unsecured Creditors: SIDLEY AUSTIN, LLP  
4 One South Dearborn Street  
Chicago, IL 60603  
(312) 853-7539

5 Recorded by: Michael F. Edmond, Sr.  
6 UNITED STATES BANKRUPTCY COURT  
7 1100 Commerce Street, 12th Floor  
Dallas, TX 75242  
(214) 753-2062

8 Transcribed by: Kathy Rehling  
9 311 Paradise Cove  
Shady Shores, TX 76208  
10 (972) 786-3063

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

003557

1 DALLAS, TEXAS - JUNE 25, 2021 - 9:36 A.M.

2 (Transcript excerpt begins at 11:33 a.m.)

3 THE CLERK: All rise.

4 THE COURT: All right. Please be seated. We are  
5 back on the record, and our last motion this morning is the  
6 Motion to Reconsider filed by CLO Holdco and the DAF. Do we  
7 have Mr. Bridges and Mr. Sbaiti back with us now?

8 MR. BRIDGES: Yes, Your Honor. I have changed seats  
9 because of audio problems we're having here, but we're both  
10 here.

11 THE COURT: Okay. Well, I think we heard an  
12 agreement that you all have agreed that you're going to have  
13 an hour and a half each, and I presume that means everything:  
14 opening statements, arguments, evidence. So, we'll start the  
15 clock. Nate, it's 11:35. So, Mr. Bridges, your opening  
16 statement?

17 OPENING STATEMENT ON BEHALF OF CLO HOLDCO AND THE CHARITABLE  
18 DAF, LP

19 MR. BRIDGES: Thank you, Your Honor. We're here on a  
20 motion to modify an order that we'd submit has already been  
21 modified by the plan confirmation order, although that order  
22 has not yet become effective.

23 The modification there was to add the phrase "to the  
24 extent legally permissible" to the Court's assertion of  
25 jurisdiction in what is essentially the same gatekeeper

1 provision that's at issue here. We submit that change is an  
2 admission or at least a strong indication that the unmodified  
3 order, at least as applied in some instances, contains  
4 legally-impermissible provisions. The entire argument today  
5 from our side is about what's not legally permissible in that  
6 order.

7 And that starts with our concerns regarding the  
8 application of 28 U.S.C. § 959(a). As Your Honor knows well,  
9 959(a) is a provision of law that the Fifth Circuit and  
10 *Collier on Bankruptcy* call an exception to the *Barton*  
11 doctrine. I know from the last time we were here that the  
12 Court is already aware of what 959(a) says. It's the second  
13 sentence, I understand, which the Court pointed to in our  
14 previous hearing that creates general equity powers or  
15 authorizes the Court to use its general equity powers to  
16 exercise some jurisdiction, some control over actions that  
17 fall within the first sentence of 959(a). But that second  
18 sentence also prohibits explicitly the Court's using general  
19 equity powers to deprive a litigant of his right to trial by  
20 jury.

21 Here, we're not under *Barton*, the statutory exception to  
22 *Barton* applies, because Mr. Seery is a manager of hundreds of  
23 millions of third-party investor property. Instead, we're  
24 here under the Court's general equity powers, as authorized by  
25 959(a). And those equity powers cannot deprive the right to

1 trial by jury.

2 But the order does deprive trials by jury, first by  
3 asserting sole jurisdiction here, where jury trials are  
4 unavailable, and secondly, by abolishing any trial rights for  
5 claims that do not involve gross negligence or intentional  
6 misconduct.

7 Movants' third cause of action in the District Court case  
8 is for ordinary negligence. It comes with a Seventh Amendment  
9 jury right. But it's barred by the order because the order  
10 only allows colorable claims involving gross negligence or  
11 intentional conduct, not ordinary negligence.

12 Movants' second cause of action in the District Court case  
13 is for breach of contract. That comes with a Seventh  
14 Amendment jury right, but it's barred by the order because the  
15 order only allows colorable claims of gross negligence or  
16 intentional misconduct, not negligent or faultless breaches of  
17 contractual obligations.

18 Movants' first cause of action in the District Court case,  
19 breach of Advisers Act fiduciary duties, comes with a jury  
20 right. It's also barred by the order because the order only  
21 allows colorable claims involving gross negligence or  
22 intentional misconduct.

23 You see there what I mean. Congress couldn't have been  
24 clearer. Courts cannot deprive litigants of their day in  
25 court before a jury of their peers by invoking general equity

1 powers. Those powers don't trump the constitutional right to  
2 a jury trial.

3 Yet this Court's order purports to do precisely that, not  
4 only for the Movants, but also for future potential litigants  
5 who may have claims that have not even accrued yet. If those  
6 claims are for ordinary negligence or breach of contract or  
7 breach of fiduciary duties and don't rise to the level of  
8 gross negligence or intentional misconduct, this order says  
9 that those claims are barred, and it would deprive them of  
10 their day in court.

11 The Court's general equity powers are simply not broad  
12 enough to uphold such an order.

13 This issue is even more problematic when the causes of  
14 action at issue fall within the mandatory withdrawal of the  
15 reference provisions of 28 U.S.C. § 157(d). As this Court  
16 knows, it lacks jurisdiction over proceedings that require  
17 consideration of non-bankruptcy federal law regulating  
18 interstate commerce. Some such claims -- Movants' Advisers  
19 Act claim, for instance -- do not involve culpability rising  
20 to the level of gross negligence or intentional misconduct,  
21 but the order purports to bar them nonetheless, despite this  
22 Court's lacking jurisdiction over the subject matter of those  
23 claims.

24 Even if there is gross negligence or intentional  
25 misconduct, the order states that this Court will have sole

1 jurisdiction over such claims. And that can't be right if  
2 withdrawal of the reference is mandatory.

3 Opposing counsel will tell you that 157(d) is inapplicable  
4 here because they think our claims in the District Court won't  
5 require substantial consideration of the Advisers Act or any  
6 other federal laws regulating interstate commerce. But their  
7 cases don't come anywhere close to making that showing, as the  
8 briefing demonstrates.

9 And in any case, that argument is beside the point. This  
10 order is contrary to 157(d) because it asserts jurisdiction  
11 over claims that 157(d) does not apply -- I'm sorry, does  
12 apply to. And that's true regardless of whether Movants'  
13 claims are among those.

14 The idea that there's no substantial consideration of  
15 federal law, however, in the District Court case is undermined  
16 by Mr. Seery's testimony in support of his appointment in  
17 which he confirmed that the Advisers Act applies to him and  
18 that he has fiduciary duties under that Act to the investors  
19 of the funds he manages.

20 Your Honor, importantly, the Advisers Act isn't the  
21 typical federal statute with loads of case law under it. It's  
22 actually an underdeveloped, less-relied-upon statute, and most  
23 -- most of the law under that Act is promulgated by regulation  
24 and supervised by the SEC. As a registered investment  
25 advisor, Mr. Seery is bound by that Act, which he admits, he

1 agrees to. But to flesh out what his duties are requires a  
2 close exam of more than three dozen regulations under 17  
3 C.F.R. Part 275.

4 The obligations include robust duties of transparency and  
5 disclosure, as well as duties against self-dealing and the  
6 necessity of obtaining informed consent, none of which are  
7 waivable, these duties.

8 The proceedings here in this Court reflect an effort to  
9 have those unwaivable duties waived. The allegations in the  
10 District Court are essentially insider trading allegations  
11 that the Debtor and Mr. Seery knew or should have known  
12 information that they had a duty under the Advisers Act to  
13 disclose to their advisees. Both under the Act and  
14 contractually, they had those duties. And, instead, they did  
15 not disclose and consummated a transaction that benefited  
16 themselves nonetheless.

17 In considering those claims, the presiding court will have  
18 to consider and apply the Advisers Act and the many  
19 regulations promulgated under it, in addition to other federal  
20 laws regulating interstate commerce. For that reason,  
21 withdrawal of the reference on the District Court action is  
22 mandatory. That's the two major -- that's two major problems  
23 out of four with the order that we're here on today.

24 First, it deprives litigants of their right to trial, to a  
25 jury trial, when Section 959(a) says that can't be done. And,



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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 18**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>				<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>				<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)	
Vol. 8	8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001349	9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001352	10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
001359	11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
001361	12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
001369	13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>
001381				

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				



001. 22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>37</u> Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

*/s/ Mazin A. Sbaiti*  
Mazin A. Sbaiti

1 two, the order asserts jurisdiction -- sole jurisdiction, even  
2 -- over proceedings in which withdrawal of the reference is  
3 mandatory under 157(d).

4 The fourth major problem is what the Court called  
5 specificity at the previous hearing. The Fifth Circuit's  
6 *Applewood Chair* case holds that the rule from *Shoaf* does not  
7 apply without a "specific discharge or release," and that that  
8 release has to be enumerated and approved by the Bankruptcy  
9 Court. Thus, the order here can't exculpate Mr. Seery of  
10 liability for ordinary negligence and the like in a blanket  
11 fashion. The claims being released must be identified.

12 That's what happened in *Shoaf*. *Shoaf*'s guaranty  
13 obligation was explicitly released. That's also what happened  
14 in *Espinosa*. *Espinosa*'s plan listed his student loan as his  
15 only specific indebtedness. But it's not what happened here.  
16 And it couldn't happen here, because the ordinary negligence  
17 and similar claims being discharged by the order had not yet  
18 accrued and thus were not even in existence at the time the  
19 order issued.

20 Instead, what we have here is a nonconsensual, nondebtor  
21 injunction or release that's precisely what the Fifth Circuit  
22 refused to enforce in the *Pacific Lumber* case.

23 So, lack of specificity is the third major problem with  
24 the order. And that brings us to the fourth problem, which is  
25 the *Barton* doctrine. *Barton* is the only possible basis for

1 this Court to assert exclusive or sole jurisdiction over  
2 anything. Outside of *Barton*, it's plain black letter law that  
3 the District Court's jurisdiction is equal to and includes  
4 anything that this Court's derivative jurisdiction would also  
5 reach.

6 But the exception to the *Barton* doctrine in 959(a) plainly  
7 applies here, leaving no basis for exclusivity with regards to  
8 jurisdiction and the District Court. That's because Mr. Seery  
9 is carrying on the business of a debtor and managing the  
10 property of others, rather than merely administering the  
11 bankruptcy estate. The exclusive jurisdiction function of the  
12 *Barton* doctrine has no applicability because 959(a) creates  
13 that exception here.

14 Under its general equity powers, yes, 959(a) still  
15 authorizes this Court to exercise some control over actions  
16 against Mr. Seery, but short of depriving litigants of their  
17 day in court. And nothing in 959(a), that exception to  
18 *Barton*, says that the Court can nonetheless exercise  
19 exclusivity in that jurisdiction. Those general equity powers  
20 do not create exclusive or sole jurisdiction. They do not  
21 deprive the District Court of its Congressionally-granted  
22 original jurisdiction.

23 Moreover, Mr. Seery is not an appointed trustee entitled  
24 to the protections of the *Barton* doctrine in any case. His  
25 appointment was a corporate decision that the Court was asked

1 not to interfere with. The Court was asked to defer under the  
2 business judgment rule to the Debtor's appointment of Mr.  
3 Seery. And the Court did so.

4 As we asserted last time, no authority that we can find  
5 combines these two unrelated doctrines, the *Barton* doctrine  
6 and the business judgment rule. And they don't go together.  
7 None of the testimony or the briefing or argument, in the July  
8 order, in the January order that preceded it, none of that  
9 indicated that Mr. Seery would be a trustee or the functional  
10 equivalent of a trustee. The word "trustee" does not appear  
11 in any of those briefs or transcripts.

12 Opposing -- and because of that, the District Court suit  
13 is not about -- well, not because of that. The District Court  
14 suit simply is not about any trustee-like role that Mr. Seery  
15 may have played anyway. Opposing counsel will try to convince  
16 you otherwise, will tell you that the District Court case is a  
17 collateral attack on the settlement, but it's not. Wearing  
18 his estate administrator hat, Mr. Seery can settle claims in  
19 this court. Wearing his advisor hat, he has to fulfill his  
20 Advisers Act duties and properly advise his clients.

21 He doesn't have to wear both hats, and it seems highly  
22 unusual that he would choose to fill both of those roles  
23 simultaneously. But he has chosen both roles. And the  
24 District Court case is a hundred percent about his role as an  
25 advisor. Did he comply with the Act? Did he do the things

1 that his advisor role obligated him to do as a manager of that  
2 property?

3 The District Court suit really is only being used to  
4 illustrate the issues that we're raising here. It's  
5 important, it's timely to address those issues now because of  
6 the District Court action, but that's an illustration of the  
7 problems with the order. It is not exclusively that that  
8 action is what we're attempting to address. Rather, the order  
9 exculpating Mr. Seery from ordinary negligence liability and  
10 similar liability is problematic, is contrary to the law. On  
11 top of that, the Court is asserting jurisdiction over gross  
12 negligence and intentional misconduct claims. To the extent  
13 that 157(d) applies, it is problematic and contrary to law as  
14 well.

15 THE COURT: Okay. We're occasionally getting some  
16 breakup of your sound. So please -- I don't know what you can  
17 do to adjust, but it was just now, and intermittently we get a  
18 little bit of garbly. So if you could just say your last  
19 sentence one more time, and we'll see if it improves.

20 MR. BRIDGES: Your Honor, I'm not sure I can say this  
21 last sentence again.

22 THE COURT: Okay.

23 MR. BRIDGES: I was -- I was mentioning that the  
24 District Court case is an illustration of our argument. Our  
25 argument is not merely that the District Court case should be

1 exempted or excepted from the order. Our argument is that the  
2 order is legally infirm and that the District Court case and  
3 the claims there illustrate some of those infirmities, but  
4 that the infirmities go beyond just what's at issue in the  
5 District Court case.

6 In sum, there are four problems with the order that render  
7 parts of it legally infirm. It deprives the right of a jury  
8 trial -- in fact, of any trial -- in contravention of 959(a)  
9 for some causes of action.

10 It asserts jurisdiction -- two, it asserts jurisdiction  
11 over claims that are subject to the mandatory withdrawal of  
12 the reference provision (garbled) 157(d).

13 And three, it lacks the specificity required to discharge  
14 future claims under *Applewood*.

15 Finally, Your Honor, number four, the order relies on the  
16 *Barton* doctrine, which doesn't apply and which 959(a) creates  
17 an exception to.

18 Movants respectfully submit the order should be modified  
19 for those reasons.

20 MR. SBAITI: Tell him Mark Patrick is here, for the  
21 record.

22 THE COURT: All right. I have a couple of follow-up  
23 questions for you. I want to drill down on the issue of your  
24 client not having appealed the July 2020 order. Or the  
25 HarbourVest settlement order, for that matter. Tell me as

1 directly as possible why you don't view that as a big problem.  
2 Because it's high on my list of possible problems here.

3 MR. BRIDGES: I understand, Your Honor. The  
4 *Applewood Chair* case is our -- our defense to that argument,  
5 that without providing specifics as to the claims being  
6 discharged in the July order, that *Shoaf* cannot apply to  
7 create a res judicata effect from the failure to appeal that  
8 order.

9 THE COURT: But is that really what we're talking  
10 about, a discharge of certain claims? We're talking about a  
11 protocol that the Court established which wasn't appealed.

12 MR. BRIDGES: Your Honor, your order does many  
13 things. We're talking about a few of them in one paragraph of  
14 the order. And in that order -- in that paragraph, yes, it  
15 creates a protocol for determining the colorability of some  
16 claims, claims that rise to the level of gross negligence or  
17 intentional misconduct. It does not create a protocol for  
18 claims that fall below that threshold, claims for ordinary  
19 negligence, as an example.

20 THE COURT: Okay.

21 MR. BRIDGES: For breach of contract that's not  
22 intentional, is not grossly negligent, it's just a breach of  
23 contract. It can even be faultless. There's still liability.  
24 There's still a jury right under the Seventh Amendment for  
25 faultless breach of contract.



1           The protocols in the order do not address such claims  
2 other than to bar them. To discharge them. And thus, yes,  
3 it's a release, it's a discharge of those claims. It can be  
4 viewed as a permanent injunction against bringing such claims.  
5 It's what's -- it's what's not allowed by the *Applewood Chair*  
6 case and by *Pacific Lumber*.

7           THE COURT: All right. So you're arguing that was --  
8 the wording of the order was not specific enough to apprise  
9 affected parties of what they were releasing, they're  
10 releasing claims based on ordinary negligence against Mr.  
11 Seery? That's not specific enough?

12           MR. BRIDGES: Correct. Future unproved claims, the  
13 factual basis for which has not happened yet. Those cannot be  
14 and were not disclosed with any specificity in this order.

15           If we compare it to *Shoaf* and to *Espinosa*, in *Shoaf* what  
16 we had was a guaranty, Shoaf's guaranty on a transaction that  
17 was listed in the actual release, describing what the  
18 transaction was that was being -- that the guaranty was being  
19 released for.

20           In *Espinosa*, what we had was a student loan --

21           THE COURT: Right.

22           MR. BRIDGES: -- that was listed in the plan  
23 specifically, as the only specific indebtedness.

24           Here, we don't have any of that specificity. What we have  
25 is a notice to the entire world, Your Honor, that for an

1 unlimited period of time any claim for ordinary negligence,  
2 for ordinary breach of contract or fiduciary duty against Mr.  
3 Seery is barred if it relates to his CEO role. And his CEO  
4 role means as a manager of property, exactly precisely what  
5 959(a) is talking about.

6 Those jury rights (garbled) claims cannot be released,  
7 discharged, expunged, done away with, in an order that isn't  
8 explicit.

9 On top of that, even in an explicit order, 959(a) tells  
10 the Court it cannot deprive a litigant of its jury trial  
11 right.

12 THE COURT: Well, as anyone knows who's been around a  
13 while in this case, my brain sometimes goes down an unexpected  
14 trail, and maybe this one is one of those situations. Are  
15 there contracts that your clients would rely on in potential  
16 litigation?

17 MR. BRIDGES: Yes, Your Honor.

18 THE COURT: What are those contracts?

19 MR. BRIDGES: It is a management contract. I don't  
20 think I can give you the specifics at this moment, but I  
21 probably can before we're done here today. A management  
22 contract in which the Debtor provides advisory and management  
23 services to the DAF --

24 THE COURT: Well, you know, the shared services  
25 agreements that we heard so much about in this case? A shared

1 service agreement? I can't remember, you know, which entities  
2 have them and which do not at times. So, --

3 MR. BRIDGES: The shared services agreement is one of  
4 those contracts, Your Honor.

5 THE COURT: Okay.

6 MR. BRIDGES: It's not the only one.

7 THE COURT: And what are the others?

8 MR. BRIDGES: There's -- the other is the investment  
9 advisory agreement.

10 THE COURT: Those two?

11 MR. BRIDGES: (no response)

12 THE COURT: Those are the only two?

13 MR. BRIDGES: There may be one other, Your Honor.  
14 I'm not sure.

15 THE COURT: Are they in evidence?

16 MR. BRIDGES: I can find out shortly.

17 THE COURT: Are they in evidence? We haven't talked  
18 about evidence yet, but are they going to be in evidence,  
19 potentially?

20 MR. BRIDGES: They are referenced in the District  
21 Court case, the complaint, which is in evidence.

22 THE COURT: I'm asking, are --

23 MR. BRIDGES: But those contracts I don't believe are  
24 listed as exhibits here in this motion, no.

25 THE COURT: They are not? Okay.

1 Well, what my brain is thinking about here is, of the  
2 umpteen agreements I've seen -- more than umpteen -- of the  
3 many, many agreements I've seen over time in this case, so  
4 often there's a waiver of jury trial rights, as I recall, as  
5 well as an arbitration clause. I just was curious, hmm, you  
6 know, you talked a lot about your clients' jury trial rights:  
7 do we know that these agreements have not waived those?

8 MR. BRIDGES: Your Honor, I think I can answer that  
9 by the end of our hearing. I don't have an answer off the top  
10 of my head. What I can tell you is a jury right has been  
11 demanded in the federal court complaint, which is in evidence,  
12 and that opposing counsel has brought no evidence indicating  
13 that they have the defense of our having waived the right to a  
14 jury trial here.

15 THE COURT: Okay. Well, I just --

16 MR. BRIDGES: Or arbitra...

17 THE COURT: -- would think that you would know that.  
18 Does anyone know that on the Debtor's side off the top of your  
19 head?

20 MR. POMERANTZ: I do not, Your Honor.

21 THE COURT: Uh-huh.

22 MR. POMERANTZ: And to Mr. Bridges' last point, we  
23 have filed a motion to dismiss. We have not answered the  
24 complaint. So any time to object to their jury trial right  
25 would be in the context of the answer. So the implication

1 that we have not raised the issue and therefore it doesn't  
2 exist is just not a correct implication and connection he's  
3 trying to draw.

4 THE COURT: Okay. All right.

5 Well, let me also ask you about this. I'm obsessing a  
6 little over the *Barton* doctrine and your insistence that it  
7 does not provide authority or an analogy here.

8 Well, for one thing, is there anything in the Fifth  
9 Circuit case *Sherman v. Ondova* that you think either helps you  
10 or hurts you on that point? I'm intimately familiar with it,  
11 although I haven't read it in a while, because it was my  
12 opinion that the Fifth Circuit affirmed. And I spent a lot of  
13 time thinking about that. It was a trustee, a traditional --  
14 well, no, a Chapter 11 trustee and his counsel. But anything  
15 from that case that you think is worthy of pointing out here?

16 MR. BRIDGES: No, Your Honor. I'm not -- nothing  
17 comes to mind. That case is not fresh on my mind.

18 What I would tell you is that *Barton* doctrine and the  
19 business judgment rule are incompatible, and the appointment  
20 of a trustee never involves application of the business  
21 judgment rule or deference to the Debtor or another party in  
22 terms of making that appointment.

23 The *Barton* doctrine, as it applies to trustees, is viewed  
24 as an extension, to some extent, of judicial immunity to the  
25 trustee, who is chosen by, selected by the Court and assigned

1 by the Court to carry out certain functions. That --

2 THE COURT: Well, let me --

3 MR. BRIDGES: -- quasi-immunity --

4 THE COURT: -- stop you there. You say it's an  
5 extension of immunity. But isn't it, by nature, really a  
6 gatekeeping provision? It's a gatekeeping provision, right?  
7 Before you even get to immunity, maybe, in a lawsuit, it's a  
8 gatekeeping function that the Supreme Court has blessed, you  
9 know, obviously in the context of a receiver, but appellate  
10 courts have blessed it in the bankruptcy context. The  
11 Bankruptcy Court can be the gatekeeper on whether the trustee  
12 or someone I think in a similar position can get sued or not.

13 And then we had that Fifth Circuit case after *Ondova*. It  
14 begins with a *V, Villegas* or something like that. Didn't  
15 that, I don't know, further ratify, if you will, the whole  
16 *Barton* doctrine by saying, oh, just because they're noncore  
17 claims, state law or non-bankruptcy law claims, doesn't mean,  
18 after *Stern*, the Bankruptcy Court still cannot serve the  
19 gatekeeper function.

20 Tell me what you disagree. That's my kind of combined  
21 reading of all of that.

22 MR. BRIDGES: Your Honor, I have to parse it out.  
23 There's a lot to unpack there. If I can make sure to get in  
24 the follow-ups, I can start with saying it's okay for the  
25 Court in many instances to act as a gatekeeper.

1 THE COURT: Okay.

2 MR. BRIDGES: Both under *Barton* -- under *Barton*, or  
3 when the *Barton* exception in 959(a) applies, under the Court's  
4 general equitable powers, that gatekeeping functions are not  
5 across-the-board prohibited, --

6 THE COURT: Okay.

7 MR. BRIDGES: -- and we aren't trying to argue that  
8 they're prohibited across the board.

9 THE COURT: Okay.

10 MR. BRIDGES: Now, to try to dig into that a little  
11 deeper, the order does two things: gatekeeping as to some  
12 claims, and, frankly, discharging or barring other claims.  
13 Those are two separate functions.

14 The first one, the gatekeeping, may be, in some  
15 circumstances, which we'll come to, many circumstances, may be  
16 allowable, may be even mandatory under *Barton*, not even  
17 requiring an order from this Court, for the gatekeeping of  
18 *Barton* to apply. But nonetheless, allowable in many instances  
19 under the Court's general equity powers under 959(a). That  
20 part is right about gatekeeping.

21 It does not create jurisdiction in this Court where 157(d)  
22 deprives this Court of jurisdiction. Just because it's  
23 related to bankruptcy isn't enough to say that the Court  
24 therefore has jurisdiction if, one, if mandatory withdrawal of  
25 the reference is required.



1           Furthermore, Your Honor, that gatekeeping function, under  
2 the equity powers authorized by 959(a), will not allow a court  
3 to discharge or -- or deprive, is the word I'm looking for --  
4 deprive a litigant of their right to a trial -- a specific  
5 kind of trial, a jury trial -- but a trial. And by crafting  
6 an order that says certain kinds of claims that do (garbled)  
7 jury rights are barred, rather than just providing a  
8 gatekeeper provision, flat-out bars them, that doesn't -- that  
9 doesn't comply with 959.

10           THE COURT: Okay.

11           MR. BRIDGES: Your Honor, if I could add one last  
12 thing.

13           THE COURT: Go ahead.

14           MR. BRIDGES: The Supreme Court's *Stern* case points  
15 out that -- that it's -- well, actually, it's the *Villegas*  
16 case from the Fifth Circuit --

17           THE COURT: The one I mentioned.

18           MR. BRIDGES: -- points out that *Stern* -- *Stern* --  
19 yes, you did. *Stern* did not create an exception to the *Barton*  
20 doctrine. And that gives -- that endorses a *Barton* court's  
21 ability to perform gatekeeping, even over claims that *Stern*  
22 says there would not be jurisdiction over.

23           Contrast that with 959(a), which *Collier on Bankruptcy* and  
24 the Fifth Circuit have held is an exception to the *Barton*  
25 doctrine. Because of that exception, *Barton* no longer

1 applies, and what you're using in invoking a gatekeeper order  
2 is the Court's inherent equitable powers, its general powers  
3 in equity. And those equity powers are cabined. They're  
4 broad, but they're cabined by 959(a)'s prohibition of doing  
5 away with a litigant's right to a trial, a jury trial.

6 Now, I also -- counsel is telling me I should note for the  
7 record that Mr. Mark Patrick is here as a representative of  
8 our clients. But Your Honor, I'll -- I will quit now unless  
9 you have further questions for me.

10 THE COURT: All right. I do not at this time. Mr.  
11 Morris or Mr. Pomerantz, who's going to make the argument?

12 MR. POMERANTZ: It's me, Your Honor.

13 OPENING STATEMENT ON BEHALF OF THE DEBTOR

14 MR. POMERANTZ: And I'll start with the jury trial  
15 right. In the last few minutes, we have been able to  
16 determine that the Second Amended and Restated Investment  
17 Advisory Agreement between the DAF and the Debtor has a broad  
18 jury trial waiver under 14(f). And in addition, as I will  
19 include in my discussion, there is no private right of action  
20 under the Investment Advisers Act.

21 I think those two points are fatal to Movants' argument,  
22 and probably I can get away with not even responding to the  
23 others. But since I prepared a lengthy presentation to  
24 address the issues that were raised today, and also the half  
25 hour that Mr. Bridges spent with Your Honor on June 8th in

1 which was his first opening statement on the motion for  
2 reconsideration, I'll now proceed.

3 THE COURT: All right.

4 MR. POMERANTZ: The arguments that the Movants made  
5 in the original motion essentially boil down to one legal  
6 proposition, that the Court did not have jurisdiction to enter  
7 the July 16th order because those orders impermissibly  
8 stripped the District Court from jurisdiction, in violation of  
9 (inaudible) Supreme Court precedent and 28 U.S.C. Section  
10 157(d).

11 As with all things Dondero, the arguments continue to  
12 morph, and you heard argument at the contempt hearing on June  
13 8th and further argument today that now the prospective  
14 exculpation for negligence in the order is also unenforceable  
15 and should be modified.

16 Movants continue to try to distance themselves from the  
17 January 9th order and argue that it is not relevant because  
18 they seek to pursue claims against Mr. Seery as CEO and not as  
19 an independent director. Movants ignore, however, that the  
20 January 9th order not only protects Mr. Seery in his role as  
21 the independent director, but also as an agent of the board.  
22 I will walk the Court through my arguments on that issue in a  
23 few moments.

24 Of course, the Movants had no explanation, Your Honor, for  
25 the question of why it took them until May of 2021, 10 months

1 after the entry of the July 16th order that appointed Mr.  
2 Seery as CEO and CRO, and 16 months after the Court appointed  
3 the independent board, with Mr. Dondero's blessing and  
4 consent, as a substitute for what would have surely been the  
5 imminent appointment of a Chapter 11 trustee.

6 Movants try to distance themselves from the prior orders  
7 by essentially arguing that the DAF is a newcomer to the  
8 Chapter 11 and is not under Mr. Dondero's control but is  
9 rather managed separately and independently by Mr. Patrick,  
10 who recently replaced Mr. Scott.

11 The Movants admit, as they must, that the DAF is the  
12 parent and the sole shareholder of CLO Holdco and conducts its  
13 business through CLO Holdco, and both entities conduct their  
14 business through one individual. It was Grant Scott then;  
15 it's Mark Patrick now. So even if Mr. Dondero does not  
16 control the DAF and CLO Holdco, which issue was the subject of  
17 lengthy testimony in connection with the DAF hearing, both the  
18 DAF and the CLO Holdco are bound by the Debtor's res judicata  
19 argument, which I will discuss shortly.

20 In any event, I really doubt the Court is convinced that  
21 the DAF operates truly independently of Mr. Dondero any more  
22 than the Court has been convinced that the Advisors, the  
23 Funds, Dugaboy and Get Good, all operate independently from  
24 Mr. Dondero. The only explanation for the delay is that Mr.  
25 Dondero has been and continues to be unhappy with the Court's

1 rulings and has now hired a new set of lawyers in a desperate  
2 attempt to evade this Court's jurisdiction. Having failed in  
3 their attempt to recuse Your Honor from the case, this is  
4 essentially their last hope.

5 And these new lawyers, Your Honor, have not only filed  
6 this DAF lawsuit in the District Court which is the subject of  
7 the contempt motion and today's motion, but they also filed  
8 another lawsuit in the District Court on behalf of an entity  
9 called PCMG, another Dondero entity, challenging yet another  
10 of Mr. Seery's postpetition decisions.

11 And there's no doubt that this is only the beginning. Mr.  
12 Dondero recently told Your Honor at a hearing that there were  
13 many more sets of lawyers waiting in the wings. And as the  
14 Court remarked at the hearing on the Trusts' motion to compel  
15 compliance with Rule 2015.3, the Trusts were trying through  
16 that motion to obtain information about the Debtor's control  
17 entities so that they could file more lawsuits against the  
18 Debtor, a concern that Mr. Draper unconvincingly denied.

19 I would like to focus the Court preliminarily on exactly  
20 what the January 9th and July 16th orders do, because Movants  
21 try to confuse things by casting the entire order with a broad  
22 brush of their jurisdictional overreach arguments, and they  
23 misinterpret Supreme Court and Fifth Circuit precedent.

24 I would like to put up on the screen the language of  
25 Paragraph 10 of the January 9th order and Paragraph 35

1 (garbled) of the July 16th.

2 Your Honor is very familiar with these orders, I'm sure,  
3 having dealt with them in connection with confirmation and in  
4 prior proceedings. But to recap, the orders essentially do  
5 three things.

6 First, they require the parties to first come to the  
7 Bankruptcy Court before commencing or pursuing a claim against  
8 certain parties.

9 Second, they provided the Court with the sole jurisdiction  
10 to make a finding of whether the party has asserted a  
11 colorable claim of negligence -- of willful misconduct or  
12 gross negligence.

13 And lastly, the orders provided the Court with exclusive  
14 jurisdiction over any claims that the Court determined were  
15 colorable.

16 The protected parties under the January 9th order are the  
17 independent directors, their agents and advisors, which, as I  
18 mentioned earlier, includes Mr. Seery -- who, at least as of  
19 March 2020, was acting as the agent on the board's behalf as  
20 the CEO -- for any actions taken under their direction.

21 The protected parties under the July 16th order are Mr.  
22 Seery, as the CEO and CRO, and his agents and advisors.

23 Movants spend a lot of time in their moving papers and  
24 reply arguing that the Court may not assert exclusive  
25 jurisdiction over any claims that pass through the gate. They

1 also spend a lot of time arguing that the Bankruptcy Court  
2 does not even have jurisdiction at all to assert -- to  
3 adjudicate claims against Mr. Seery because such claims are  
4 subject to mandatory withdrawal under Section 157(d).

5 The Debtor doesn't agree, and has briefed why mandatory  
6 withdrawal of the reference is inapplicable. The Debtor has  
7 also filed in the District Court a motion to enforce the  
8 reference in effect in this district which refers cases in  
9 this district arising under, arising in, or related to Chapter  
10 11 to the Bankruptcy Court.

11 The motion to enforce the reference, Your Honor, which  
12 extensively briefs this issue, is contained in Exhibit 3 of  
13 the Debtor's exhibits.

14 We were somewhat surprised that the complaint filed in the  
15 District Court wasn't automatically referred to this Court  
16 under the standing order in effect in this district, given the  
17 related bankruptcy case, the Court's prior approval of the  
18 HarbourVest settlement, and the appeal in the District Court  
19 of the HarbourVest settlement.

20 When we dug a little further, we found out that Movants  
21 filed a civil case cover sheet accompanying the complaint in  
22 the District Court. They neglected in that initial filing to  
23 point out that there was any related case to the lawsuit they  
24 filed.

25 Mr. Bridges fell on his sword at the contempt hearing on



1 June 8th and took complete responsibility for the oversight.  
2 I commend him for not trying to argue that the bankruptcy  
3 case, the HarbourVest settlement, and the District Court  
4 appeal are not related cases that would require disclosure, an  
5 argument that surely would have been unsupportable.

6 But as I said at the contempt hearing, I find it curious  
7 that such an important issue was overlooked, an issue which  
8 would have likely changed the entire trajectory of the  
9 proceedings and landed the DAF lawsuit in this Court rather  
10 than the District Court.

11 And this Tuesday, Your Honor, Movants filed a revised  
12 civil cover sheet with the District Court. Although they  
13 referenced the bankruptcy case as a related case, they didn't  
14 bother to mention the appeal already pending in the District  
15 Court regarding the HarbourVest settlement -- surely, a  
16 related case.

17 Your Honor also asked Mr. Bridges at the June 8th hearing  
18 whether it was an oversight or intentional that he didn't  
19 mention 28 U.S.C. Section 1334 as a basis for jurisdiction in  
20 his complaint. Mr. Bridges had no answer for Your Honor then,  
21 and has given no answer now. His only comment at the hearing  
22 last time was that it must have been Ms. Sbaiti that wrote it  
23 because he had no recollection of it.

24 So, Your Honor, it's no surprise that Movants conveniently  
25 found themselves in the District Court, which was their

1 ultimate strategy from the get go.

2 In any event, Your Honor, we have briefed the withdrawal  
3 of the reference issue. A response by the Movants is due --  
4 CLO Holdco and DAF is due on June 29th. And we hope the  
5 District Court will decide soon thereafter whether to enforce  
6 the reference.

7 While I'm happy to argue why Movants' mandatory withdrawal  
8 of the reference argument is [not] persuasive, I don't think  
9 it's necessary, but I do, again, want to highlight that there  
10 is no private right of action under the Investment Advisers  
11 Act.

12 Your Honor, it's not really relevant to today's hearing,  
13 since we have argued in opposition to the motion before Your  
14 Honor that resolving the issue of the Bankruptcy Court's  
15 jurisdiction to adjudicate claims contained in the complaint  
16 as they relate to Mr. Seery is premature at this point. The  
17 January 9th and July 16th orders first require the Court to  
18 determine whether a claim is colorable. It's not until this  
19 Court determines if a claim is colorable that the decision on  
20 where the lawsuit should be tried is relevant.

21 Having said that, Your Honor, we read the Movants' reply  
22 brief very carefully and noticed in Footnote 6 that the  
23 Movants state that modifying the exclusive grant of  
24 jurisdiction to adjudicate any claims that pass through the  
25 gate to include the language "to the extent permissible by

1 law," in the same way the Debtor modified the plan, would  
2 resolve the motion. So let's look at the provision as it  
3 exists in the plans.

4 Ms. Canty, if you can put up the next demonstrative,  
5 please.

6 This provision provides that the Bankruptcy Court will  
7 have sole and exclusive jurisdiction to determine whether a  
8 claim or cause of action is colorable, and, only to the extent  
9 legally permissible and provided in Article XI, shall have  
10 jurisdiction to determine -- to adjudicate the underlying  
11 colorable claim or cause of action.

12 The Movants request in their reply brief in Footnote 6  
13 that the July 16th order be given the plan treatment. That  
14 treatment: sole authority to determine colorability and  
15 jurisdiction, and, to the extent legally permissible, to  
16 adjudicate underlying claim, only if jurisdiction existed.

17 After reviewing the reply brief and prior to the June 8th  
18 hearing, we decided that we would agree to modify both the  
19 January 9th and the July 16th orders to provide that the  
20 Bankruptcy Court would only have jurisdiction to adjudicate  
21 claims that pass through the colorability gate to the extent  
22 permissible by law.

23 Prior to the June 8th hearing, Mr. Morris and I had a  
24 conversation with Mr. Bridges. We conferred about a potential  
25 resolution and a proposed modification. Mr. Bridges indicated

1 they were interested in exploring a resolution and wanted to  
2 --

3 MR. BRIDGES: Objection, Your Honor.

4 THE COURT: There's an objection?

5 MR. BRIDGES: Objection, Your Honor. There's a Rule  
6 408 settlement discussion. He's welcome to talk about the  
7 results, but he shouldn't be talking about what was -- what  
8 was proposed by opposing counsel in a settlement conversation.

9 THE COURT: Okay. I overrule.

10 MR. POMERANTZ: Your Honor, this was not --

11 THE COURT: I don't think this is a 408 issue.

12 Continue.

13 MR. BRIDGES: Thank you.

14 MR. POMERANTZ: The stipulation and order which we  
15 provided to counsel is attached to my declaration, which is  
16 found at Document 2418, and it was filed in connection with a  
17 Notice of Revised Proposed Orders that we filed at Docket  
18 2417. And I would like to put up on the screen the relevant  
19 paragraphs of the order that we provided to the Movants.

20 So, you see, we agreed to modify each of the orders at the  
21 end to do what the plan says. The Court would only have  
22 jurisdiction for claims passing through the gate if the Court  
23 had jurisdiction and it was legally permissible.

24 Movants' counsel, however, responded with a mark-up that  
25 went beyond -- went beyond what Movants proposed in Footnote 6

1 and sought to fundamentally change the January 9th and July  
2 16th orders in ways that were not acceptable to the Debtor and  
3 not even contemplated by the original motion.

4 Ms. Canty, can you put up on the screen the relevant  
5 paragraphs of the response we received?

6 Specifically, Your Honor, you see at the first part they  
7 wanted to provide that the only -- the order only applied to  
8 claims involving injury to the Debtor, presumably as opposed  
9 to alleged injuries to affiliated funds or third parties.  
10 They also provided that the Court's ability to make the  
11 initial colorability determination was also qualified by "to  
12 the extent permissible by law" in the way that the Court --  
13 that the Debtor agreed to modify the ultimate adjudication  
14 jurisdiction provision.

15 Your Honor, Movants haven't even talked about this back  
16 and forth. They haven't talked about their about-face. And  
17 I'll leave it for Your Honor to read their Footnote 6 that  
18 said it would resolve their motion, the back and forth, our  
19 proposal, and now Mr. Bridges' modified, morphed arguments  
20 that now point out other issues.

21 In any event, Your Honor, we made the change, and we think  
22 it should resolve the motion, or at least it resolves part of  
23 the motion. There can't be any argument that the Court is  
24 trying to exert exclusive jurisdiction on claims that pass  
25 through the gate.

1           What apparently remains from the arguments raised by the  
2 Movants is the argument that the Court does not even have  
3 jurisdiction to act as a gatekeeper in the first place because  
4 it doesn't have jurisdiction of the underlying lawsuit. And  
5 on June 8th and today, they've added a new argument, that the  
6 orders impermissibly exculpate Mr. Seery and others, violate  
7 their jury trial rights, and are contrary to the Fifth Circuit  
8 precedent.

9           Movants claims that the orders are a jurisdictional  
10 overreach, a violation of constitutional proportions, a  
11 violation of due process, and inconsistent with several U.S.  
12 Supreme Court cases. But, of course, they cite no cases whose  
13 facts are even remotely similar to this one. Instead, they  
14 are content to rely on general statements regarding bankruptcy  
15 jurisdiction, how it is derived from district court  
16 jurisdiction and is constitutionally limited, legal  
17 propositions which are not terribly controversial or even  
18 applicable to these facts.

19           There are several arguments -- I mean, there are several  
20 reasons, Your Honor, why Movants' arguments fail. Initially,  
21 Movants have not cited any authority, any statute, or any rule  
22 which would allow this Court to revisit the January 9th and  
23 July 16th orders. As I will discuss in a moment, Your Honor,  
24 *Republic v. Shoaf*, a case the Court is very familiar in and  
25 relied on in connection with plan confirmation, bars a

1 collateral attack on these orders under the doctrine of res  
2 judicata.

3 Similarly, as the Court remarked on June 8th, the Supreme  
4 Court's *Espinosa* decision, which rejected an attack based upon  
5 Federal Rule of Civil Procedure 60(b)(4) to a prior order that  
6 may have been unlawful, prohibits the Court from now  
7 reconsidering the January 9th and July 16th orders.

8 But even if Your Honor rules that res judicata does not  
9 apply, there are two independent reasons why the orders were  
10 not an unlawful extension of the Court's jurisdiction. The  
11 first is because the Court had jurisdiction to enter both of  
12 those orders as the ability to determine the colorability of  
13 claims is within the jurisdiction of the Court. The second is  
14 because the orders are justified by the *Barton* doctrine.

15 Lastly, Your Honor, Movants' argument that the Court may  
16 not act as a gatekeeper to determine the colorability of a  
17 claim for which it may not have jurisdiction is incorrect, and  
18 as Your Honor has mentioned and as Mr. Bridges unconvincingly  
19 tried to distinguish, the Fifth Circuit *Villegas v. Schmidt*  
20 case is a case on point and resolves that issue.

21 Turning to res judicata, Your Honor, it prevents the Court  
22 from revisiting these governance orders. CLO Holdco had  
23 formal notice of the Seery CEO motion and the opportunity to  
24 respond. It failed to do so. It is clearly bound.

25 As reflected on Debtor's Exhibit 4, CLO Holdco is a



1 wholly-owned subsidiary of the DAF. The DAF is its sole  
2 shareholder. There is no dispute about that. Importantly, at  
3 the time of both the January and July orders, Grant Scott was  
4 the only human being authorized to act on behalf of CLO Holdco  
5 and the DAF. The DAF did not respond to the Seery CEO motion,  
6 either.

7 And why is that important, Your Honor? It's because  
8 Movants argue in their reply that the DAF cannot be bound by  
9 res judicata because they did not receive notice of the July  
10 16th order. However, Your Honor, that is not the law. Res  
11 judicata binds parties to the dispute and their privies, and  
12 the DAF is bound to the prior orders even though it did not  
13 receive notice.

14 There are several cases, Your Honor, that stand for this  
15 unremarkable proposition. First I would point Your Honor to  
16 the Fifth Circuit's opinion of *Astron Industrial Associates v.*  
17 *Chrysler*, found at 405 F.2d 958, a Fifth Circuit case from  
18 1968. In that case, Your Honor, the Fifth Circuit held that  
19 the appellant was barred by the doctrine of res judicata from  
20 bringing a claim because its parent, which was its sole  
21 shareholder, would have been bound by res judicata.

22 *Astron* is consistent with the 1978 Fifth Circuit case of  
23 *Pollard v. Cockrell*, 578 F.2d 1002 (1978). And the Northern  
24 District of Texas in 2000 case of *Bank One v. Capital*  
25 *Associates*, 2000 U.S. Dist. LEXIS 11652, found that a parent

1 and a sole shareholder of an entity couldn't assert res  
2 judicata as a defense when those claims could have been  
3 brought against its wholly-owned subsidiary.

4 And lastly, Your Honor, the 2011 Southern District of  
5 Texas case, *West v. WRH Energy Partners*, 2011 LEXIS 5183, held  
6 that res judicata applied with respect to a partnership's  
7 general partner because the general partner was in privity  
8 with the partnership.

9 These cases are spot on and make sense. DAF is CLO  
10 Holdco's parent. Grant Scott was the only live person to  
11 represent these entities in any capacity at the relevant  
12 times. Accordingly, just as CLO Holdco is bound, DAF is  
13 bound.

14 Allowing DAF to assert a claim when its wholly-owned and  
15 controlled subsidiary is barred would allow entities to  
16 transfer claims amongst their related entities in order to  
17 relitigate them and they would never be finality. And, of  
18 course, Jim Dondero, as we know, consented to the January 9th  
19 order, which provided Mr. Seery protection in a variety of  
20 capacities.

21 And as Your Honor has pointed out, and as Mr. Bridges  
22 didn't have an answer for, neither CLO Holdco nor the DAF or  
23 any other party appealed any of the governance orders. And  
24 nobody challenged the validity of these orders at the  
25 confirmation hearing, where the terms of these orders were

1 front and center.

2 And importantly, Your Honor, the orders are clear and  
3 unambiguous. They require a Bankruptcy Court [sic] to seek  
4 Bankruptcy Court approval before they commence or pursue an  
5 action against the independent board, the CEO, CRO, or their  
6 agents. And they clearly and unambiguously set the standard  
7 of care for actions prospectively: gross negligence or  
8 willful misconduct.

9 The Bankruptcy Court had jurisdiction to enter the  
10 governance orders, which, as expressly indicated in the  
11 orders, were core proceedings dealing with the administration  
12 of the estate. No one challenged this finding of core  
13 jurisdiction. And as I will discuss later, the failure to  
14 challenge core jurisdiction is waived under applicable Supreme  
15 Court and Fifth Circuit precedent.

16 Your Honor, the Court [sic] does not argue that Movants  
17 have waived their right to seek adjudication of a lawsuit that  
18 passes through the colorability gate by an Article III Court.  
19 The issue is not before the Court, but the changes to the  
20 order that the Debtor agreed to make clearly -- clearly will  
21 provide Mr. Bridges' clients the ability to make that  
22 determination.

23 The Debtor is, however, arguing that the Movants have  
24 waived their right to contest the core jurisdiction of the  
25 Bankruptcy Court to make the determination that the claims are

1 colorable in the first place, and to challenge the exculpation  
2 provisions provided to the beneficiaries of those orders.

3 Accordingly, Your Honor, the elements of res judicata are  
4 satisfied. Both proceedings involve the same parties. The  
5 prior judgment was entered by a court of competent  
6 jurisdiction. The prior order was a final judgment on its  
7 merits. And they involved the same causes of action.

8 Importantly, the members of the independent board,  
9 including Jim Seery, relied on the protections contained in  
10 the January 9th and July 16th orders and would not have  
11 accepted these appointments if the protections weren't  
12 included. And how do we know this? Because each of them,  
13 both Mr. Seery and Mr. Dubel, both testified at the  
14 confirmation hearing on this very topic.

15 And I would like to put up on the screen an excerpt from  
16 Mr. Seery's testimony at confirmation, which is testimony  
17 included in the February 2nd, 2021 transcript, which is  
18 Exhibit 2 of the Debtor's exhibits.

19 THE COURT: Okay.

20 MR. POMERANTZ: And I would like to just read this,  
21 Your Honor.

22 "Q Okay. You mentioned that there were certain  
23 provisions of the January 9th order that were important  
24 to you and the other independent directors. Do I have  
25 that right?"

1 MR. POMERANTZ: A little bit later on, Mr. Seery  
2 testifies:

3 "A And then ultimately there'll be another provision  
4 in the agreement here, I don't see it off the top of my  
5 head, but a gatekeeper provision. And that provision"  
6 --

7 "Q Hold on one second, Mr. Seery."

8 MR. POMERANTZ: Please scroll.

9 "Q So, Paragraph 4 and 5, were those -- were those --  
10 were those provisions put in there at the insistence of  
11 the prospective independent directors?

12 "A Yes.

13 "Q Okay. Can we go to Paragraph 10, please? There  
14 you go."

15 Mr. Morris: Is this the other provision that you were  
16 referring to?

17 "A This is -- it's become to be known as the  
18 gatekeeper provision, but it's a provision that I  
19 actually got from other cases -- again, another very  
20 litigious case -- that I thought it was appropriate to  
21 bring it into this case. And the concept here is that  
22 when you are dealing with parties that seem to be  
23 willing to engage in decade-long litigation and  
24 multiple forums, not only domestically but even  
25 throughout the world, it seemed important and prudent

1 to me and a requirement that I set out that somebody  
2 would have to come to this Court, the Court with  
3 jurisdiction over these matters, and determine whether  
4 there was a colorable claim. And that colorable claim  
5 would have to show gross negligence and willful  
6 misconduct -- i.e., something that would not otherwise  
7 be indemnifiable" --

8 MR. POMERANTZ: Hold on one second.

9 "A So, basically, it set an exculpation standard for  
10 negligence. It exculpates the directors from  
11 negligence, and if somebody wants to bring a cause  
12 against the directors, they have to come to this Court  
13 first to get a finding that there's a colorable claim  
14 for gross negligence or willful misconduct."

15 "Q Would you have accepted the engagement as an  
16 independent director without the Paragraphs 4, 5, and  
17 10 that we just looked at?

18 "A No, these were very specific requests. The  
19 language here has been smithed, to be sure, but I  
20 provided the original language for Paragraph 10 and  
21 insisted on the guaranty provisions above to ensure  
22 that the indemnity would have some support.

23 "Q And ultimately did the Committee and the Debtor  
24 agree to provide all the protections afforded by  
25 Paragraphs 4, 5, and 10?

1 "A Yes."

2 MR. POMERANTZ: So, Your Honor, these -- this  
3 testimony also applied to as well as the CEO.

4 The testimony was echoed by Mr. Dubel, another member of  
5 the board. And I'm not going to put his testimony on the  
6 screen, but it can be found at Pages 272 to 281 of Exhibit 2,  
7 which is the February 2nd transcript.

8 Movants argue, however, that res judicata doesn't apply  
9 because the Court didn't have jurisdiction to enter these  
10 orders. And they argue that the order stripped the District  
11 Court of this jurisdiction. As I previously described, the  
12 Debtor is prepared to modify the governance orders to provide  
13 that the Court shall retain jurisdiction to -- on claims that  
14 pass through the gate only to the extent legally permissible.  
15 The modification does not appear to be good enough for the  
16 Movants. They continue to argue that the Bankruptcy Court  
17 can't even act as the exclusive gatekeeper to determine  
18 whether such actions are colorable as a prerequisite for  
19 commencing or pursuing an action.

20 The problem Movants run into is the Fifth Circuit's  
21 opinion of *Republic v. Shoaf* and various Supreme Court  
22 decisions, including *Espinosa*.

23 In *Shoaf*, the Fifth Circuit held that a party cannot  
24 subsequently challenge a confirmed plan that clearly and  
25 unambiguously released a third party, even if the Bankruptcy



1 Court lacked jurisdiction to approve the release in the first  
2 place. Movants' proper recourse was to appeal the governance  
3 orders, not to seek to collaterally attack them.

4 In *Shoaf*, the Fifth Circuit held that the confirmed plan  
5 was res judicata with respect to a suit by the creditor  
6 against the guarantor. And in so ruling, the Fifth Circuit  
7 says that the prong of res judicata standard that requires an  
8 order, prior order to be made by a court of competent  
9 jurisdiction is satisfied regardless of whether the issue was  
10 actually litigated. This is because whenever a court enters  
11 an order, it does so by implicitly making a finding of its  
12 jurisdiction, a determination that can't be attacked. And in  
13 fact, in the January 9th and the July 16th orders, it wasn't  
14 implicit, the Court's jurisdiction; it was set out that the  
15 Court had core jurisdiction.

16 Movants try to brush *Shoaf* aside, arguing that is the only  
17 case the Debtor cites to support res judicata argument and is  
18 a narrow opinion that has been questioned and distinguished.  
19 That's just not correct, Your Honor. Movants ignore that we  
20 have cited two United States Supreme Court cases, *Stoll v.*  
21 *Gottlieb* and *Chicot County Drainage District*, upon which the  
22 Fifth Circuit based its *Shoaf* decision. In each case, the  
23 U.S. Supreme Court gave res judicata effect to a Bankruptcy  
24 Court order that made a ruling party -- that a ruling party  
25 later claimed was beyond the Court's jurisdiction to do so.

1 In *Stoll*, it was a release of guaranty without jurisdiction,  
2 like *Shoaf*. In *Chicot*, it was an extinguishment of a bond  
3 claim without jurisdiction.

4 Similarly, Your Honor, the U.S. Supreme Court held in  
5 *Espinosa* that a party was not entitled to reconsideration of a  
6 Bankruptcy Court order under Federal Rule of Civil Procedure  
7 60(b)(4) discharging a student loan without making the  
8 required statutory finding of undue hardship in an adversary  
9 proceeding. And the Supreme Court reasoned in that opinion as  
10 follows: A judgment is not void, for example, simply because  
11 it may have been erroneous. Similarly, a motion under  
12 60(b)(4) is not a substitute for a timely appeal. Instead,  
13 60(b)(4) applies only in the rare instance where a judgment is  
14 premised either on a certain type of jurisdictional error or a  
15 violation of due process that deprives a party of notice or  
16 the opportunity to be heard.

17 Federal courts considering Rule 60(b)(4) motions that  
18 assert a judgment is void because of a jurisdictional defect  
19 generally have reserved it only for the exceptional case in  
20 which the court that rendered the judgment lacked even an  
21 arguable basis for jurisdiction. This case is not the  
22 exceptional -- exceptional circumstance that was referred to  
23 by *Espinosa*.

24 In addition, we argue in our brief, and I'll get to in a  
25 few moments, that both of the orders are justified under the

1 Barton doctrine.

2 Actually, before I go to that, Your Honor, I think Movants  
3 are really trying to distinguish *Espinosa* by arguing that the  
4 Court's order exculpating Mr. Seery for negligence liability  
5 did not provide people, mom-and-pop investors, with the due  
6 process informing them that they would not be able to assert  
7 duty claims based upon mere negligence. I think that's the  
8 core of Mr. Bridges' argument, that, hey, you entered an  
9 order, you gave this exculpation, it was inappropriate, and it  
10 couldn't be done.

11 There are several problems with Movants' argument. First,  
12 Movants mischaracterize both the facts and the law in  
13 connection with the Debtor's relationship with its investors.  
14 The Debtor is the registered investment advisor for HCLOF as  
15 well as approximately 15 to 18 CLOs. The only investor in  
16 HCLOF other than the Debtor is CLO Holdco. The investors in  
17 the CLOs are the retail funds advised by the Dondero advisors  
18 and the other -- and other institutional investors.  
19 Accordingly, the thousands of investors, the mom-and-pop  
20 investors whose due process rights have allegedly been  
21 trampled by the January 9th and July 16th orders, are not  
22 investors in any funds managed by the Debtor.

23 And, of course, I have mentioned, as I've mentioned  
24 before, no non -- non-Dondero investor, be it a mom-and-pop  
25 investor, another institutional investor, anyone unrelated to

1 Mr. Dondero, has ever appeared in this Court to challenge the  
2 Debtor's activities.

3 But more fundamentally, Your Honor, the Debtor does not  
4 owe fiduciary duties to investors in any of the funds that the  
5 Debtor advises. The fiduciary duty that the Debtor owes is to  
6 the funds themselves, not the investors in the funds.

7 And while Movants point to Mr. Seery's prior testimony to  
8 support the argument that the Debtor owes a duty to investors,  
9 Mr. Seery was not testifying as a lawyer and his testimony  
10 just cannot change the law.

11 As to each of the funds that the Debtor manages, HCLOF and  
12 the CLOs, they were each provided with actual notice of the  
13 January 16th -- the July 16th order and didn't object. And as  
14 Your Honor will recall, the Trustees for the CLOs, the party  
15 that could potentially have claims for breach of fiduciary  
16 duty, they participated in the January 9th hearing. They came  
17 to the Court and were concerned about the protocols that the  
18 Debtor was agreeing to with the Committee. We revised them.  
19 The Trustees didn't object. They didn't object then; they  
20 didn't object now. And, in fact, they consented to the  
21 assumption of the contracts between the Debtor and the CLOs.

22 So the argument that the orders, by having this  
23 exculpation for future conduct, violated due process rights of  
24 anyone and is the type -- essentially, the type of order that  
25 *Espinosa* would have contemplated could be attacked, is --

1 relies on faulty legal and factual premises. No duty to  
2 investors. No private right of action. And both -- and all  
3 the funds received due process.

4 In addition, Your Honor, as we argue in our brief and I'll  
5 get to in a few moments, both of the orders are justified  
6 under the *Barton* doctrine, as Mr. Seery is entitled to  
7 protection based upon how courts around the country have  
8 interpreted the *Barton* doctrine. As such, Mr. Seery is  
9 performing his role both as an agent of the independent board  
10 under the January 9th order, as a CEO under the July 16th  
11 order, as a quasi-judicial officer. And as Your Honor  
12 examined in the *Ondova* opinion which you mentioned, trustees  
13 are entitled to qualified immunity for damage to third parties  
14 resulting from simple negligence, provided that the trustee is  
15 operating within the scope of his duties and is not acting in  
16 an *ultra vires* manner.

17 So, exculpating the independent directors, their agents,  
18 and the CEO in the January 9th and July 16th orders was a  
19 recognition by this Court that they would be entitled to  
20 qualified immunity, much in the same way trustees are.

21 No doubt that Movants contend that this was error and that  
22 the Court overreached. However, the remedy for that overreach  
23 was an appeal, not a reconsideration 16 months later. The  
24 Court's orders based upon the determination that in this  
25 highly contentious case that these court officers needed to be

1 protected from negligence suits is not the exceptional case  
2 where the Court lacked any arguable basis for jurisdiction.  
3 Accordingly, this Court must follow *Espinosa*, *Shoaf*, *Stoll*,  
4 and *Chicot* and reject the attack on the prior court orders.

5 The only case Movants cite to challenge the Supreme  
6 Court's decision -- to challenge the Supreme Court precedent I  
7 mentioned and the Fifth Circuit's *Shoaf* decision is the  
8 *Applewood* case. *Applewood* is totally consistent with *Shoaf*.  
9 *Applewood* also involved a plan that purported to release a  
10 guaranty claim that the guarantor argued was res judicata in  
11 subsequent litigation regarding the guaranty. The Fifth  
12 Circuit held in that case that the plan was not res judicata.  
13 It made that ruling because the plan did not contain clear and  
14 unambiguous language releasing the guaranty. In that way, the  
15 Fifth Circuit distinguished *Shoaf*.

16 *Applewood* and *Shoaf* are consistent. A Bankruptcy Court  
17 order will be given res judicata effect, even if the Court  
18 didn't have jurisdiction to enter it, if the order was clear  
19 and unambiguous. In *Shoaf*, the release was. In *Applewood*, it  
20 wasn't.

21 Movants argued on June 8th and argue now that the  
22 *Applewood* case really argues -- really deals with prospective  
23 exculpation of claims. I went back and read Mr. Bridges'  
24 comments carefully of June 8th. He said *Applewood*,  
25 exculpation. Well, that's just not correct. *Applewood* is all

1 about requiring specificity of a (garbled) to give it res  
2 judicata effect. Claims that existed at that time, were they  
3 described clearly and unambiguously? Yes? *Shoaf* applies.  
4 No? *Applewood* does -- applies.

5 So how should the Court apply these principles here? The  
6 Court approved a procedure for certain claims in the  
7 governance orders. The procedure: come to Bankruptcy Court  
8 before pursuing a claim against the independent directors and  
9 Seery or their agents so that the Court can make a  
10 colorability determination. Clear and unambiguous. The  
11 governance orders each provide that the Bankruptcy Court had  
12 jurisdiction to enter the orders, and the orders were not  
13 appealed.

14 Movants attempt to confuse the Court and argue *Applewood*  
15 is on point because the January 9th and July 16th orders do  
16 not clearly identify specific claims that Movants now have  
17 that are being released. And because they're not specific,  
18 then basically it's an ambiguous release and *Applewood*  
19 applies.

20 The problem with the Movants' argument is that neither the  
21 January 9th or July 16th orders released claims that existed  
22 at that time. If they did, and if there wasn't an adequate  
23 description, I might agree with Mr. Bridges that *Applewood*  
24 applied. But there were no claims. It was prospective. It  
25 was a standard of care. The Court clearly and unambiguously



1 said what the standard of care would be going forward.  
2 Clearly, under *Shoaf* and Supreme Court precedent, they are  
3 entitled to res judicata because it's a clear and unambiguous  
4 provision. *Applewood* just simply doesn't apply.

5 Mr. Phillips at the last hearing made an impassioned plea  
6 to the Court for a narrow interpretation of the exculpation  
7 provisions in the January 9th and July 16th orders, and he  
8 argued that the Court could not possibly have intended for the  
9 exculpation for negligence to apply on a go forward basis. He  
10 thus argued to the Court that the Court should construe the  
11 exculpation narrowly and only apply it to potential claims of  
12 harm caused to the Debtor, as opposed to harm caused to third  
13 parties, which he said included thousands of innocent  
14 investors.

15 Of course, Mr. Phillips made those arguments unburdened by  
16 the actual facts and the prior proceedings which led to the  
17 entry of these orders, because, as he was the first to admit,  
18 he only became involved in the case a month ago.

19 As the Court recalls, and as reinforced by Mr. Seery's and  
20 Mr. Dubel's testimony I just mentioned, the exculpation  
21 provisions were included precisely to prevent Mr. Dondero,  
22 through any one of the entities he's owned and controlled, the  
23 Movants being two of those, from asserting baseless claims  
24 against the beneficiaries of those orders, exactly the  
25 situation Mr. Seery now finds himself in.

1           And, again, it bears emphasizing: throughout this case,  
2 not one of the purported public investors Mr. Phillips  
3 lamented would be prevented from holding Mr. Seery responsible  
4 for his conduct has ever appeared in this case to object about  
5 anything. And none of the directors of the funds, the funds  
6 where the Debtor acts as an investment adviser, have ever  
7 stepped foot in this court, either.

8           Even if the Court declines to apply res judicata, Your  
9 Honor, to prevent challenges to the governance orders, the  
10 Court has the jurisdiction, had the jurisdiction to include  
11 the gatekeeping provisions in those orders. The Bankruptcy  
12 Court derives its jurisdiction from 28 U.S.C. Section 157, and  
13 bankruptcy jurisdiction is divided into two parts: core  
14 matters, which are those arising in or arising under Title 11,  
15 and noncore matters, those matters which are related to a  
16 Chapter 11 case.

17           Bankruptcy Courts may enter final orders in core  
18 proceedings, and with the consent of parties, noncore  
19 proceedings. If a party does not consent to a final judgment  
20 in the noncore matters or waives its right to consent, then  
21 the Bankruptcy Court -- or does not waive its right to  
22 consent, then the Bankruptcy Court issues a report and  
23 recommendation to the District Court.

24           The seminal Fifth Circuit case on bankruptcy court  
25 jurisdiction is the 1987 case of *Wood v. Wood*, 825 F.2d 90.

1 There, the Fifth Circuit held that the Bankruptcy Court has  
2 related to jurisdiction over matters if the outcome of that  
3 proceeding could conceivably have any effect on the estate  
4 being administered in the bankruptcy.

5 More recently, the Fifth Circuit, in the 2005 case, in  
6 *Stonebridge Tech's*, elaborated on when a matter has a  
7 conceivable effect on the estate such as to confer Bankruptcy  
8 Court jurisdiction. There, the Fifth Circuit held that an  
9 action is related to bankruptcy if the outcome could alter the  
10 debtor's rights, liabilities, options, or freedom of action,  
11 either positively or negatively, and which in any way impacts  
12 upon the handling and the administration of the bankruptcy  
13 estate. It is against this backdrop, Your Honor, that the  
14 Court should evaluate its jurisdiction to have entered the  
15 orders.

16 So, again, what did the orders do? They established  
17 governance over the Chapter 11 debtor with new independent  
18 directors being approved. They established the procedures and  
19 protocols of how transactions were going to be presented to  
20 and approved by the Committee. They vested in the Committee  
21 certain related-party claims, and they provided for the  
22 procedures parties would have to follow to assert any claims  
23 against the independent directors and the CRO and the agents  
24 and advisors.

25 Your Honor, it's hard to imagine that there is a more core

1 order than the entry of these orders. At the time the orders  
2 were entered, the Court was well aware of the potential for  
3 acrimony from Mr. Dondero and his related entities, and  
4 included the gatekeeper provisions to prevent the Debtor's  
5 estate from being embroiled in frivolous litigation against  
6 the board and the CEO.

7 Such protections were clearly within the Court's  
8 jurisdiction, both to protect the administration of the estate  
9 but also under applicable Fifth Circuit law dealing with  
10 vexatious litigants, as set forth in the *Baum* and *Carroll*  
11 cases that the Court cited in its confirmation order.

12 Not that it was hard to predict, but the last several  
13 months have reinforced how important the gatekeeping  
14 provisions in the order are and how important similar  
15 provisions in the plan are.

16 The Court heard extensive testimony at the confirmation  
17 hearing regarding the havoc continued litigation by Mr.  
18 Dondero and his related entities would cause, which  
19 predictions have unfortunately been borne out by the  
20 unprecedented blizzard of litigation involving Mr. Dondero and  
21 his related entities that has consumed the Court over the last  
22 several months and caused the estate to incur millions of  
23 dollars in fees that could have been used to pay its  
24 creditors.

25 And these attacks are continuing. As I mentioned before,

1 in addition to the DAF lawsuit, Sbaiti & Co. filed an action  
2 against the Debtor on behalf of PCMG, another related entity,  
3 alleging postpetition mismanagement of the Select Fund.

4 And to complete the hat trick, they are the lawyers  
5 seeking to sue Acis in the Southern District of New York for  
6 allegedly post-confirmation matters.

7 The Court knew then and certainly knows now that the  
8 potential for sizable indemnification claims could consume the  
9 estate. The Court used that as the potential basis for  
10 determining that the orders were within its jurisdiction, just  
11 as it used that potential to justify the exculpation  
12 provisions in the plan as being consistent with *Pacific*  
13 *Lumber*.

14 Movants also ignore the cases -- and we cited in our  
15 opposition -- where courts in this district, including Judge  
16 Lynn in *Pilgrim's Pride* in 2010 and Judge Houser in the *CHC*  
17 *Group* in 2016, approved gatekeeper provisions that provided  
18 the Bankruptcy Court with exclusive jurisdiction to adjudicate  
19 claims against postpetition fiduciaries.

20 Movants also ignore cases outside this district, including  
21 *General Motors* and *Madoff*, which we cited in our brief as  
22 examples of cases where Bankruptcy Courts have been used as  
23 gatekeepers to determine if claims are colorable or being  
24 asserted against the correct entity.

25 And there's another reason, Your Honor, why Movants may

1 now not contest the Court's jurisdiction to have entered those  
2 orders. Each of those orders, as I said before, include a  
3 finding that the Court had core jurisdiction to enter the  
4 orders. No party contested that finding or refused to consent  
5 to the core jurisdiction.

6 Under well-established Supreme Court precedent, parties  
7 can waive their right to challenge the Bankruptcy Court's  
8 jurisdiction, core jurisdiction, by failing to object. In  
9 *Wellness v. Sharif* in 2015, the Supreme Court expressly held  
10 that Article III was not violated if parties knowingly and  
11 voluntarily consented to adjudication of *Stern v. Marshall*-  
12 type alter ego claims, and that the consent need not be  
13 express, so long as it was knowing and voluntary.

14 And *Wellness* confirmed the pre-*Stern* opinion of the Fifth  
15 Circuit in the 1995 *McFarland* case, which held that a person  
16 who fails to object to the Bankruptcy Court's assumption of  
17 core jurisdiction is deemed to have consented to the entry of  
18 a final order by the Bankruptcy Court.

19 Your Honor, I'd now like to turn to the *Barton* doctrine.  
20 The Court also has jurisdiction to have entered the orders  
21 based upon the *Barton* doctrine. The *Barton* doctrine dates  
22 back to an old United States Supreme Court case and provides  
23 as a general rule that, before a suit may be brought against a  
24 trustee, consent from the appointing court must be obtained.

25 Movants essentially make two arguments why the *Barton*

1 doctrine doesn't apply.

2 First, Movants, without citing any authority, argue that  
3 it does not apply to Mr. Seery because he is not a trustee or  
4 receiver and was not appointed by the Court. Although the  
5 doctrine was originally applied to receivers, it has been  
6 extended over time to cover various court-appointed  
7 fiduciaries and their agents in bankruptcy cases, including  
8 debtors in possession, officers and directors of the debtor,  
9 and the general partner of the debtor. And although Mr.  
10 Bridges says he couldn't find one case that applied the *Barton*  
11 doctrine to a court-retained professional, I will now talk  
12 about several such cases.

13 In *Helmer v. Pogue*, a 2012 case cited in our brief, the  
14 District Court for the Northern District of Alabama  
15 extensively analyzed the *Barton* doctrine jurisprudence from  
16 the Eleventh Circuit and beyond and concluded that it applied  
17 to debtors in possession. The *Helmer* Court relied in part on  
18 a prior 2000 decision of the Eleventh Circuit in *Carter v.*  
19 *Rodgers*, which held that the doctrine applies to both court-  
20 appointed and court-approved officers of the debtor, which is  
21 consistent with the law in other circuits.

22 And subsequently, the Eleventh Circuit again considered --  
23 and in that case, the distinction of a court-appointed as a  
24 court-retained professional was -- was not persuasive to the  
25 Court, and the Court held that a court-retained professional



1 can still have *Barton* protection, notwithstanding that he  
2 wasn't appointed, the argument that Mr. Bridges tries to make.

3 And subsequently, --

4 THE COURT: I wonder, was that -- was that Judge  
5 Clifton Jessup, by chance? Or maybe Bennett?

6 MR. POMERANTZ: Your Honor, this was -- this was the  
7 Eleventh Circuit *Carter v. Rodgers*, so I think Judge Jessup  
8 was --

9 THE COURT: Oh, I thought you were still talking  
10 about the Alabama case. No?

11 MR. POMERANTZ: Yeah, the Alabama -- well, the  
12 Alabama case referred to the Eleventh Circuit case, *Carter v.*  
13 *Rodgers*, --

14 THE COURT: Okay.

15 MR. POMERANTZ: -- and the appointment and -- or  
16 retention issue was discussed in the *Carter v. Rodgers* case.

17 THE COURT: Okay.

18 MR. POMERANTZ: And subsequently, the Eleventh  
19 Circuit again considered the contours of the *Barton* doctrine  
20 in *CDC Corp.*, a 2015 case, 2015 U.S. App. LEXIS 9718. In that  
21 case, which Your Honor referenced in your *Ondova* opinion,  
22 which I will discuss in a few moments, the Eleventh Circuit  
23 held that a debtor's general counsel who had been approved by  
24 the Court, who was appointed by a chief restructuring officer  
25 who was also approved by the Court, was covered by the *Barton*

1 doctrine for acts taken in furtherance of the administration  
2 of the estate and the liquidation of the assets.

3 And the Eleventh Circuit last year, in *Tufts v. Hay*, 977  
4 F.3d 204, reaffirmed that court-approved counsel who function  
5 as the equivalent of court-appointed officers are entitled to  
6 protection under *Barton*. While the Court in that case  
7 ultimately ruled that counsel could be sued without first  
8 going to the Bankruptcy Court, it did so because it determined  
9 that the suit between two sets of lawyers would not have any  
10 effect on the administration of the estate.

11 So, Your Honor, not only is there authority, there is  
12 overwhelming authority that Mr. Seery is entitled to the  
13 protections.

14 In *Gordon v. Nick*, a District -- a case from 1998 from the  
15 Fourth Circuit, the Court that the *Barton* doctrine applied to  
16 a lawsuit against a general partner who was responsible for  
17 administering the bankruptcy estate.

18 And as I mentioned, Your Honor, and as Your Honor  
19 mentioned, Your Honor had reason to look at the *Barton*  
20 doctrine in length and in depth in the 2017 *Ondova* opinion.  
21 And in the course of the opinion, Your Honor discussed one of  
22 the policy rationales for the doctrine, which you took from  
23 the Seventh Circuit's *Linton* opinion, and you said as follows:  
24 "Finally, another policy concern underlying the doctrine is a  
25 concern for the overall integrity of the bankruptcy process

1 and the threat of trustees being distracted from or  
2 intimidated from doing their jobs. For example, losers in the  
3 bankruptcy process might turn to other courts to try to become  
4 winners there by alleging the trustee did a negligent job."

5 Here, the independent board was approved by the Court as  
6 an alternative to the appointment of a Chapter 11 trustee.  
7 And it and its agent, including Mr. Seery as the CEO, even  
8 before the July 16th order, were provided protections in the  
9 form of the gatekeeper order and exculpation.

10 I'm sure the Court has a good recollection of the January  
11 9th hearing -- we've talked about it a lot in the proceedings  
12 before Your Honor -- where the Debtor and the Committee  
13 presented the governance resolution to Your Honor. And as  
14 Your Honor will recall, the appointment of the board was a  
15 hotly-contested issue among the Debtor and the Committee and  
16 was heavily negotiated. And the appointment of the  
17 independent board was even contested by the United States  
18 Trustee at a hearing on January 20th, 2020.

19 I refer the Court to the transcripts of the hearings on  
20 January 9th and January 20th of 2020, which clearly  
21 demonstrate that appointing this board and giving it the  
22 rights and protections and its agents the rights and  
23 protections was not your typical corporate governance issue,  
24 but it was essentially the Court's alternative to appointing a  
25 trustee. And recognizing that the members of the independent

1 board were essentially officers of the Court, the Court  
2 approved the gatekeeper provision, requiring parties first to  
3 come and seek the Court's permission before suing them, in  
4 order to prevent them from being harassed by frivolous  
5 litigation.

6 And the independent board was given the responsibility in  
7 the January 9th order to retain a CEO it deemed appropriate,  
8 and it did so by retaining Mr. Seery.

9 Recognizing the *Barton* doctrine as it applies to Mr. Seery  
10 is consistent with a legion of cases throughout the United  
11 States, and Movants' argument that Mr. Seery is not court-  
12 appointed is just wrong.

13 Second, Your Honor, Movants cite without any authority,  
14 argue that even if the *Barton* doctrine applied there is an  
15 exception which would allow it to pursue a claim against Mr.  
16 Seery without leave of the Court.

17 The Debtor agrees the 28 U.S.C. § 959 is an exception to  
18 the *Barton* doctrine. Section 959(a) provides that trustees,  
19 receivers, or managers of any property, including debtors in  
20 possession, may be sued without leave of the court appointing  
21 them with respect to any of their acts or transactions in  
22 carrying on business connected with such property.

23 As the Court also pointed out at the June 8th hearing, and  
24 Mr. Bridges alluded to in his argument, the last sentence of  
25 959(a) provides that such actions -- clearly referring to

1 actions that may be pursued without leave of the appointing  
2 court -- shall be subject to the general equity power of such  
3 court, so far as the same may be necessary to the ends of  
4 justice.

5 And Mr. Bridges made a plea, saying you can't take away my  
6 jury trial right there. You just cannot do that. Well, I  
7 have two answers to that, Your Honor. One, they relinquished  
8 their jury trial right. We've established that. Okay?

9 The second is allowing Your Honor to act as a gatekeeper  
10 has nothing to do with their jury trial right. Allowing Your  
11 Honor to act as a gatekeeper allows you to determine whether  
12 the action could go forward, and it'll either go forward in  
13 Your Honor's court or some other court.

14 And the argument that the exculpation was essentially a  
15 violation of 959 is just -- is just -- it just is twisting  
16 what happened. You have an exculpation provision. We already  
17 went through the authority the Court had to give an  
18 exculpation. With respect to these litigants who are before  
19 Your Honor -- we're not talking about anyone else who's coming  
20 in to try to get relief from the order; we're talking about  
21 these litigants -- we've already established that they were  
22 here, they're bound by res judicata. So their 959 argument  
23 goes away.

24 And as the Court -- and separate and apart from that, the  
25 issue at issue in the District Court litigation is -- is not

1 even subject to 959.

2 Mr. Bridges says, well, of course it is because it deals  
3 with the administration of the estate. I'd like to refer to  
4 what the Court said -- this Court said in its *Ondova* opinion:  
5 The exception generally applies to situations in which the  
6 trustee is operating a business and some stranger to the  
7 bankruptcy process might be harmed, such as a negligence claim  
8 in a slip-and-fall case, and is inapplicable to suits based  
9 upon actions taken to further the administering or liquidating  
10 the bankruptcy estate.

11 And your *Ondova* opinion is consistent with the Third and  
12 Eleventh Circuit opinions Your Honor cited in your opinion, as  
13 well as numerous other --

14 (Interruption.)

15 MR. POMERANTZ: -- from the -- from around the  
16 country, including cases from the First, Second, Sixth,  
17 Seventh, and Ninth Circuits. And I'm not going to give all  
18 the cites to those cases, but it's not a -- it's not a  
19 remarkable proposition that Your Honor relied on in *Ondova*.

20 In addition, several of these cases, including the  
21 Eleventh Circuit's *Carter* opinion, have been cited with  
22 approval by the Fifth Circuit in *National Business Association*  
23 *v. Lightfoot*, a 2008 unpublished opinion for this very point.  
24 The *Barton* exception of 959 does not apply to actions taken in  
25 the administration of the case and the liquidation of assets

1 in the estate.

2 Suffice it to say that it's clear that the Section 959  
3 exception to *Barton* has no applicability in this case.  
4 Movants, hardly strangers to the bankruptcy case, want to sue  
5 Mr. Seery for acts taken relating to a settlement of very  
6 complex and significant claims against the estate. They want  
7 to sue a court-appointed fiduciary for doing his job,  
8 resolving claims against the estate and his management of the  
9 bankruptcy estate. And they want to do this outside of the  
10 Bankruptcy Court.

11 Settlement of the HarbourVest claim, which is where this  
12 claim arises under -- whether it's a collateral attack now or  
13 not, and we say it is, is for another issue -- but it clearly  
14 arises in the context of settlement of the HarbourVest claim,  
15 is the quintessential act to further the administration and  
16 liquidation of the bankruptcy estate, and certainly doesn't  
17 fall within the 959 exception.

18 Movants seem to be arguing that 959(a) makes a distinction  
19 between claims against Mr. Seery that damaged the Debtor and  
20 claims against Mr. Seery that damaged third parties. However,  
21 the Movants make up that distinction, and it's not in the  
22 statute, it's not in the case law. The focus is not on who  
23 the conduct damages, but it's rather on whether the conduct  
24 was taken in connection with the administration or the  
25 liquidation of the estate.



1           And even if the Debtor is wrong, Your Honor, which it's  
2 not, the savings clause allows the Court to determine whether  
3 leave to be -- sue will be granted. Given that these claims  
4 are asserted by Dondero-related entities, if not controlled  
5 entities, no serious argument exists that the equities do not  
6 permit this Court to determine if leave to sue is appropriate.

7           Accordingly, Movants' argument that the orders create this  
8 tension with 959 is simply an over-dramatization. And in any  
9 event, Your Honor, there's a basis independent of *Barton* that  
10 supports the jurisdiction to enter the orders, as I mentioned.

11           But even if the orders only relied on *Barton*, there is an  
12 easy fix to Movants' concerns: let them come to court and  
13 argue that the type of suit they are bringing allegedly falls  
14 within the exception of 959.

15           Your Honor, Movants argue that the Bankruptcy Court may  
16 not act as a gatekeeper if it would not have jurisdiction to  
17 deal with the underlying action. They essentially argue that  
18 an Article I judge may not pass on the colorability of a  
19 claim, that it should be decided by an Article III judge.  
20 This is the same argument, Your Honor, that Your Honor  
21 rejected in connection with plan confirmation and which I  
22 touched on earlier.

23           And the reason why Your Honor rejected it is because  
24 there's no law to support it. In fact, there is Fifth Circuit  
25 law that holds to the contrary. And we talked about a little

1 bit the Fifth Circuit case decided is *Villegas v. Schmidt* in  
2 2015. And *Villegas* is a simple case. Schmidt was appointed  
3 trustee over a debtor and liquidated its estate and the  
4 Bankruptcy Court approved his final fees. Four years later,  
5 Villegas and the prior debtor sued Schmidt in District Court,  
6 the district in which the Bankruptcy Court was pending,  
7 arguing that he was negligent in the performance of his  
8 duties. The District Court dismissed the case because  
9 Villegas failed to obtain Bankruptcy Court approval to bring  
10 the suit under the *Barton* doctrine.

11 On appeal, Villegas argued *Barton* didn't apply for two  
12 reasons. First, that *Stern v. Marshall* created an exception  
13 to the *Barton* doctrine for claims that the Bankruptcy Court  
14 would not have the jurisdiction to adjudicate. And second,  
15 that *Barton* did not apply if the suit is brought in the  
16 District Court, which exercises supervisory authority over the  
17 Bankruptcy Court that appointed the trustee. Pretty much the  
18 argument that was made by Movants at the contempt hearing.

19 The Fifth Circuit rejected both arguments. It held that  
20 the existence of a *Stern* claim does not impact the Bankruptcy  
21 Court's authority because *Stern* did not overrule *Barton* and  
22 the Supreme Court had cautioned circuit courts against  
23 interpreting later cases as impliedly overruling prior cases.

24 More importantly, the Fifth Circuit pointed to a post-  
25 *Stern* 2014 case, *Executive Benefits v. Arkison*, 573 U.S. 25

1 (2014), which held that *Stern* does not decide how a Bankruptcy  
2 Court or District Courts should proceed when a *Stern* creditor  
3 is identified, as support for the argument that *Barton* is  
4 still good law, even dealing with a *Stern* claim.

5 Second, the Fifth Circuit, joining every circuit to have  
6 addressed the issue, ruled that the District Court and the  
7 Bankruptcy Court are distinct from one another and the  
8 Bankruptcy Court has the exclusive authority to determine the  
9 colorability of *Barton* claims and that the supervisory  
10 District Court does not.

11 Movants didn't address *Villegas* in their reply. Briefly  
12 tried to distinguish it, unconvincingly, today. The bottom  
13 line is *Villegas* is directly applicable. Your Honor cited it  
14 in the *Ondova* opinion for precisely the proposition that  
15 *Barton* applies whether or not the Court has authority to  
16 adjudicate the claim.

17 Accordingly, Your Honor, it was within the Court's  
18 jurisdiction to require a party to seek approval of Your Honor  
19 on the colorability of a claim before an action may be  
20 commenced or pursued against the protected parties, even if  
21 Your Honor wouldn't have authority to adjudicate the claim at  
22 the end of the day.

23 In fact, some courts have even addressed the proper  
24 procedure for doing so, requiring the putative plaintiff to  
25 not only seek leave of Bankruptcy Court but also to provide a

1 draft complaint and a basis for the Court to determine if the  
2 claim is colorable.

3 Movants have done neither, and they should not be  
4 permitted to modify the final orders of the Court as a  
5 workaround.

6 Your Honor, that concludes my presentation. I'm happy to  
7 answer any questions Your Honor may have.

8 THE COURT: All right. Not at this time. All right.  
9 I'm going to figure out, do we need a break or not, depending  
10 on what Mr. Bridges tells me. I assume we're just doing this  
11 on argument today. I think that's what I heard. No witnesses  
12 or exhibits.

13 MR. BRIDGES: That is correct, Your Honor.

14 THE COURT: Okay. Mr. Bridges, how long do you  
15 expect your rebuttal to take so I can figure out does the  
16 Court need a break?

17 MR. BRIDGES: Fifteen minutes plus whatever it takes  
18 to submit agreed-to exhibits.

19 THE COURT: Okay. Let's take a five-minute bathroom  
20 break. We'll come back. It's -- what time is it? It's 1:11  
21 Central time. We'll come back in five minutes.

22 THE CLERK: All rise.

23 (A recess ensued from 1:11 p.m. until 1:17 p.m.)

24 THE CLERK: All rise.

25 THE COURT: All right. Please be seated. We're

1 going back on the record in the Highland matters.

2 Mr. Bridges, time for your rebuttal. I want to ask you a  
3 question right off the bat. Mr. Pomerantz pointed out  
4 something that was on my list that I forgot to ask you when  
5 you made your initial presentation. What is the authority  
6 you're relying on? You did not cite a statute or a rule *per*  
7 *se*, but I guess we can probably all agree that Bankruptcy Rule  
8 9024 and Federal Rule 60 is the authority that would govern  
9 your motion, correct?

10 MR. BRIDGES: I don't agree, Your Honor. I don't  
11 believe this is a final order that we're contesting here. And  
12 I think that's demonstrated by the Court's final confirmation  
13 -- plan -- plan confirmation order that seeks to modify this  
14 order or will modify this order upon being -- being effective.  
15 So I don't think so.

16 In the alternative, if we are challenging a final order,  
17 then I think you're right as to the rules that would be  
18 controlling.

19 THE COURT: All right. Well, let me back up. Why  
20 exactly do you say this would be an interlocutory order as  
21 opposed to a final order?

22 MR. BRIDGES: Because of its nature, Your Honor.  
23 While the appointment in the order or the approval of the  
24 appointment in the order might, as a separate component of the  
25 order, have -- have finality, the provisions -- the provisions

1 in it relating to gatekeeping and exculpation are, we think,  
2 by their very nature, quite obviously interlocutory and not  
3 permanent. They don't seem to indicate an intention by any of  
4 the parties that, 30 years from now, if Mr. Seery is still CEO  
5 at Highland, long after the bankruptcy case has ended, that  
6 nonetheless parties would be prohibited from bringing claims,  
7 strangers to this action would be prohibited from bringing  
8 claims related to his CEO role.

9 I think the nature of it demonstrates that, the  
10 modifications to it, and even the inclusion of it in the final  
11 plan confirmation, as well as -- can't read that.

12 THE COURT: Can you give me some authority? Because  
13 as we know, there's a lot of authority out there in the  
14 bankruptcy universe on what discrete orders are interlocutory  
15 in nature that a bankruptcy judge might routinely enter and  
16 which ones are final. You know, it would just probably, if I  
17 flipped open *Collier's*, I could -- you know, it would be mind-  
18 numbing.

19 So what authority can you rely on? I mean, is there any  
20 authority that says an employment order is not a final order?  
21 That would be shocking to me if you have cases to that effect,  
22 but, I mean, of course, sometimes we do interim on short  
23 notice and then final. But this would be shocking to me if  
24 there is case authority to support the argument this is not a  
25 final order. But I learn something new every day, so maybe I

1 would be shocked and there is.

2 MR. BRIDGES: Your Honor, I'd point you to *In re*  
3 *Smyth*, 207 F.3d 758, and *In re Royal Manor*, 525 B.K. 338  
4 [sic], for the proposition that retaining a bankruptcy  
5 professional is an interlocutory order.

6 THE COURT: Okay. Stop for a moment. The *Smyth*  
7 case. Which court is that?

8 MR. BRIDGES: Fifth Circuit.

9 THE COURT: Okay. So tell me the facts. I'm  
10 surprised I don't know about this case. But, again, I don't  
11 know every case. So, it held that an employment order is an  
12 interlocutory order?

13 MR. BRIDGES: Appointing counsel. A professional in  
14 the bankruptcy context, Your Honor.

15 THE COURT: Counsel for a debtor-in-possession? An  
16 order approving counsel was an interlocutory order?

17 MR. BRIDGES: Yes, or the Trustee's counsel.

18 THE COURT: Or the Trustee's counsel? Okay. What  
19 were the circumstances? Was this on an expedited basis and  
20 there wasn't a follow-up final order, or what?

21 MR. BRIDGES: Your Honor, I don't have -- I don't  
22 have that at the tip of my memory. I'm sorry.

23 THE COURT: Okay. And the other one, 525 B.R. 338,  
24 what court was that?

25 MR. BRIDGES: It's a Bankruptcy Court within the



1 Sixth Circuit. I'm not certain which district.

2 THE COURT: All right. Well, maybe one of you two  
3 over there can look them up and give me the context, because  
4 that is surprising authority. Or other lawyers on the WebEx  
5 maybe can do some quickie research.

6 Okay. We'll come back to that. But assuming that this  
7 was a final order, which I have just been presuming it was,  
8 Rule 60 is the authority you're going under? 9024 and Rule  
9 60, correct?

10 MR. BRIDGES: Your Honor, we have not invoked those  
11 rules. Alternatively, I think you're right that they would  
12 control if we are wrong about the interlocutory nature of the  
13 order.

14 THE COURT: Well, you have to be going under certain  
15 -- some kind of authority when you file a motion. So I'm --

16 MR. BRIDGES: As an alternative --

17 THE COURT: I'm approaching this exactly, I assure  
18 you, as the District Court or a Court of Appeals would. You  
19 know, you start out, what is the legal authority that is being  
20 invoked here?

21 MR. BRIDGES: Well, --

22 THE COURT: So I just assume Rule 60. I can't, you  
23 know, come up with anything else that would be the authority.

24 MR. BRIDGES: Yes, Your Honor. You also have  
25 inherent power to modify orders that are in violation of the

1 law. And we pointed you to --

2 THE COURT: Now, is that right? Is that really  
3 right? Why do we have Rule 60 if I can just willy-nilly, oh,  
4 I feel like I got that wrong two years ago? I can't do that,  
5 can I? Rule 60 is the template for when a court can do that.  
6 Parties are entitled to rely on orders of courts. And that's  
7 why we have Rule 60, right? So, --

8 MR. BRIDGES: Your Honor, I think -- I think that  
9 we're miscommunicating. I'm trying not to rely on Rule 60 in  
10 the first instance because in the first instance we view this  
11 as not a final order. So, in the first instance, --

12 THE COURT: I got that. And I've got my law clerks  
13 looking up your cases to see if they convince me. But I'm  
14 asking you to go to layer two. Assuming I don't agree with  
15 you these are final orders, what is your authority for the  
16 relief you're seeking?

17 MR. BRIDGES: Yes, Your Honor. Rule 60 would apply  
18 in the alternative.

19 THE COURT: All right.

20 MR. BRIDGES: That's correct.

21 THE COURT: So, which provision? Which provision of  
22 Rule 60? (b) what?

23 MR. BRIDGES: Your Honor, I'm not prepared to concede  
24 any of them. I don't have the rule in front of me.

25 THE COURT: You're not prepared to concede what?

1 MR. BRIDGES: Any of the provisions of Rule 60. Just  
2 (b) (1), (b) (2), especially, but I'm -- I'm -- Rule 60 is our  
3 basis, as is the particulars (b) (1), (2), (6) --

4 (Garbled audio.)

5 THE COURT: Okay. You're breaking up. Can you  
6 restate?

7 MR. BRIDGES: (b) (1), (2), and (6), as -- as well as  
8 any other provision, Your Honor, of Rule 60.

9 THE COURT: Okay. Well, so (1), mistake,  
10 inadvertence, surprise, excusable neglect. Which one of  
11 those?

12 MR. BRIDGES: All of the above, Your Honor.

13 THE COURT: Surprise? Who's surprised?

14 MR. BRIDGES: Your Honor, I think every potential  
15 litigant who discovers that your order purports to bar  
16 prospective unaccrued claims at the time the order issued  
17 would be surprised.

18 Frankly, I think Mr. Seery would be surprised, given his  
19 testimony that he owes fiduciary duty -- duties that he must  
20 abide by and that he appears to have, as I continue to  
21 represent to clients, to advisees, and to the SEC, that those  
22 duties are owing.

23 THE COURT: Okay. I'm giving you one more chance  
24 here to make clear on the record what provision of Rule 60 (b)  
25 are you relying on, okay? I need to know. It's not in your

1 pleading.

2 MR. BRIDGES: Your Honor, --

3 THE COURT: So tell me specifically. I can only --

4 MR. BRIDGES: -- (b) (1) --

5 THE COURT: -- come up with a result here if I know  
6 exactly what's being presented.

7 MR. BRIDGES: Your Honor, (b) (1), (b) (2), and (b) (6)  
8 --

9 THE COURT: Which, okay, there are multiple parts to  
10 (1). You're saying somebody's surprised by the ruling. I  
11 don't know who. Really, all that matters is your client, the  
12 Movants. You're saying, even though they participated, --

13 MR. BRIDGES: Yes, Your Honor.

14 THE COURT: -- got notice, they're somehow surprised?  
15 Why are they surprised?

16 MR. BRIDGES: Yes, Your Honor.

17 THE COURT: Do you have evidence of their surprise?

18 MR. BRIDGES: Your Honor, our brief shows the  
19 intentions of all involved were not the interpretation of that  
20 order being advanced at this -- at this point in time. And  
21 so, yes, I believe that is evidence. The transcripts of the  
22 hearings I believe evidence that as well, that the  
23 understanding of everyone involved was not that future --  
24 unspecified future claims that had not accrued yet would be  
25 released under (b) (1). Yes, Your Honor.

1 THE COURT: Okay.

2 MR. BRIDGES: Under (b) (2), --

3 THE COURT: I don't have any evidence of that. All I  
4 have is the clear wording of the order. Okay. Let me just --  
5 just let me go through this.

6 Assuming Rule 60 (1) through (6) are what you're arguing  
7 here, what about Rule 60(c): a motion under Rule 60(b) must  
8 be made within a reasonable time? We're now 11 months --

9 MR. BRIDGES: Your Honor, --

10 THE COURT: We're now 11 months past the July 2020  
11 order. What is your authority for this being a reasonable  
12 time?

13 MR. BRIDGES: Yes, Your Honor. If I may back up one  
14 step before answering your question. Under (b) (2), we're  
15 relying on newly-discovered evidence that was discovered in  
16 late March and caused both the filing of this motion and the  
17 filing of the District Court action.

18 Under (b) (4), we believe that the order is --

19 THE COURT: Let me stop. Let me stop. What is my  
20 evidence that you're putting in the record that's newly  
21 discovered?

22 MR. BRIDGES: The evidence is detailed in the  
23 complaint that is in the record. You know, --

24 THE COURT: That's not evidence.

25 MR. BRIDGES: -- honestly, Your Honor, --

1 THE COURT: That is not evidence. Okay? A lawyer-  
2 drafted complaint in another court is not evidence. Okay?

3 MR. BRIDGES: Your Honor, I think, to be technical,  
4 that there is not a record yet, that we have evidence yet to  
5 be admitted on our exhibit list. I believe in this  
6 circumstance -- I understand that, in general, allegations in  
7 a pleading are not evidence. In this instance, when we're  
8 talking about whether or not new facts led to the filing of a  
9 lawsuit, I do believe that the allegations in the lawsuit are  
10 evidence of those new facts.

11 THE COURT: All right. Go on.

12 MR. BRIDGES: Under (b) (4), we believe the order is,  
13 in part, void. It is void because of the jurisdictional and  
14 other defects noted in our argument.

15 And also, under (b) (6) (garbled) ground for relief that  
16 we're appealing to the equitable powers of this Court to  
17 correct errors and manifest injustice towards not just the  
18 litigants here but to correct the order of the Court to make  
19 it comply with -- with the law, with the statutes promulgated  
20 by Congress and to respect the jurisdiction of the District  
21 Court.

22 THE COURT: All right. Do you agree with Mr.  
23 Pomerantz that the case law standard for Rule 60(b) (4) is  
24 exceptional circumstances? It's only applied so that a  
25 judgment is voided in exceptional circumstances. Do you

1 disagree with that case authority?

2 MR. BRIDGES: I would -- I would agree, in part, that  
3 unusual circumstances is not the ordinary case. I'm not  
4 entirely sure what you mean by exceptional, but I think we're  
5 on the same page.

6 THE COURT: Okay. It's not what I mean. That's just  
7 the case law standard. And I'm asking, do you agree with Mr.  
8 Pomerantz that that is the standard set forth in case law when  
9 applying 60(b)(4)? There have to be some sort of exceptional  
10 circumstances where there's just basically no chance the Court  
11 had authority to do what it did.

12 MR. BRIDGES: Out of the ordinary would be the phrase  
13 I would use, Your Honor.

14 THE COURT: Okay. So I guess then I'll go from  
15 there. Is it your argument that gatekeeping provisions in the  
16 bankruptcy world are out of the ordinary?

17 MR. BRIDGES: The exculpation of Mr. Seery for  
18 liability falling short of gross negligence or intentional  
19 wrongdoing in connection with his continuing to conduct the  
20 business of the Debtor as an investment advisor subject to the  
21 Advisers Act, yes, I would say that is out of the ordinary,  
22 that it is extraordinary, that it is --

23 THE COURT: Okay. What is your authority or evidence  
24 on that? Because this Court approves exculpation provisions  
25 regularly in connection with employment orders, and pretty



1 much every judge I know does. In fact, I'm wondering why this  
2 isn't just a term of compensation. You know, he's going to do  
3 x, y, z in the case. His compensation is going to be a, b, c,  
4 d, e. And by the way, we're going to set a standard of  
5 liability for his performance as CEO or investment banker,  
6 financial advisor, whatever, so that no one can sue him  
7 regarding his performance of his job duties unless it rises to  
8 the level of gross negligence, willful misconduct.

9 It's a term of employment that, from my vantage point,  
10 seems to be employed all the time. So it would be anything  
11 but exceptional circumstances. Do you have authority or  
12 evidence --

13 MR. BRIDGES: Your Honor, frankly, --

14 THE COURT: -- to the contrary?

15 MR. BRIDGES: Your Honor, frankly, I'm astonished at  
16 your view of that situation, that it would merely be a term of  
17 his employment, that vitiates the entire fiduciary duty  
18 standard created by the Advisers Act that tells him, with  
19 hundreds of millions of dollars of assets under management for  
20 people he's advising as a registered investment advisor,  
21 people he's advising who believe that he has a fiduciary duty  
22 to them and that it's enforceable, that the SEC, who monitors,  
23 believes he has an enforceable fiduciary duty to those people,  
24 and that he's testified that he has fiduciary duties to those  
25 people, and that Your Honor is saying no, just as a regular

1 term of employment we have undone the Advisers Act's  
2 imposition of an unwaivable fiduciary duty.

3 Your Honor, the order is void to the extent that it  
4 attempts to do so.

5 This is not an ordinary employment agreement, Your Honor.  
6 This is an attempt to exculpate someone from the key thing  
7 that our entire investment system depends upon, regulation by  
8 the SEC and the requirement in investment advisors to act as  
9 fiduciaries when they manage the money of another.

10 It would be the equivalent of telling lawyers who are  
11 appointed in a bankruptcy proceeding that they don't have any  
12 duties to their client, or at least not fiduciary duties.  
13 That the lawyers merely owe a duty not to be grossly negligent  
14 to their clients. That's not an ordinary term of employment,  
15 Your Honor.

16 THE COURT: All right. So I guess we're back to my  
17 question, was this brought within a reasonable time under Rule  
18 60(c)?

19 MR. BRIDGES: It was brought very quickly after the  
20 new evidence was discovered at the end of March, Your Honor,  
21 yes.

22 THE COURT: Okay. Well, I guess I'll just ask you  
23 one more question before you continue on with your rebuttal  
24 argument. I mean, again, I want your best argument of why  
25 *Villegas* doesn't absolutely permit the gatekeeping provisions

1 that you're challenging. And many cases were cited by Mr.  
2 Pomerantz in his brief where courts have extended the *Barton*  
3 doctrine to persons other than trustees. And so what is your  
4 best rebuttal to that?

5 MR. BRIDGES: Your Honor, we've already given it.  
6 I'm afraid --

7 THE COURT: Okay. If you don't want to say more, --

8 MR. BRIDGES: -- what I have is not --

9 THE COURT: -- I'm not going to make you say more.

10 MR. BRIDGES: I --

11 THE COURT: I'm just telling you what's on my brain.

12 MR. BRIDGES: I do. I want to -- I am apologizing in  
13 advance for repeating, but yes, *Villegas, Villegas*, however  
14 that case is pronounced, says that *Stern* is not an exception  
15 to the *Barton* doctrine.

16 THE COURT: Uh-huh.

17 MR. BRIDGES: 959(a) is an exception to the *Barton*  
18 doctrine. You are not operating under the *Barton* doctrine  
19 here. Even counsel's brief, the Debtor's brief, doesn't say  
20 *Barton* applies. It says it's consistent with *Barton*.

21 Your Honor, in our previous hearing, you directed me to  
22 the second sentence of 959(a) because you believe it's what  
23 empowers you to do the gatekeeping. It limits the gatekeeping  
24 that you can do by protecting jury rights, the right to trial,  
25 says you cannot discharge, undo, deprive a litigant of their

1 right to a trial, a jury trial.

2 THE COURT: Well, you mentioned it again, jury trial  
3 rights. Do you have any argument --

4 MR. BRIDGES: Yes, Your Honor.

5 THE COURT: -- of why that hasn't flown out the  
6 window?

7 MR. BRIDGES: Yes, Your Honor. I am told that  
8 Section 14(f) that counsel for the Debtor referred to is not a  
9 waiver of jury rights at all. It is an arbitration agreement.  
10 Your Honor is probably familiar how arbitration agreements  
11 work, is that they need not be elected. They need not be  
12 invoked by the parties. When they are, they create a  
13 situation where arbitration may be required. But a waiver of  
14 a jury right outside of arbitration is not part of this  
15 arbitration clause, or of any. The issue is not briefed or in  
16 evidence before the Court. We're relying on representations  
17 of counsel as to what that provision contains. That Mr. Seery  
18 wasn't even a party to that agreement, the advisory agreement,  
19 with the Charitable DAF. The arbitration agreement is subject  
20 to defenses that are not at issue here before the Court. That  
21 Movants' rights, their contractual rights to invoke the  
22 arbitration clause, also appear to be terminated by the  
23 orders' assertion of sole jurisdiction in this matter.

24 Your Honor, yes, our jury rights survive Section 14(f) in  
25 the advisory agreement with the DAF for all of those potential

1 reasons.

2 On top of that, it doesn't go to all of our causes of  
3 action. It goes to the contract cause of action. And to the  
4 extent they can argue that the other claims are subject to  
5 arbitration, that also is a defense and -- defensible and  
6 complex issue requiring the application of the Federal  
7 Arbitration Act, requiring consideration of the Federal  
8 Arbitration Act, which this Court doesn't have jurisdiction to  
9 do under 157(d).

10 THE COURT: What? Repeat that.

11 MR. BRIDGES: Yes. This Court does not have  
12 jurisdiction to determine whether or not arbitration --  
13 arbitration is enforceable due to the mandatory withdrawal of  
14 the reference provisions of 157(d).

15 THE COURT: That's just not consistent with Fifth  
16 Circuit authority. *National Gypsum*. What are some of these  
17 other arbitration cases? I've written an article on it. I  
18 can't remember them. That's just not right. Bankruptcy  
19 courts look at arbitration clauses all the time. Motions to  
20 compel arbitration.

21 MR. BRIDGES: Your Honor, under 157(d), in the  
22 circumstances of this case, if the Court is going to take into  
23 consideration an arbitration clause under the Federal  
24 Arbitration Act, when that clause is not in evidence and is  
25 not before the Court, then Movants respectfully move to

1 withdraw the reference of your consideration of that issue and  
2 of any proceeding and ask that you would issue only a report  
3 and recommendation rather than an order on that issue.

4 THE COURT: Okay. I regret that we even got off on  
5 this trail. I'm sorry. So just proceed with your rebuttal  
6 argument as you had envisioned it, Mr. Bridges.

7 MR. BRIDGES: Thank you, Your Honor.

8 Debtor's counsel says there's no private right of action  
9 under the Advisers Act. That is both inaccurate and  
10 misleading. The Advisory Act creates, imposes fiduciary  
11 duties that state law provides the cause of action for. It is  
12 a state law breach of fiduciary duty claim regarding --  
13 regarding fiduciary duties imposed as a matter of law by the  
14 Investment Advisers Act that is Count One in the District  
15 Court action.

16 Furthermore, that Act does create a private right of  
17 action for rescission. That would be rescission of the  
18 advisory agreement with the Charitable DAF, not rescission of  
19 the HarbourVest settlement.

20 Second, Your Honor, the notion that this Court has related  
21 to jurisdiction is irrelevant and beside the point. I would  
22 like to note for the record that the District Court civil  
23 cover sheet that omitted to state that this was a related  
24 action has been corrected, has been amended, and that that has  
25 taken place.

1 Counsel for the Debtor also appears to agree with us that  
2 the order ought to be modified for having asserted exclusive  
3 jurisdiction over colorable claims to the extent it's not  
4 legally permissible to do. And in trying to invoke the  
5 discussions between us as to how the orders might be fixed,  
6 what counsel does is tries to cabin the legally-permissible  
7 caveat to just the second half of the paragraph at issue. It  
8 is both -- both portions, the gatekeeping and the subsequent  
9 hearing of the claims, that should be limited to the extent it  
10 would be impermissible legally for this Court to make those  
11 decisions.

12 On top of that, Your Honor, merely stating "to the extent  
13 legally permissible" would result in a considerable amount of  
14 ambiguity in the order that would lead it, I fear, to be  
15 unenforceable as a matter of law.

16 Next, Your Honor, when Debtor's counsel talks about the  
17 authority in this case, it feels like we're ships passing in  
18 the night. He says that we're wrong in asserting that no case  
19 we can find involves both the *Barton* doctrine and the  
20 application of the business judgment rule where the Court is  
21 asked to defer, and he mentions cases that apply the *Barton*  
22 doctrine to an approval rather than an appointment. The Court  
23 is asked to --

24 (Garbled audio.)

25 THE COURT: I lost you for a moment. Could you



1 repeat the last 30 seconds?

2 MR. BRIDGES: Thank you, Your Honor. Yes. He points  
3 -- opposing counsel points us to case law where the *Barton*  
4 doctrine has been applied despite the Bankruptcy Court having  
5 merely approved rather than appointed the trustee or the, I'm  
6 sorry, the professional. But in doing so, he doesn't  
7 reference any case that has done so in the context of business  
8 judgment rule deference. It's like we're ships passing in the  
9 night.

10 What we're saying isn't that a mere approval can never  
11 rise to the level of the *Barton* doctrine. What we're saying  
12 is that, in combination with the business judgment rule  
13 deference, the two cannot go together. There's no authority  
14 for saying that they do.

15 We -- I further feel like we're ships passing in the night  
16 when he talks about *Shoaf*. Counsel says that in *Shoaf* there  
17 was a confirmed final plan and it specifically identified the  
18 released guaranty. And yeah, that distinguishes it from this  
19 case, just as it distinguished -- just as the *Applewood Chair*  
20 case distinguished it when there's not that specific  
21 identification. And here, we don't even have a final plan  
22 confirmation at the time these orders are being issued.  
23 Without that express -- express notion of what the claims are  
24 being discharged, *Shoaf* doesn't apply.

25 There, there was a guaranty to a party on a specific

1 indebtedness that was listed, identified with specificity, and  
2 disappeared as a result of the judgment, as a result of the  
3 judgment in the underlying case. Here, we're talking about  
4 any potential claim that might arise in the future. As of the  
5 July order's issuance, it didn't apply on its -- either it  
6 didn't apply to future claims that had not yet accrued or else  
7 in violation of *Applewood Chair*, it was releasing claims  
8 without identifying them.

9       Who does Seery owe a fiduciary duty to? Is it, as  
10 Debtor's counsel says, only to the funds and not to the  
11 investors, or does he also owe those duties to the investors  
12 as well? Your Honor, that is going to be a hotly-contested  
13 issue in this litigation, and it involves -- it requires  
14 consideration of the Advisers Act and the multitude of  
15 accompanying regulations. To just state that his fiduciary  
16 duties are limited in a way that couldn't affect anyone that  
17 is -- whose claims are precluded by the July order is both  
18 wrong on the law and is invoking something that will be a  
19 hotly-contested issue that falls under 157(d), where, again,  
20 this Court doesn't have the jurisdiction to decide that, other  
21 than in a report and recommendation.

22       The order is legally infirm because it's issued without  
23 jurisdiction for doing that as well.

24       Finally, Your Honor, I think (garbled) wrong direction  
25 with a statement that suggests that Mr. Seery is an agent of

1 the independent directors under the January order. He is, in  
2 fact, not an independent agent -- not an agent of any of the  
3 independent directors, but, at most, of the company that is  
4 controlled by the board, not -- not of individual directors  
5 who could confer on him -- who could confer on him any  
6 immunity that they have obtained from the January order just  
7 by having appointed him.

8 The proposed order from the other side failed to address  
9 either the ambiguity in the order or its attempt to exculpate  
10 Mr. Seery from the liability, including liability for which  
11 there is a jury trial right, and it is not a fix to the  
12 problem for that reason.

13 In order to make the order enforceable and to fix its  
14 infirmities, the Court would have to do significantly more.  
15 It would have to both apply the caveat from the final  
16 confirmation plan order, rope that caveat to the first part of  
17 the relevant paragraph, as well as the second part, and it  
18 would have to provide directive clarity to be enforceable  
19 rather than too vague.

20 Your Honor, I think that's all I have.

21 THE COURT: Okay. Just FYI, my law clerk pulled the  
22 *Smyth* case from 21 years ago from the Fifth Circuit. And  
23 while it more prominently deals with the issue of whether  
24 trustees -- in this case, it was a Chapter 11 trustee -- could  
25 be subjected to personal liability for damages to the

1 bankruptcy estate --

2 (Echoing.)

3 THE COURT: Someone, put your phone on mute. I don't  
4 know who that is.

5 It dealt with, you know, the standard of liability, that  
6 the trustee could not be sued for matters not to the level of  
7 gross negligence.

8 But it does say, in the very last paragraph, to my shock  
9 and amazement, that -- it's just one sentence in a 10-page  
10 opinion -- orders appointing counsel -- and it was talking  
11 about the trustee's lawyer he hired to handle appeals to the  
12 Fifth Circuit -- orders appointing counsel under the  
13 Bankruptcy Code are interlocutory and are not generally  
14 considered final and appealable. And it cites one case from  
15 1993, the Middle District of Florida. Live and learn. There  
16 is one sentence in that opinion that says that. But I don't  
17 know that it's hugely impactful here, but I did not know about  
18 that opinion and I'm rather surprised.

19 All right. You were going to walk me through evidence,  
20 you said?

21 MR. BRIDGES: Well, do I -- Your Honor, do you want  
22 to do that first before I submit --

23 THE COURT: Yes, please.

24 MR. BRIDGES: -- my rebuttal argument?

25 THE COURT: Please.

1 MR. BRIDGES: Okay.

2 THE COURT: Uh-huh.

3 MR. BRIDGES: Your Honor, we would submit and offer  
4 Exhibits 1 through 44, with the exception of those that have  
5 been withdrawn, that are 2, 13 --

6 THE COURT: Okay. Slow down. Slow down. I need to  
7 get to the docket entry number we're talking about. Are we  
8 talking -- are your -- the Debtor's exhibits are at 2412. But  
9 Nate, I misplaced my notes. Where are Charitable DAF and  
10 Holdco's?

11 THE CLERK: I have 2411.

12 THE COURT: 2411? Is that it?

13 MR. BRIDGES: 2420, Your Honor.

14 THE COURT: 2420? Okay. Give me a minute. (Pause.)  
15 2420?

16 MR. BRIDGES: Yes, Your Honor.

17 THE COURT: Okay, I'm there. And it's which  
18 exhibits?

19 MR. BRIDGES: It's Exhibits 1 through 44, Your  
20 Honor, with four exceptions. We have agreed to withdraw  
21 Exhibit 2, 13, 14, and 29.

22 THE COURT: All right.

23 MR. BRIDGES: Also, Your Honor, we'd like to submit  
24 Debtor's Exhibit 1, which is under Exhibit 49 on our list,  
25 would be anything offered by the other side. But we'd like

1 to make sure that Debtor's Exhibit 1 gets in the record as  
2 well.

3 THE COURT: Let me back up. When I pull up the  
4 docket entry you just told me, I have Exhibits 44, 45, and 46  
5 only. Am I misreading this?

6 MR. BRIDGES: I have a chart showing Exhibits 1  
7 through 49 titled Docket 2420 filed 6/7/21.

8 THE COURT: Okay. The docket entry number you told  
9 me, 2420, it only has three exhibits: 44, 45, and 46. So,  
10 first off, I understand -- are you offering 45 and 46 or not?

11 MR. BRIDGES: No, Your Honor.

12 THE COURT: Okay. So you said you were offering 1  
13 through 44 minus certain ones. 44 is here.

14 MR. BRIDGES: Yes.

15 THE COURT: But I've got to go back to a different  
16 docket number.

17 THE CLERK: It's actually 2411.

18 THE COURT: It's at 2411. That has all the others?

19 THE CLERK: Yes.

20 THE COURT: Okay.

21 So, Mr. Pomerantz, do you have any objection to Exhibits  
22 1 through 44, which he's excepted out 2, 13, 14, and 29, and  
23 then he's added Debtor's Exhibit 1? Any objection?

24 MR. POMERANTZ: I don't believe so. I just would  
25 confirm with John Morris, who has been focused on the

1 exhibits, just to confirm.

2 THE COURT: Mr. Morris?

3 MR. MORRIS: No objection, Your Honor. It's fine.

4 THE COURT: Okay. They're admitted.

5 (Movants' Exhibits 1, 3 through 12, 15 through 28, and 30  
6 through 44 are received into evidence. Debtor's Exhibit 1 is  
7 received into evidence.)

8 THE COURT: So, any --

9 MR. BRIDGES: Thank you, Your Honor.

10 THE COURT: Anything you wanted to call to my  
11 attention about these?

12 MR. BRIDGES: Your Honor, the things that we  
13 mentioned in the argument, for sure, but especially that the  
14 word "trustee" is not used in the January hearing's  
15 transcript, nor is it under discussion in that transcript  
16 that it would be a trustee-like role being played by the  
17 Strand directors, as well as the transcript of the July  
18 hearing on the order at issue here, Your Honor, where you are  
19 asked to defer both in that transcript and in the motion, the  
20 motion that was at issue in that hearing, you are asked to  
21 defer to the business judgment of the company.

22 And finally, Your Honor, I'd ask you to look at the  
23 allegations in the District Court complaint.

24 THE COURT: All right.

25 Mr. Pomerantz or Morris, let's see what exhibits you're



1 wanting the Court to consider. Your exhibits, it looks like,  
2 are at Docket Entry 2412.

3 MR. MORRIS: As subsequently amended at 2423.

4 THE COURT: Oh. All right. So which ones are you  
5 offering?

6 MR. MORRIS: We're offering all of the exhibits on  
7 2423, which is 1 through 17.

8 (Echoing.)

9 THE COURT: Whoops. We got some distortion there.  
10 Say again?

11 MR. MORRIS: Yeah. All of the exhibits that are on  
12 2423, which are Exhibits 1 through 17. But I want to make  
13 sure that, as I did earlier, that that has the exhibits that  
14 we're relying on. Does that --

15 (Pause.)

16 THE COURT: Okay. Let me make sure I know what's  
17 going on here. You're double-checking your exhibits, Mr.  
18 Morris?

19 MR. MORRIS: Yes, Your Honor.

20 THE COURT: Okay.

21 (Pause.)

22 MR. MORRIS: Your Honor, we start with Docket No.  
23 2419, --

24 THE COURT: Okay.

25 MR. MORRIS: -- which was the amended exhibit list.

1 And that actually had Exhibits 1 through 17. And then that  
2 was amended at Docket 2423. So, the exhibits on both of  
3 those lists.

4 THE COURT: Well, they're one and the same, it looks  
5 like, right?

6 MR. MORRIS: Yes.

7 THE COURT: Okay. So you're offering those?

8 MR. MORRIS: I think -- yeah.

9 THE COURT: Any objection?

10 MR. BRIDGES: No objection.

11 THE COURT: All right. They're admitted.

12 (Debtor's Exhibits 1 through 17 are received into  
13 evidence.)

14 MR. POMERANTZ: Your Honor, if I may take a few  
15 moments to respond to Mr. Bridges' reply?

16 THE COURT: All right. Is he still within his hour  
17 and a half?

18 THE CLERK: At an hour and one minute.

19 THE COURT: Okay. All right. You have a little  
20 time left, so go ahead.

21 MR. POMERANTZ: Thank you, Your Honor.

22 So look, I -- it sort of was really not fair to us. Mr.  
23 Bridges was really making things up on the fly. He was  
24 changing the theories of his case and responding to Your  
25 Honor. But I'm going to do my best to respond to the

1 arguments made, many of which I sort of anticipated.

2 I'll first start with the issue that Your Honor raised,  
3 which was whether this is under Rule 60 or not. Mr. Bridges  
4 identified a couple of cases, said that the order was  
5 interlocutory, said that somehow the orders have anything to  
6 do with a plan confirmation order. They do not. Your Honor  
7 didn't hear that argument at the plan confirmation. The  
8 January 9th and July 16th orders are old and cold. There's  
9 an exculpation provision in the plan. There's a gatekeeper  
10 in the plan. The provisions do not overlap entirely. The  
11 gatekeeper applies prospectively. The exculpation provision  
12 includes additional parties.

13 So the arguments that basically the plan had anything to  
14 do -- and the fact that the plan is not a final order -- has  
15 anything to do with the January 9th and July 16th orders is  
16 just wrong. It's just wrong.

17 More fundamentally, Your Honor, as Your Honor pointed  
18 out, the *Smyth* case is a professional employment order. And  
19 ironically, if you abide by the *Smyth* case, that order is  
20 never appealable because it's interlocutory.

21 But more fundamentally, Your Honor, that's dealing with  
22 327 professionals. And again, there's not much analysis in  
23 the *Smyth* case, but we're not dealing with a 327  
24 professional. We're dealing with orders that were approved  
25 under 363.

1           So the premise of the argument that Rule 60(b) -- 60  
2 doesn't apply and they have other arguments just doesn't make  
3 any sense.

4           Okay. So now that gets us to Rule 60. And Your Honor,  
5 Your Honor hit the nail on the head. They haven't presented  
6 any evidence. Allegations in a complaint aren't evidence.  
7 They can't stand up there and say surprise evidence. They  
8 had the opportunity -- and this hearing's been continued a  
9 few weeks -- they had the opportunity to bring it up, and  
10 it's -- they had the opportunity to claim that there was  
11 surprise, but they just didn't. Okay?

12           So to go on to the Rule 60 arguments. Surprise.  
13 Surprise and reasonable delay are really -- go hand in hand  
14 with Mr. Bridges' argument. He says, well, we didn't find  
15 out that -- months after the order was entered that he  
16 violated a duty to us, so we are surprised by that, and it's  
17 a reasonable time. Well, Your Honor, the order provided for  
18 an exculpation. CLO Holdco and DAF knew that it applied to  
19 an exculpation. They were bound. They knew based upon that  
20 order that they would not be able to bring claims for normal  
21 negligence. There is no surprise.

22           If you take Mr. Bridges' argument to its conclusion, he  
23 could wait until the end of the statute of limitations after  
24 an order and have come in four years from now and say, Your  
25 Honor, we just found out facts so we should go back four

1 years before. That, Your Honor, that's not how the surprise  
2 works. That's not how the reasonable time works.

3 Mr. Bridges did not contest that they're bound by res  
4 judicata. He did not contest that the exculpation itself was  
5 clear and unambiguous. Of course he argued Your Honor  
6 couldn't enter an order saying there was exculpation, again,  
7 with no authority. And he seemed surprised, as I suspect he  
8 should, since he's not a bankruptcy lawyer, that retention  
9 orders, whether it's investment bankers, financial advisors,  
10 include exculpations all the time. So there's no grounds  
11 under surprise.

12 There's no grounds -- the motions are late under 60(c).

13 And they're not void. I went through a painstaking  
14 analysis, Your Honor, and I described in detail what the  
15 *Espinosa* case held, and the exceptional circumstances which  
16 Mr. Bridges tried to get away from as much as he could.  
17 Maybe he can try to get away from language in a district  
18 Court opinion, in a Bankruptcy Court opinion, in a Circuit  
19 Court opinion. You can't get away from language in a Supreme  
20 Court opinion. The Supreme Court opinion said exceptional  
21 circumstances, where there was arguably no basis for  
22 jurisdiction for what the Court did. They have not even come  
23 close to convincing Your Honor that there was absolutely no  
24 basis.

25 Now, they disagree. We granted, we think it's a good-

1 faith disagreement, but they haven't come close to  
2 establishing the *Espinosa* standard, so their motion under 60  
3 does not -- it fails.

4 And I don't think -- look, these are good lawyers. Mr.  
5 Bridges and Mr. Sbaiti are good lawyers. They didn't just  
6 inadvertently not mention Rule 60. They never mentioned it  
7 because they knew they had no claim under Rule 60.

8 Your Honor, Mr. Bridges has made comments about the  
9 fiduciary duty of Mr. Seery, about what the Investor's Act  
10 provides. He's just wrong on the law. Now, Your Honor  
11 doesn't have to decide that. Whichever court adjudicates the  
12 DAF lawsuit will have to decide it. But there is no private  
13 cause of action for damages. There are no fiduciary duties to  
14 the investors.

15 And what Mr. Bridges doesn't even mention, in that the  
16 investment agreement that's so prominent in his complaint,  
17 they waived claims other than willful misconduct and gross  
18 negligence against Highland. They waived those claims. So  
19 for Mr. Bridges to come in here and argue that there's some  
20 surprise, when he hasn't even bothered to look at the document  
21 that's underlying the contractual relationship between the DAF  
22 and the Debtor, is -- you know, I'll just say it's  
23 inadvertence.

24 Your Honor, Mr. Bridges tried to argue that Mr. Seery is  
25 not a beneficiary of the January 9th order. He's not an

1 agent. Well, again, Your Honor, Mr. Bridges wasn't there.  
2 Your Honor and we were. On January 9th, an independent board  
3 was picked, and at the time Mr. Dondero ceased to become the  
4 CEO. So you have three gentlemen coming in -- Mr. Seery, Mr.  
5 Dubel, and Mr. Nelms -- coming in to run Highland, in a very  
6 chaotic time. They had to act through their agents. There  
7 was no expectation that this board was going to actually run  
8 the day-to-day operations of the Debtor. Of course not. They  
9 needed someone to run. And they picked Mr. Seery. And the  
10 argument that well, he's an agent of the company, he's not an  
11 agent of the board, that just doesn't make sense. The  
12 independent board had to act. The directors had to act. And  
13 the directors, how do they deal with that? They acted through  
14 Mr. Seery. So he is most certainly governed by the January  
15 9th order.

16 Your Honor, I want to talk about the jury trial right.  
17 Mr. Bridges said that Paragraph 14 is an arbitration clause  
18 and not a jury trial waiver. Now, again, I will forgive Mr.  
19 Bridges because I assume he didn't read the provision, okay,  
20 and he -- somebody told him that, and that person just got it  
21 wrong. But what I would like to do is read for Your Honor  
22 Paragraph 14(f). It doesn't have to do with arbitration.  
23 It's a waiver of jury trial. 14(f), Jurisdiction Venue,  
24 Waiver of Jury Trial. The parties hereby agree that any  
25 action, claim, litigation, or proceeding of any kind



1 whatsoever against any other party in any way arising from or  
2 relating to this agreement and all contemplated transactions,  
3 including claims sounding in contract, equity, tort, fraud,  
4 statute defined as a dispute shall be submitted exclusively to  
5 the U.S. District Court for the Northern District of Texas, or  
6 if such court does not have subject matter jurisdiction, the  
7 courts of the State of Texas, City of Dallas County, and any  
8 appellate court thereof, defined as the enforcement court.

9 Each party ethically and unconditionally submits to the  
10 exclusive personal and subject matter jurisdiction of the  
11 enforcement court for any dispute and agrees to bring any  
12 dispute only in the enforcement court. Each party further  
13 agrees it shall not commence any dispute in any forum,  
14 including administrative, arbitration, or litigation, other  
15 than the enforcement court. Each party agrees that a final  
16 judgment in any such action, litigation, or proceeding is  
17 conclusive and may be enforced through other jurisdictions by  
18 suit on the judgment or in any manner provided by law.

19 And then the kick, Your Honor, all caps, as jury trial  
20 waiver always are: Each party irrevocably and unconditionally  
21 waives to the fullest extent permitted by law any right it may  
22 have to a trial by jury in any legal action, proceeding, cause  
23 of action, or counterclaim arising out of or relating to this  
24 agreement, including any exhibits, schedules, and appendices  
25 attached to this agreement or the transactions contemplated

1 hereby. Each party certifies and acknowledges that no  
2 representative of the owner of the other party has represented  
3 expressly or otherwise that the other party won't seek to  
4 enforce the foregoing waiver in the event of a legal action.  
5 It has considered the implications of this waiver, it makes  
6 this waiver knowingly and voluntarily, and it has been induced  
7 to enter into this agreement by, among other things, the  
8 mutual waivers and certifications in this section.

9 Your Honor, I will forgive Mr. Bridges. I assume he just  
10 did not read that. But to represent to the Court that that  
11 language does not contain a jury trial waiver is -- is just  
12 wrong.

13 THE COURT: All right. I'm going to stop right  
14 there. And you were reading from the Second Amended and  
15 Restated Shared Services Agreement between Highland --

16 MR. POMERANTZ: Not shared services. I'm reading  
17 from the Second Amended and Restated Investment Advisory  
18 Agreement --

19 THE COURT: Investment --

20 MR. POMERANTZ: -- between the Charitable DAF, the  
21 Charitable DAF GP, and Highland Capital Management. The  
22 agreement whereby the Debtor was the investment advisor to the  
23 Charitable DAF Fund and the Charitable DAF GP.

24 THE COURT: All right. Well, Mr. Bridges, I'm going  
25 to bounce quickly back to you. This is your chance to defend

1 your honor.

2 MR. BRIDGES: Yeah, we're -- we're looking at a  
3 different agreement, where -- where literally the words that  
4 were read to you are not in the agreement in front of us and  
5 it is news to me. So, Your Honor, this is a problem --

6 THE COURT: What is the agreement you're looking at?

7 MR. BRIDGES: It is the Amended -- I assume that  
8 means First Amended -- Restated Advisory Agreement.

9 MR. POMERANTZ: Your Honor, we are happy to file this  
10 agreement with the Court so the Court has the benefit of it in  
11 connection with Your Honor's ruling.

12 THE COURT: Okay. I would like you to do that. Uh-  
13 huh.

14 MR. BRIDGES: I'd like -- I'd like to request -- I'll  
15 withdraw that.

16 THE COURT: Okay. Go on, Mr. Pomerantz.

17 MR. POMERANTZ: Mr. Bridges, if you could put us on  
18 mute. If you could put us on mute, Mr. Bridges, so I don't  
19 hear your feedback. Thank you.

20 Mr. Bridges also complains about the language "to the  
21 extent permissible by law." As Your Honor knows and as has  
22 been my practice over 30 years, that language is probably in  
23 every plan where there's a retention of jurisdiction: to the  
24 extent permissible by law. And Mr. Bridges says that this  
25 will create ambiguity in the order that couldn't be enforced.

1 There's no basis for that. Our including the language "to the  
2 extent permissible by law" in the orders, as we are prepared  
3 to do, is consistent with the plan confirmation order where we  
4 addressed that issue. And we addressed that issue because we  
5 didn't want to put Your Honor in a position where thereby Your  
6 Honor may have an action before Your Honor that passes the  
7 colorability gate that Your Honor may not be able to assert  
8 jurisdiction. And since jurisdiction can't be waived in that  
9 regard, we will agree to amend that.

10 There's nothing ambiguous about that, and there's no  
11 reason, though, that clause has to modify the Court's ability  
12 to act as a gatekeeper, because, as we've argued *ad nauseam*,  
13 gatekeeper provisions where the Court has that ability is not  
14 only part of general bankruptcy jurisprudence but also part of  
15 the Bankruptcy Code.

16 Counsel says that *Barton* doesn't apply because the  
17 business judgment of Your Honor was used in retaining Mr.  
18 Seery as opposed to in some other capacity. There's no basis  
19 for that, Your Honor. A court-appointed -- a court-approved  
20 CEO, CRO, professional, they are all entitled to protection  
21 under the *Barton* act. And the argument -- and again, this is  
22 separate and apart from whether he's entitled to protection  
23 under the January 9th order. But the argument that because it  
24 was the business judgment -- again, business judgment in doing  
25 something that Your Honor expressly contemplated under the

1 January 9th corporate governance order -- there's just no law  
2 to support that. And I guess he's trying to get around the  
3 plethora of cases that deal with the situation where *Barton*  
4 has been extended.

5 Your Honor, Mr. Bridges, again, in arguing that we're  
6 ships passing in the night on *Shoaf* and *Applewood* and  
7 *Espinosa*, no, we're not ships passing in the night. We have a  
8 difference in agreement on what these cases stand for. These  
9 cases stand for the proposition that a clear and unambiguous  
10 provision, plain and simple, if it's clear and unambiguous, it  
11 will be given res judicata effect. The release in *Shoaf*,  
12 clear and unambiguous. The release in *Applewood*, not. The  
13 issue here is the exculpation language. That was clear and  
14 unambiguous. It applied prospectively. The argument makes no  
15 sense that we didn't identify -- we didn't identify claims  
16 that might arise in the future, so therefore an exculpation  
17 clause doesn't apply? That doesn't make any sense.

18 Your Honor clearly exculpated parties. Mr. Dondero knew  
19 it. CLO Holdco knew it. The DAF knew it. So the issue Your  
20 Honor has to decide is whether that exculpation was a clear  
21 and unambiguous provision such that it should be entitled to  
22 res judicata effect. And we submit that the answer is  
23 unequivocally yes.

24 That's all I have, Your Honor.

25 THE COURT: All right. Well, --

1 MR. MORRIS: Your Honor? I apologize.

2 THE COURT: Okay.

3 MR. MORRIS: This is John Morris.

4 THE COURT: Yes?

5 MR. MORRIS: I just want to, with respect to the  
6 exhibits, I know there was no objection, but I had cited to  
7 Docket Nos. 2419 and 2423. The original exhibit list is at  
8 Docket No. 2412. So it's the three of those lists together.  
9 2412, as amended by 2419, as amended by 2423. Thank you very  
10 much.

11 THE COURT: All right. Thank you. All right.

12 MR. BRIDGES: Your Honor, I still have no objection  
13 to that, but may I have the last word on my motion?

14 THE COURT: Is there time left?

15 THE CLERK: Yes.

16 THE COURT: Okay. Go ahead.

17 MR. BRIDGES: I just need a minute, Your Honor. They  
18 agreed to change the order. They proposed it to us. They  
19 proposed it in a proposed order to you. They can't also say  
20 that it cannot be changed.

21 Secondly, Your Honor, in *Milic v. McCarthy*, 469 F.Supp.3d  
22 580, the Eastern District of Virginia points out that the  
23 Fourth Circuit treats appointment of estate professionals as  
24 interlocutory orders as well.

25 That's all. Thank you, Your Honor.

1 THE COURT: All right. Here's what we're going to  
2 do. We've been going a very long time. I'm going to take a  
3 break to look through these exhibits, see if there's anything  
4 in there that I haven't looked at before and that might affect  
5 the decision here. So we will come back at 3:00 o'clock  
6 Central Time -- it's 2:22 right now -- and I will give you my  
7 bench ruling on this. All right.

8 So, Mike, they can all stay on the line, right?

9 Okay. You can stay on, and we'll be back at 3:00 o'clock.

10 THE CLERK: All rise.

11 (A recess ensued from 2:22 p.m. to 3:04 p.m.)

12 THE CLERK: All rise.

13 THE COURT: All right. Please be seated. All right.  
14 Everyone presented and accounted for. We're going back on the  
15 record.

16 MR. POMERANTZ: Your Honor, before you start, this is  
17 Jeff Pomerantz. We had sent to your clerk, and hopefully it  
18 got to you, a copy of the Second Amended and Restated  
19 Investment Advisory Agreement. We also copied Mr. Sbaiti with  
20 it as well. And we would also like to move that into  
21 evidence, just so that it's part of the Court's record.

22 THE COURT: All right.

23 MR. BRIDGES: We would object to that, Your Honor.  
24 We haven't had an opportunity to even verify its authenticity  
25 yet.



1 THE COURT: All right. Well, I'll tell you what.  
2 I'm going to address this in my ruling. So it's not going to  
3 be part of the record for this decision, and yet -- well, I'll  
4 get to it.

5 All right. So we're back on the record in Case Number 19-  
6 34054, Highland Capital. The Court has deliberated, after  
7 hearing a lot of argument and allowing in a lot of documentary  
8 evidence, and the Court concludes that the motion of CLO  
9 Holdco, Ltd. and The Charitable DAF to modify the retention  
10 order of James Seery, which was entered almost a year ago, on  
11 July 16th, 2020, should be denied.

12 This is the Court's oral bench ruling, but the Court  
13 reserves discretion to supplement or amend in a more fulsome  
14 written order what I'm going to announce right now, pursuant  
15 to Rule 7052.

16 First, what is the Movants' authority to request the  
17 modification of a bankruptcy court order that has been in  
18 place for so many months, which was issued after reasonable  
19 notice to the Movants, and after a hearing, which was not  
20 objected to by the Movants, or appealed, when the Movants were  
21 represented by sophisticated counsel, I might add, and which  
22 order was relied upon by parties in this case, most notably  
23 Mr. Seery and the Debtor, and in fact was entered after  
24 significant negotiations involving a sophisticated court-  
25 appointed Unsecured Creditors' Committee with sophisticated

1 professionals and sophisticated members, and after negotiation  
2 with an independent board of directors, court-appointed, one  
3 of whose members is a retired bankruptcy judge? What is the  
4 Movants' authority?

5 Movants fumbled a little on that question, in that the  
6 exact authority wasn't set forth in the motion. But Movants'  
7 primary argument is that Movants think the Seery retention  
8 order was an interlocutory order and that the Court simply has  
9 the inherent authority to modify it as an interlocutory order.

10 The Court disagrees with this analysis. I do not think  
11 the Fifth Circuit's *Smyth* case dictates that the Seery  
12 retention order is still interlocutory. The Seery retention  
13 order was an order entered pursuant to Section 363 of the  
14 Bankruptcy Code, not a Section 327 professionals to a debtor-  
15 in-possession, professionals to a trustee employment order  
16 such as the one involved in the *Smyth* case.

17 But even if the Seery retention order is interlocutory --  
18 the Court feels strongly that it's not, but even if it is --  
19 the Court believes it would be an abuse of this Court's  
20 inherent discretion or authority to modify that order almost a  
21 year after the fact and under the circumstances of this case.

22 Now, assuming Rule 60(b) applies to the Movants' request,  
23 the Court determines that the Movants have not made their  
24 motion anywhere close to within a reasonable time, as Rule  
25 60(c) requires, nor do I think the Movants have demonstrated

1 any exceptional circumstances to declare the order or any of  
2 its provisions void. The Movants have put on no evidence that  
3 constitutes surprise or constitutes newly-disputed evidence.  
4 So why are there no exceptional circumstances here such that  
5 the Court might find, you know, a void order or void  
6 provisions of an order?

7 First, this Court concludes that there's no credible  
8 argument that the Court overreached its jurisdiction with the  
9 gatekeeping provisions in the order. Gatekeeping provisions  
10 are not only very common in the bankruptcy world -- in  
11 retention orders and in plan confirmation orders, for example  
12 -- but they are wholly consistent with the *Barton* case, the  
13 U.S. Supreme Court's *Barton's* case, and its progeny that has  
14 become known collectively as the *Barton* doctrine. Gatekeeping  
15 provisions are wholly consistent with 28 U.S.C. Section  
16 959(a)'s complete language.

17 The Fifth Circuit has blessed gatekeeping provisions in  
18 all sorts of contexts. It has blessed them in the situation  
19 of when *Stern* claims are involved in the *Villegas* case. It  
20 even blessed Bankruptcy Courts' gatekeeping functions a long  
21 time ago, in 1988, in a case that I don't think anyone  
22 mentioned in the briefing, but as I've said, my brain  
23 sometimes goes down trails, and I'm thinking of the *Louisiana*  
24 *World Exposition* case in 1988, when the Fifth Circuit blessed  
25 there a procedure where an unsecured creditors' committee can

1 bring causes of action against persons, such as officers and  
2 directors or other third parties, if they first come to the  
3 Bankruptcy Court and show a colorable claim. They have to  
4 come to the Bankruptcy Court, show they have a colorable claim  
5 and they're the ones that should be able to pursue them. Not  
6 exactly on point, but it's just one of many cases that one  
7 could cite that certainly approve gatekeeper functions of  
8 various sorts of Bankruptcy Courts.

9 It doesn't matter which court might ultimately adjudicate  
10 the claims; the Bankruptcy Court can be the gatekeeper.

11 And the Court agrees with the many cases cited from  
12 outside this circuit, such as the case in Alabama, in the  
13 Eleventh Circuit, and there was another circuit-level case, at  
14 least one other, that have held that the *Barton* doctrine  
15 should be extended to other types of case fiduciaries, such as  
16 debtor-in-possession management, among others.

17 Finally, as I pointed out in my confirmation ruling in  
18 this case, gatekeeping provisions are commonplace for all  
19 types of courts, not just Bankruptcy Courts, when vexatious  
20 litigants are involved. I have commented before that we seem  
21 to have vexatious litigation behavior with regard to Mr.  
22 Dondero and his many controlled entities.

23 Now, as far as the Movants' argument that there was not  
24 just improper gatekeeping provisions but actually an improper  
25 discharge in the Seery retention order of negligence claims or

1 other claims that don't rise to the level of gross negligence  
2 or willful misconduct, again, I reiterate there's nothing  
3 exceptional in the bankruptcy world about exculpation  
4 provisions like this. They absolutely are a term of  
5 employment very often. Just like compensation, they're  
6 frequently requested, negotiated, and approved. They are  
7 normal in the corporate governance world, generally. They are  
8 normal in corporate contracts between sophisticated parties.  
9 And most importantly of all, even if this Court overreached  
10 with the exculpation provisions in the Seery retention order,  
11 even if it did, res judicata bars the attack of these  
12 provisions at this late stage, under cases such as *Shoaf*,  
13 *Republic Supply v. Shoaf* from the Fifth Circuit, the *Espinosa*  
14 case from the U.S. Supreme Court, and even *Applewood*, since  
15 the Court finds the language in this order was clear,  
16 specific, and unambiguous with regard to the gatekeeping  
17 provisions and the exculpation provisions.

18 Last, and this is the part where I said I'm going to get  
19 to this agreement that has been submitted, the Second Amended  
20 and Restated Investment Advisor Agreement or whatever the  
21 title is. I am more than a little disturbed that so much of  
22 the theme of the Movants' pleadings and arguments, and I think  
23 even representations to the District Court, have been they  
24 have these sacred jury trial rights, these inviolate jury  
25 trial rights, and an Article I Court like this Court should

1 have no business through a gatekeeping provision impinging on  
2 the possible pursuit of an action where there's a jury trial  
3 right.

4 I was surprised initially when I thought about this. I  
5 thought, wow, I've seen so many agreements over the months. I  
6 can't say every one of them waived the jury trial right, but I  
7 just remembered seeing that a lot, and seeing arbitration  
8 provisions, and so that's why I asked. It just was lingering  
9 in my brain. So I'm going to look at what is submitted. I'm  
10 not relying on that as part of my ruling. As you just heard,  
11 I had a multi-part ruling, and whether there's a jury trial  
12 right or not is irrelevant to how I'm choosing to rule on this  
13 motion. But I do want to see the agreement, and then I want  
14 Movants within 10 days to respond with a post-hearing trial  
15 brief either saying you agree that this is the controlling  
16 document or you don't agree and explain the oversight, okay?  
17 Because it feels like a gross omission here to have such a  
18 strong theme in your argument -- we have a jury trial right,  
19 we have a jury trial right, by God, the gatekeeping  
20 provisions, among other things, impinge on our sacred pursuit  
21 of our jury trial right -- and then maybe it was very  
22 conspicuous in the controlling agreement that you'd waived  
23 that, the Movants had waived that.

24 So, anyway, I'm requiring some post-hearing briefing, if  
25 you will, on whether omissions, misrepresentations were made

1 to the Court.

2           Anyway, so I reserve the right to supplement or amend this  
3 ruling with a more fulsome written order. I am asking Mr.  
4 Pomerantz to upload a form of order that is consistent with  
5 this ruling, and --

6           MR. POMERANTZ: Your Honor, we will do so. I do have  
7 one thing to bring to the Court's attention, unrelated to the  
8 motion, before Your Honor leaves the bench.

9           THE COURT: All right. So just a couple of follow-up  
10 things. Have you -- I'm not clear I heard what you said about  
11 this agreement. Did you email it to my courtroom deputy or  
12 did you file it on the docket?

13           MR. POMERANTZ: We emailed it to your courtroom  
14 deputy. We're happy to file it on the docket. And we also  
15 provided a copy to Mr. Sbaiti.

16           I would note for the Court that it's signed both by The  
17 Charitable DAFs by Grant Scott, just for what it's worth.

18           THE COURT: Okay. All right. Well, I'm trying to  
19 think what I want -- I do want you to file it on the docket,  
20 and I'm trying to think of what you label it. Just call it  
21 Post-Hearing Submission or something and link it to the motion  
22 that we adjudicated here today. And then, again, you've got  
23 10 days, Mr. Bridges, to say whatever you want to say about  
24 that agreement.

25           I guess the last thing I wanted to say is we sure devoted



1 a lot of time to this motion today. We have -- this is a  
2 recurring pattern, I guess you can say. We have a lot of  
3 things that we devote a lot of time to in this case that I get  
4 surprised, but it is what it is. You file a motion. I'm  
5 going to give it all the attention Movants and Respondents  
6 think it warrants. I'm going to develop a full record,  
7 because, you know, there's a recurring pattern of appeals  
8 right now, 11 or 12 appeals, I think, not to mention motions  
9 to withdraw the reference. If we're going to have higher  
10 courts involved in the administration of this case, I'm going  
11 to make a very thorough record so nobody is confused about  
12 what we did, what I considered, what my reasoning was.

13 So I kind of think it's unfortunate for us to have to  
14 spend case resources and so much time and fees on things like  
15 this, but I'm going to make sure a Court of Appeals is not  
16 ever confused about what happened and what we did. So that's  
17 just the way it's going to be. And I feel like we have no  
18 choice, given, again, the pattern of appeals.

19 All right. So, with that, Mr. Pomerantz, you had one  
20 other case matter, you said?

21 MR. POMERANTZ: Yes. But before I get to that, Your  
22 Honor, I assume that, in response to the Movants' submission  
23 on the agreement, that we would have right at four or seven  
24 days to respond if we deem it's appropriate?

25 THE COURT: I think that's reasonable. That's

1 reasonable.

2 MR. POMERANTZ: Okay. Thank you, Your Honor.

3 THE COURT: So let me think of how I want to do this.  
4 I'll just do a short scheduling order of sorts that just, it  
5 says in one or two paragraphs, at the hearing on this motion,  
6 the Court raised questions about the jury trial rights and the  
7 Debtor has now submitted the controlling agreements, I'm  
8 giving the Movants 10 days to respond to whether this is  
9 indeed a controlling agreement, and why, if it is, the Movants  
10 have heretofore taken the position they have jury trial  
11 rights. And then I will give you seven days thereafter to  
12 reply, and then the Court will set a further status conference  
13 if it determines it's necessary. Okay?

14 So, Nate, we'll do a short little order to that effect.  
15 Okay?

16 MR. POMERANTZ: Thank you, Your Honor.

17 I -- again, before I raise the other issue, I want to pick  
18 up on a comment Your Honor just made towards the end. I know  
19 the Court has been frustrated with the time and effort we've  
20 been spending. The Debtor and the creditors have been  
21 extremely frustrated, because in addition to the time and  
22 effort everyone's spending, we're spending millions of  
23 dollars, millions of dollars on litigation that --

24 THE COURT: It's one of the reasons you needed an  
25 exit loan, right?

1 MR. POMERANTZ: Right. No, exactly. That's  
2 frivolous, that we think is made in bad faith.

3 And Your Honor, and everyone else who's hearing this on  
4 behalf of Mr. Dondero, should understand we're looking into  
5 what appropriate authority Your Honor would have to shift some  
6 of the costs. Your Honor did that in the contempt motion.  
7 Your Honor can surely do that in connection with the notes  
8 litigation. But all this other stuff that is requiring us to  
9 spend hundreds and hundreds of hours and spend millions of  
10 dollars, we are clearly looking into whether it would be  
11 appropriate and what authority there is. I just wanted to let  
12 Your Honor know that.

13 And in connection with that, the last point, Your Honor, I  
14 can't actually even believe I'm saying this, but there was  
15 another lawsuit filed -- we just found out in the break -- on  
16 Wednesday night by the Sbaiti firm on behalf of Dugaboy in the  
17 District Court.

18 Now, to make matters worse, Your Honor, the litigation  
19 relates to alleged improper management by the Debtor of Multi-  
20 Strat. If Your Honor will recall, at many times I've told  
21 this Court what Dugaboy's claims they filed in this case.  
22 Dugaboy has a claim that is filed in this case for  
23 mismanagement postpetition of Multi-Strat. Now the Sbaiti  
24 firm, in addition to representing CLO Holdco, in addition to  
25 representing the DAF, and whatever the Plaintiffs' lawyers are

1 in that other District Court, PCMG, and in connection with the  
2 Acis matter, they've decided they haven't had enough. They've  
3 now filed another motion that -- you know, why they filed it  
4 in District Court and there's a proof of claim on the same  
5 issues, I don't know. But I thought Your Honor should know.  
6 I'm not asking Your Honor to do anything about it. But we  
7 will act aggressively, strongly, and promptly.

8 Thank you, Your Honor.

9 THE COURT: All right. Well, you've reminded me of  
10 what came out earlier today about the entity -- I left my  
11 notepad in my chambers -- PMC or PMG or something.

12 Mr. Bridges, we're not going to have a hearing right now  
13 on me doing anything, but what are you thinking? What are you  
14 doing?

15 MR. BRIDGES: Your Honor, I'm not trying to duck your  
16 question. I literally have no involvement with any other  
17 claim, and we would have to ask Mr. Sbaiti to answer your  
18 questions.

19 THE COURT: All right. Is he there?

20 MR. BRIDGES: He is.

21 THE COURT: I'll listen.

22 MR. BRIDGES: I'll switch seats and give him this  
23 chair.

24 MR. SBAITI: Sorry, Your Honor. We had two computers  
25 going and weren't able to use the sound on one, so we ended up

1 turning that off.

2 Your Honor, I'm not sure what the question is about when  
3 you say what are we thinking. We have a client that's asked  
4 us to file something, and when we're advised by bankruptcy  
5 counsel that it's not prohibited for us to do so, and don't  
6 know why we're precluded from doing so, and when the time  
7 comes I'm sure we'll be able to explain to Your Honor --  
8 someone will be able to explain to Your Honor why what we're  
9 doing, despite Mr. Pomerantz's exacerbation, or excuse me,  
10 exasperation, why that wasn't improper. It's our belief that  
11 it wasn't improper or a violation of the Court's rule.

12 THE COURT: Just give me a quick shorthand *Readers'*  
13 *Digest* of why you don't think it's improper.

14 MR. SBAITI: Sure. My understanding is, Your Honor,  
15 there's not a rule that says we can't file it against the  
16 Debtor for postpetition actions. So that, that's as -- that's  
17 as much as I understand. And I'm going to -- I'm not trying  
18 to duck it, either. And if I'm wrong about that and someone  
19 wants to correct me on our side offline and if we have to  
20 explain to the Court why that's so or what rule has been  
21 violated, I'm sure we'll be able to put together something for  
22 that. But that's what I've been advised.

23 THE COURT: Have you done thorough --

24 MR. POMERANTZ: Your Honor, I think what --

25 MR. SBAITI: (garbled), Your Honor.

1 THE COURT: Have you done thorough research yourself?  
2 Your Rule 11 signature is on the line, not some bankruptcy  
3 counsel you talked to. Have you done the research yourself?

4 MR. SBAITI: Well, Your Honor, I've relied on the  
5 research and advice of people who are experts, and I believe  
6 my Rule 11 obligations also allow me to do that, so yes.

7 MR. POMERANTZ: Your Honor, I think we're entitled to  
8 know if it's Mr. Draper's firm who has been representing  
9 Dugaboy. He's the bankruptcy counsel. I don't think it's an  
10 attorney-client privilege issue. If Mr. Sbaiti is going to be  
11 here and sort of say, hey, bankruptcy counsel said it was  
12 okay, I think we would like to know and I'm sure Your Honor  
13 would like to know who is that bankruptcy counsel.

14 THE COURT: Yes. Fair enough. Mr. Sbaiti?

15 MR. SBAITI: Your Honor, in consultation with Mr.  
16 Draper and with consultation with other counsel that we've  
17 spoken to, that has been our understanding.

18 THE COURT: Who's the other counsel?

19 MR. SBAITI: Well, we've talked to Mr. Rukavina about  
20 some of these things for the PCMG and the Acis case. We've  
21 talked to the people who, when they tell us you can't do this  
22 because they're bankruptcy counsel for our client, then we  
23 don't do something. So, and I'm not trying to throw anybody  
24 under the bus, but my understanding of what goes on in  
25 Bankruptcy Court is incredibly limited, so, you know, and if

1 it's a mistake then I'll own it, if I have a mistaken  
2 understanding, but I also wasn't anticipating having to make a  
3 presentation about this right here right now, so --

4 THE COURT: Well, you're filing lawsuits that involve  
5 this bankruptcy case during the hearing, so --

6 MR. SBAITI: Oh, we didn't file it during the  
7 hearing, Your Honor. It was filed last night, I believe.

8 THE COURT: Okay. Well, I assume that you're going  
9 to go back and hit the books, hit the computer, and be  
10 prepared to defend your actions, because your bankruptcy  
11 experts, they may think they know a lot, but the judge is not  
12 very happy about what she's hearing.

13 MR. POMERANTZ: Your Honor, if I may ask when Your  
14 Honor intends to issue the contempt ruling in connection with  
15 the June 8th hearing? I strongly believe -- and, obviously,  
16 this has nothing to do with the contempt hearing; this  
17 happened after -- but I strongly believe that sending a  
18 message that Your Honor is inclined to hold counsel in  
19 contempt, which obviously is one of the violators we said  
20 should be held in contempt, it may be important to do that  
21 sooner rather than later so that people know that Your Honor  
22 is serious.

23 THE COURT: All right. Well, I understand and  
24 respect that request. And let me tell you all, I had a seven-  
25 day -- okay. You all were here on that motion June 8th. I



1 had a seven-day, all-day, every-day, 9:00 to 5:00, 45-minute  
2 lunch break, in-person hearing with a dozen or so live  
3 witnesses that I just finished Tuesday at 5:00 o'clock. So  
4 you all were here on the 8th, and then -- what day was that --  
5 what was -- Tuesday, I finished. Tuesday was the 22nd. So I  
6 started on the 14th, okay? So you all were here on the 8th  
7 and I had a live jury trial -- I mean, not jury trial, a live  
8 bench trial -- live human beings in the courtroom, beginning  
9 June 14th. So you're here the 8th. June 14th through 22nd, I  
10 did my trial. And here we are on the 25th. And guess what, I  
11 have another live human-being bench trial next week, Monday  
12 through Friday.

13 So we've been working in other things like this in between  
14 those two. So I'm telling you that not to whine, I'm just  
15 telling you that, that's the only reason I didn't get out a  
16 quick ruling on this, okay?

17 MR. POMERANTZ: And Your Honor, I was not at all  
18 making that comment to imply anything about the Court.

19 THE COURT: Well, --

20 MR. POMERANTZ: The time and effort that you have  
21 given to this case is extraordinary, --

22 THE COURT: Okay.

23 MR. POMERANTZ: -- so please don't misunderstand my  
24 comment.

25 THE COURT: Okay. And I didn't mean to express

1 annoyance or anything like that. I guess what I'm trying to  
2 do is I don't want anyone to mistake the delay in ruling on  
3 the contempt motion to mean I'm just not that -- you know, I'm  
4 not prioritizing it, other things are more serious to me or  
5 important to me, or I'm going to take two months to get to it.  
6 It's literally been I've been in trial almost all day long  
7 every day since you were here. But trust me, I'm about as  
8 upset as upset can be about what I heard on June 8th, and I'm  
9 going to get to that ruling, and I know what I'm going to do.  
10 And, well, like I said, it's just a matter of figuring out  
11 dollars and whom, okay? There's going to be contempt. I just  
12 haven't put it on paper because I've been in court all day and  
13 I haven't come up with a dollar figure. Okay?

14 So I hope -- I don't know if that matters very much, but  
15 it should.

16 All right. We stand adjourned.

17 (Proceedings concluded at 3:35 p.m.)

18 --oOo--

19

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
above-entitled matter.

23 **/s/ Kathy Rehling**

**06/29/2021**

24

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

25

003676

1	INDEX	
2	<i>Excerpt</i>	
	11:33 a.m. to 3:35 p.m.	
3	PROCEEDINGS	3
4	OPENING STATEMENTS	
5	- By Mr. Bridges	3
	- By Mr. Pomerantz	23
6	WITNESSES	
7	-none-	
8	EXHIBITS	
9		
10	Movants' Exhibits 1, 3 through 12, 15 through 28, and 30 through 44	Received 91
11	Debtor's Exhibit 1	Received 91
12	Debtor's Exhibits 1 through 17	Received 93
13	RULINGS	106
14	END OF PROCEEDINGS	121
15	INDEX	122
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

**EXHIBIT 22**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	.	Case No. 19-34054-11 (SGJ)
	.	
HIGHLAND CAPITAL	.	
MANAGEMENT, L.P.,	.	
	.	
Debtor.	.	
. . . . .	.	
	.	Adv. No. 21-03067 (SGJ)
CHARITABLE DAF FUND, LP,	.	
et al.,	.	
	.	
Plaintiffs,	.	Earle Cabell Federal Building
	.	1100 Commerce Street
v.	.	Dallas, Texas 75242
	.	
HIGHLAND CAPITAL,	.	
MANAGEMENT, L.P., et al.,	.	
	.	
Defendants.	.	Tuesday, November 23, 2021
. . . . .	.	9:40 a.m.

TRANSCRIPT OF HEARING ON  
PLAINTIFFS' MOTION TO STAY ALL PROCEEDINGS (55);  
PLAINTIFFS' MOTION TO STRIKE REPLY APPENDIX (47); AND  
DEFENDANTS' MOTION TO DISMISS COMPLAINT (26)

**BEFORE HONORABLE STACEY G. JERNIGAN  
UNITED STATES BANKRUPTCY COURT JUDGE**

TELEPHONIC APPEARANCES CONTINUED ON NEXT PAGE.

Audio Operator: Hawaii S. Jeng

Proceedings recorded by electronic sound recording, transcript  
produced by a transcript service.

---

**LIBERTY TRANSCRIPTS**  
7306 Danwood Drive  
Austin, Texas 78759  
E-mail: DBPATEL1180@GMAIL.COM  
(847) 848-4907

TELEPHONIC APPEARANCES:

For CLO Holdco, Ltd.: Sbaiti & Company PLLC  
BY: MAZIN AHMAD SBAITI, ESQ.  
JP Morgan Chase Tower  
2200 Ross Avenue, Suite 4900 W  
Dallas, Texas 75201

For Highland Capital Management: Pachulski Stang Ziehl & Jones LLP  
BY: JOHN MORRIS, ESQ.  
780 3rd Avenue, 34th Floor  
New York, NY 10017

Pachulski Stang Ziehl & Jones LLP  
BY: JEFFREY N. POMERANTZ, ESQ.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, California 90067

For Highland CLO Funding, Ltd.: Brobeck Phleger & Harrison  
BY: JONATHAN W. JORDAN, ESQ.  
4801 Plaza on the Lake  
Austin, Texas 78746

King & Spalding LLP  
BY: PAUL RICHARD BESSETTE, ESQ.  
500 West 2nd Street, Suite 1800  
Austin, Texas 78701

**INDEX**

	<b><u>PAGE</u></b>
PLAINTIFFS' MOTION TO STAY ALL PROCEEDINGS (55) Court's Ruling - Denied	29
PLAINTIFFS' MOTION TO STRIKE REPLY APPENDIX (47) Court's Ruling - Denied	32
DEFENDANTS' MOTION TO DISMISS COMPLAINT (26) Court's Ruling - Under Advisement	103



1 THE COURT: Good morning. Please be seated.

2 All right. We have a setting in the Charitable DAF  
3 Fund, et al., v. Highland, Adversary 21-3067. We have three  
4 motions that are set.

5 Let me get appearances from the Plaintiffs' counsel  
6 first. Go ahead.

7 MR. SBAITI: Good morning, Your Honor. This is Mazin  
8 Sbaiti for the Plaintiffs.

9 THE COURT: Okay. Thank you.

10 Now for the Defendants, who do we have appearing?

11 MR. POMERANTZ: Good morning, Your Honor. It's Jeff  
12 Pomerantz and John Morris from Pachulski Stang Ziehl & Jones.  
13 Your Honor, before -- I understand Your Honor is going to take  
14 up the motion to stay first.

15 Before Your Honor does so, I have a procedural issue  
16 relating to that motion that I would like to address the Court  
17 after appearances are made.

18 THE COURT: All right. I assume that's all the  
19 lawyer appearances for this adversary.

20 MR. JORDAN: Your Honor?

21 THE COURT: Oh, go ahead.

22 MR. JORDAN: Your Honor, we are a nominal defendant,  
23 but John Jordan on behalf of Highland CLO Funding, Ltd.

24 THE COURT: Okay. Thank you. Sorry about that.

25 MR. BESSETTE: And, Your Honor, Paul Bessette, Mr.

1 Jordan's colleague is on the phone, as well.

2 THE COURT: Okay. Thank you.

3 All right. Anyone else I missed?

4 (No audible response)

5 THE COURT: All right. Mr. Pomerantz, your  
6 procedural issue?

7 MR. POMERANTZ: Thank you, Your Honor.

8 Your Honor, I must once again bring to this Court's  
9 attention a violation of the Court Rules by the various counsel  
10 representing Mr. Dondero. This time it's by Mr. Sbaiti.

11 When the district court entered its order granting  
12 Highland's motion to enforce the reference and referring this  
13 matter to Your Honor, there were three matters on the Court's  
14 docket, district court's docket that got transferred. First  
15 was the motion to dismiss, second was the motion to stay, and  
16 third was the motion to strike, which essentially has been  
17 rendered moot.

18 The briefing was complete with respect to the first  
19 two matters, the motion to dismiss and the motion to stay. And  
20 all that remained for the Court to do was to set a hearing and  
21 have oral argument. Your Honor, on October 13th, Your Honor  
22 set a hearing for today for each of those two motions.  
23 Nevertheless, on November 10th, almost a month after the Court  
24 set the matters for hearing and after pleadings were closed,  
25 Plaintiffs filed what they called their amended motion to stay.

1 As an initial matter, Your Honor, the amended motion  
2 was not even filed in this adversary proceeding initially. It  
3 was filed in the main case, and there was an error that Mr.  
4 Sbaiti corrected on November 18th, five days before this  
5 hearing. Plaintiff did not ask for leave of court to file any  
6 further pleadings. They did not provide the time under the  
7 local rules for response. And, in fact, they raised additional  
8 arguments in their amended motion.

9 Well, Your Honor, we can certainly argue to the Court  
10 that the amended motion constitutes a new motion, is untimely,  
11 and the hearing should be continued to allow us to file a  
12 response. We're not going to do that, Your Honor. As I will  
13 discuss when it's my time to respond substantively to the  
14 motion, the new arguments to stay the proceedings, the amended  
15 motion are equally as frivolous as the arguments contained in  
16 the original motion.

17 But I bring this to the Court's attention because,  
18 again, it's extremely frustrating to have the lawyers  
19 representing Mr. Dondero's related entities continue to act as  
20 if the rules do not apply to them. Your Honor will recall just  
21 a week or so ago, Your Honor made a -- we had a similar issue  
22 in connection with the motion to dismiss. Failure to follow  
23 the rules is unprofessional, and it's disrespectful not only to  
24 Highland's professionals but also to the Court and it  
25 interferes with Your Honor's ability to control your docket and

1 sufficiently prepare for contested matters.

2 At some point, Your Honor, there should be real  
3 consequences for the continued violation of the rules. Having  
4 said that, Your Honor, we are prepared to go forward with the  
5 motion to stay today.

6 THE COURT: All right. Mr. Sbaiti, what say you?  
7 I'm looking at Docket Entry Number 69 in the adversary  
8 proceeding that was filed last Thursday. So, obviously, very,  
9 very late in the game, shall we say. What is your response to  
10 this?

11 MR. SBAITI: Your Honor, that was not filed in the  
12 adversary as an error. When we asked one of our paralegals to  
13 file it, we're not as familiar with the bankruptcy court system  
14 and it was an error. It was corrected once the lawyers  
15 realized it, which was last -- which was on November the 18th.  
16 It was filed in, I guess in the main case. But it was simply  
17 an inadvertent error, Your Honor.

18 MR. POMERANTZ: I would add, Your Honor, the original  
19 motion filed inadvertently was November 10th. It still was not  
20 timely. I think Mr. Sbaiti needs to answer the question of why  
21 that was filed untimely, okay.

22 THE COURT: All right. Thank you, Mr. Sbaiti.

23 So, one of my pet peeves in life is people blaming  
24 paralegals, by the way. But be that as it may, as Mr.  
25 Pomerantz points out that it was still untimely the motion

1 filed in the underlying bankruptcy case November 10th. So what  
2 is your --

3 MR. SBAITI: Your Honor, when we looked at the motion  
4 and looked at the progression of the case, we filed an amended  
5 motion simply to clarify our position. And really I don't  
6 think we've changed our arguments all that much. We simply  
7 clarified our position. We've seen amended motions filed in  
8 the bankruptcy in our prior dealings, and so at that point, we  
9 felt like there wasn't a rule explicitly saying we couldn't  
10 have an amended motion.

11 But if it's untimely, Your Honor, you know, we don't  
12 think it changes the underlying arguments. As Mr. Pomerantz  
13 said, we don't think there's any prejudice to Highland either.

14 THE COURT: All right. Well, just to be clear, you  
15 know, it's one thing in an underlying bankruptcy case to file  
16 an amended motion after you've gotten a motion set for hearing  
17 that might slightly adjust, you know, facts or relief sought.  
18 And, of course, we independently look at it when it happens in  
19 an underlying case to see do we need more notice to affected  
20 parties.

21 But in an adversary proceeding, you know, you just  
22 don't do this. All right? If you have some sort of  
23 exceptional circumstances, you can file I guess a motion to  
24 amend because I got to include this new information that didn't  
25 exist. But you just don't do this, okay?

1           So I don't -- could you be clear what was the new  
2 information? What was the new information that had to be  
3 brought before the Court suddenly?

4           MR. SBAITI: Your Honor, there wasn't new  
5 information. We were simply giving notice of our understanding  
6 of where the legal arguments were going. The reason being is  
7 that after those motions were filed and recently, the debtor  
8 took the position in two other cases that they should be  
9 dismissed pursuant to the permanent injunction.

10           And so that clarified for us at least a couple of  
11 arguments that were unclear to us where the debtor stood on  
12 whether or not the permanent injunction would be a basis to  
13 dismiss or stay any of the claims that were pending. There are  
14 two other claims pending in district court. Since we had filed  
15 that motion, the debtor filed a motion to reconsider the stays  
16 that were granted in those two courts. And then they also  
17 moved to dismiss on the basis of the permanent injunction.

18           And so given that the debtor took the position that  
19 they were willing to dismiss those cases based upon the  
20 permanent injunction, it in many ways contravenes the position  
21 they took in response to our motion which is that the -- for  
22 example, they somewhat take the position in Paragraph 22, it  
23 wasn't as clear then but it's clear -- it seems clearer now  
24 that the permanent injunction is not relevant to whether or not  
25 the case can go forward in any capacity.

1           And so we simply wanted to incorporate that, but it's  
2 mainly legal argument about the choices that are before the  
3 Court. That was really it. I mean, theoretically, I would  
4 have made them for the first time during oral argument and we  
5 thought we were doing something good by giving -- apprising the  
6 Court in writing and giving notice of these arguments to the  
7 other side by filing an amended motion. We didn't add new  
8 evidence or anything like that.

9           MR. POMERANTZ: Your Honor, that argument is  
10 completely disingenuous because our motion to dismiss and  
11 motion for reconsideration that Mr. Sbaiti refers to is several  
12 weeks ago, okay. It wasn't November 10th. It was several  
13 weeks ago.

14           I will respond substantively why Mr. Sbaiti is wrong  
15 and there's no inconsistent positions when it's my time to  
16 speak. But for Mr. Sbaiti to say he was doing us a favor and  
17 he was reacting to recent new information is just wrong, Your  
18 Honor. And they should just not be continued to allowed to get  
19 away with flouting the rules.

20           THE COURT: All right. Well, let me just say I'm  
21 confused, maybe I should say baffled, about this amended  
22 motion. You know, the motion to dismiss that is before the  
23 Court for oral argument today isn't about the injunction, isn't  
24 about the plan injunction. It's about res judicata and other  
25 12(b)(6) arguments.



1           So I'm confused and I think, you know, it's been  
2 clear for many months in this adversary proceeding, in  
3 particular, the debtor's position on the plan injunction,  
4 particularly, you know, in the whole argument on the motion to  
5 leave to add Mr. Seery as a defendant.

6           So I'm confused, but we're going to go forward on the  
7 argument today, whatever argument you want to make. And you've  
8 been, I guess, forewarned. I will say that these last-minute  
9 amended motions are not going to be tolerated, are not going to  
10 be considered. And so, you know, I hope you won't do it again.  
11 Your firm has already been sanctioned once in this adversary  
12 proceeding. I'm sure we all remember.

13           So, you know, I'm just kind of baffled why you would  
14 take a chance filing an amended motion without leave or somehow  
15 getting it to the attention of the Court or running it by the  
16 other parties for their consent to you doing it. But we're  
17 going to go forward and just hear the arguments, okay. And so  
18 --

19           MR. SBAITI: Thank you.

20           THE COURT: -- I'll hear your argument.

21           I'm letting people know I don't know where this time  
22 estimate came on the calendar today, three hours. I don't know  
23 if someone specifically expressed that. But I'm letting you  
24 know at noon I have a swearing-in ceremony that I'm doing back  
25 in my chambers. So I will stop at noon Central time.

1 And so does anyone think that's going to be a  
2 problem?

3 MR. SBAITI: It should not be, Your Honor, from our  
4 perspective.

5 THE COURT: Mr. Pomerantz?

6 MR. POMERANTZ: I don't believe so. Mr. Morris is  
7 going to handle the motion to dismiss which is going to be the  
8 bulk. My presentation on the motion to stay is only going to  
9 be around ten minutes or so.

10 THE COURT: Okay. Thank you.

11 Mr. Sbaiti, your argument on the motion for stay.

12 MR. SBAITI: Thank you, Your Honor.

13 Your Honor, may I share my screen?

14 THE COURT: You may.

15 MR. SBAITI: I have a PowerPoint that can kind of --

16 THE COURT: Okay. You may.

17 MR. SBAITI: -- walk us through. Thank you.

18 Is Your Honor able to see my screen?

19 THE COURT: I can, yes.

20 MR. SBAITI: Thank you, Your Honor.

21 Your Honor, what I would point you to is, first, the  
22 injunction language. This is what Your Honor's permanent  
23 injunction says, and this is really what animates our motion to  
24 stay. Our motion to stay is derived specifically because my  
25 clients and I feel like our case has been enjoined by this

1 injunction, if not completely disposed of.

2 The language says that we're an enjoined:

3 "An enjoined party is permanently enjoined from  
4 commencing, conducting, or continuing in any manner  
5 any suit, action, or other proceeding of any kind  
6 including any proceeding in a judicial, arbitral,  
7 administrative, or other forum against or affecting  
8 the debtor or the property of the debtor."

9 And then (v) of that injunction says:

10 "or acting or proceeding in any manner in any place  
11 whatsoever that does not conform to or comply with  
12 the provisions of the plan."

13 One of the things that was suggested in Paragraph 22  
14 of their response was that the DAF and Holdco are not enjoined  
15 parties. But the final plan defines an enjoined party in  
16 Article 1(b) (56) as any entity who has or -- all entities who  
17 have held, hold, or may hold claims against the debtor; any  
18 entity that has appeared and/or filed any motion, objection, or  
19 other pleading in this Chapter 11 case regardless of the  
20 capacity in which such entity appeared and any other party in  
21 interest. And, five, the related persons of each of the  
22 foregoing.

23 Article 1(b) (22) defines a claim as any claim that's  
24 defined in Section 1015 of the Bankruptcy Code. And Section  
25 1015 of the Bankruptcy Code defines a claim as a right to

1 payment whether or not such right is reduced to judgment,  
2 liquidated, unliquidated, fixed, contingent, matured,  
3 unmatured, disputed, undisputed, legal, equitable, secured, or  
4 unsecured.

5           So given this definition, when we've read this  
6 injunction, we believed that we were enjoined parties, the DAF  
7 and Holdco were both enjoined parties. They had appeared in  
8 the -- they have claims. Obviously, those are the claims being  
9 asserted here.

10           And so going back to the injunction language, we  
11 believe this lawsuit has been disposed of by this permanent  
12 injunction. We believe there's really only one or two things  
13 that should probably happen with this lawsuit. Either it could  
14 be dismissed based upon the permanent injunction or what we  
15 proposed in our motion to stay is that the Court exercise its  
16 inherent authority to simply stay the case pending the appeal  
17 of this language, which is up on appeal in the Fifth Circuit  
18 right now.

19           If that language, and if the injunction gets affirmed  
20 by the Fifth Circuit, then certainly the dismissal can happen  
21 once that affirmance happens and there's no harm, no foul, and  
22 no one's wasted any time.

23           If they're not, if it's overturned, then, obviously,  
24 the injunction would be vacated, presumably by the Fifth  
25 Circuit. And at some point, if the Court decides not to enter

1 a similar injunction that would likewise dispose of this case,  
2 then the case could proceed on the merits.

3           The issue we've identified both in our original  
4 motion and as we fleshed out in our -- as a matter of law in  
5 our amended motion to simply put a finer point on it is that  
6 the merits are now -- have been disposed of. This injunction  
7 ends this case, at least as far as we read it. It ends this  
8 case irrespective of the underlying merits of the lawsuit,  
9 which means that the lawsuit merits themselves have become moot  
10 and any opinion or any attempt to resolve it is obviously an  
11 advisory opinion by the Court.

12           So we really only see two ways that this could go  
13 right now without either gutting the injunction or  
14 circumventing it completely, which is to say that either the  
15 case should be dismissed based upon the permanent injunction or  
16 the case should be stayed based upon the permanent injunction.

17           Mr. Pomerantz or the debtors' brief suggests that,  
18 well, the injunction doesn't prevent hearing pending motions.  
19 But I would respectfully disagree with that. If you look at  
20 the language, "commencing, conducting, or continuing in any  
21 manner in any suit, action, or other proceeding against or  
22 affecting the debtor."

23           As 12(b)(6) hearing, I would imagine, was intended to  
24 fall under the umbrella of a proceeding. And us arguing a  
25 12(b)(6) motion would us be conducting and maybe even

1 continuing the suit because we're trying to protect the merits  
2 of the suit, which as I said are at this juncture already moot.

3 And so it comes down to I think a very simple  
4 question, which is what do we do at this juncture. Do we just  
5 simply dismiss the lawsuit in light of this permanent  
6 injunction or stay the lawsuit in light of this permanent  
7 injunction?

8 The debtor makes a lot of hay out of the fact that,  
9 well, there are special rules that apply when you're trying to  
10 stay a case pending appeal. But if you look at all of their  
11 case law, it has to do with different circumstances where an  
12 appeal -- where there's a matter on appeal that could  
13 substantially affect the resolution of the case, which here we  
14 think it actually could. But in those cases, those appeals  
15 would affect the resolution of the case on the merits; whereas,  
16 here, the question goes to whether or not a permanent  
17 injunction that really has stopped us all in our tracks.

18 As soon as we understood this injunction and its  
19 scope, we're the ones who reached out to the debtor's counsel  
20 and asked them on a meet-and-confer whether or not they would  
21 just agree to stay the matter. And we were a little bit  
22 surprised by their reaction when they first didn't think that  
23 this applied to our case, and we didn't understand how. And  
24 then they changed their mind, said it did apply to our case but  
25 they didn't think that we should stay the case. And they

1 didn't suggest let's just dismiss it based upon the permanent  
2 injunction.

3           So it kind of comes down to the same small -- same  
4 simple issue, Your Honor. There's this permanent injunction,  
5 and I don't think there's any way for us to get around it at  
6 this juncture.

7           THE COURT: Mr. Pomerantz:

8           MR. POMERANTZ: Yes, Your Honor.

9           I'm going to respond to several of the arguments Mr.  
10 Sbaiti made in his motion, which apparently he's abandoned  
11 because he only is focused on the injunction. And I'm also  
12 going to tell Your Honor, what our arguments are because  
13 despite Mr. Sbaiti's efforts, he's completely misquoted them.

14           So in the motion and the amended motion, the  
15 Plaintiffs make several arguments why this Court should stay  
16 the matter. First, they argue they're entitled to a stay  
17 because the exculpation provision in the plan prohibits them  
18 from proceeding against the Defendants in the action. And  
19 there are several problems with that argument.

20           First, Mr. Sbaiti and the Plaintiffs don't even  
21 attempt to meet the Fifth Circuit's standards for a stay  
22 pending appeal because, of course, they can't. Mr. Sbaiti's  
23 trying to sidestep the grounds for a stay pending appeal by  
24 arguing it doesn't apply just is incorrect.

25           They would have to show that there is a likelihood of

1 success on the merits, they would suffer irreparable harm, the  
2 debtor wouldn't suffer irreparable harm, and there is -- public  
3 interest supports a stay. They can't do any of them.

4 In fact, as Your Honor is well aware, Your Honor  
5 denied the actual appellants in that suit, in that order, the  
6 confirmation order, a stay pending appeal and that was denied  
7 by the district court and also denied by the Fifth Circuit  
8 Court of Appeals.

9 The Plaintiffs didn't object to the plan, they are  
10 not parties to the appeal, and they never sought a stay pending  
11 appeal. So they really can't explain why they as really  
12 strangers to the appeal are entitled to a stay of the  
13 effectiveness of the plan when the actual appellants to that  
14 order were denied a stay pending appeal up through the  
15 appellate ladder.

16 Second, notwithstanding Mr. Sbaiti's arguments in the  
17 motion, the exculpation provision is neither as broad nor does  
18 it affect all the parties that are subject to this litigation.  
19 There are three Defendants in the complaint. The only  
20 Defendant that is covered by the exculpation provision is the  
21 debtor. The exculpation provision does not apply HCF Advisors,  
22 and it does not apply to Highland CLO Funding.

23 Also, while the exculpation provision does apply to  
24 the debtor, it only exculpates the debtor from claims of  
25 negligence. The complaint raises a variety of causes of action



1 that have nothing to do with negligence and would not be  
2 covered by the exculpation provision.

3 But, Your Honor, the biggest problem with their  
4 argument that the exculpation provision supports a stay is that  
5 the exculpation -- the appeal of the exculpation provision has  
6 nothing to do with this case. Why? Because the Fifth Circuit  
7 appeal concerns whether the exculpation provision is  
8 appropriate for parties other than the debtor. The debtor is  
9 the only Defendant in this case that obtains the benefit of the  
10 exculpation.

11 And there is no dispute, there was no dispute at  
12 confirmation, there's no dispute in the case law, there's no  
13 dispute in Pacific Lumber, there's no dispute in the appeal  
14 that a plan can exculpate the debtor. So the Fifth Circuit  
15 appeal doesn't implicate the exculpation provision and cannot  
16 support a basis for a stay.

17 The next argument Mr. Sbaiti makes is the injunction  
18 provision, and the injunction provision is on appeal to the  
19 Fifth Circuit. But the aspect of the appeal of the injunction  
20 is not the provision that Mr. Sbaiti points to.

21 And, again, as with the exculpation provision, the  
22 same arguments about failure to obtain a stay, failure to be  
23 party to the appeals, and failure to object to the plan apply,  
24 as well. But as is the case with the exculpation provision,  
25 the resolution of the appeal of the injunction provision will

1 not affect this case in any way.

2           They point to the portion of the injunction that  
3 prohibits enjoined parties from directly or indirectly  
4 continuing, commencing, or conducting in any manner any suit or  
5 action proceeding against the debtor. They argue that they  
6 cannot proceed without violating the injunction because the  
7 injunction was intended to put all litigation against the  
8 debtor to an end.

9           But, of course, Your Honor, that is not true. That  
10 is not what the injunction is. The issue on appeal before the  
11 Fifth Circuit as it relates to the injunction is whether the  
12 injunction impermissibly enjoins parties from enforcing their  
13 rights with respect to post-effective date commercial  
14 relationships with the reorganized debtor. And, of course, we  
15 argue that it's appropriate, but it has nothing to do with the  
16 provision Mr. Sbaiti identified.

17           The appeal does not impact in any way whether a plan  
18 can enjoin prosecution of claims that arose prior to the  
19 effective date. And, of course, such a plan provision is  
20 completely appropriate and is customary. The plan provided the  
21 debtor as the plan provides all debtors with a fresh start and  
22 enjoins litigation against the debtor.

23           But importantly, Your Honor, that does not mean as  
24 Plaintiffs argue that any liability for pre-effective date  
25 conduct just goes away and that creditors are left without a

1 remedy to pursue claims against the debtor for pre-effective  
2 date conduct.

3           Rather, if they have a pre-petition claim in lieu of  
4 their litigation that's pending, they file a pre-petition claim  
5 against the estate and that matter is resolved in the claims  
6 objection procedure. Or, as in the case here, when they make  
7 an allegation that there is a post-petition claim, what do they  
8 do? They file a request for payment of an administrative  
9 claim, and this Court addresses the validity of the  
10 administration claim. The lawsuit pending in another  
11 jurisdiction stops, but the claim has to be resolved in the  
12 bankruptcy court.

13           The only conduct that the injunction really prohibits  
14 is them from proceeding with actions in other courts. It does  
15 not deny them a remedy. Accordingly, their argument that they  
16 cannot proceed with claims against the debtor because of the  
17 injunction provision just lacks any merit and can't form the  
18 basis for a stay.

19           Plaintiffs' next argument in their briefing is that  
20 if the Court refuses to stay the complaint, they will file a  
21 motion to withdraw the reference of this matter to the district  
22 court. Your Honor, this is the biggest head-scratcher of them  
23 all given how this complaint ended up before Your Honor. This  
24 exact issue and Plaintiffs' arguments as to why the reference  
25 should be withdrawn have already been fully briefed and decided

1 by the district court.

2 As Your Honor may recall, the Plaintiff filed this  
3 action in the district court, conveniently failing to include  
4 the bankruptcy case as a related case or mentioning that the  
5 bankruptcy courts have related jurisdiction in the filings.  
6 Your Honor may have had occasion to review the underlying  
7 complaint when the debtor brought a motion for contempt against  
8 counsel for Plaintiffs for pursuing a claim against Mr. Seery  
9 in violation of Your Honor's January 9th, 2020 and July 16th,  
10 2020 orders.

11 Your Honor issued an order finding counsel and  
12 various parties in contempt which order is, of course, subject  
13 to appeal. At the time we were litigating the contempt motion,  
14 we filed two motions in district court. The first was a motion  
15 to enforce the reference and have the district court send that  
16 complaint to Your Honor. And that motion to enforce the  
17 reference is now on Your Honor's docket at Number 22 and 23.

18 The second was the motion to dismiss which is before  
19 Your Honor today. Plaintiffs oppose the motion to enforce the  
20 reference arguing that mandatory withdrawal was required  
21 because the matter involved consideration of non-bankruptcy  
22 federal law, specifically federal securities laws and the  
23 Investment Advisors' Act.

24 Plaintiffs further argue to the district court why  
25 would you refer the case to the bankruptcy court if it's only

1 going to end up back in the district court upon mandatory  
2 withdrawal of the reference. They argue to the district court  
3 that would be a complete waste of time.

4 We filed our reply at Docket Number 42 explaining to  
5 the district court why mandatory withdrawal of the reference  
6 did not apply and why this case should be referred to Your  
7 Honor. And what did the district court subsequently do? It  
8 entered an order referring this action to Your Honor which is  
9 why we are here today.

10 Plaintiffs now flout the district court's order of  
11 reference by telling the Court that if the Court does not stay  
12 the matter, they will file a motion to withdraw the reference  
13 before Your Honor, and they attach virtually identical pleading  
14 that they filed in opposition to our motion to enforce the  
15 reference.

16 Plaintiffs did not disclose in their amended motion  
17 that there was a fully-briefed motion to enforce the reference  
18 before the district court. Plaintiffs' argument is  
19 disingenuous and designed to mislead the Court.

20 The district court has only agreed that mandatory  
21 withdrawal of the reference does not apply and this case  
22 belongs in Your Honor. And while we cannot stop the Plaintiffs  
23 from filing any motion before this Court, we want to put them  
24 on notice that if they do file a motion for withdrawal of the  
25 reference in light of the facts as I just stated them, we will

1 seek sanctions.

2 In any event, Your Honor, the fact that they may file  
3 a motion for withdrawal of the reference at some point in the  
4 future is not grounds to stay the matter.

5 Lastly, Your Honor, Plaintiffs argued in the opening  
6 that Highland's position today in opposing the motion to stay  
7 is inconsistent with positions Highland has taken in two other  
8 lawsuits commenced by the Sbaiti firm. Like all of their other  
9 arguments, they misrepresent the facts and are frivolous.

10 The Sbaiti firm filed a complaint on behalf of the  
11 DAF in the district court arguing that Highland mismanaged  
12 (audio drop). That complaint followed in the heels of an  
13 almost identical complaint filed by Dugaboy asserting the same  
14 claims.

15 And Your Honor may recall questioning Mr. Sbaiti at a  
16 hearing in June how Dugaboy could pursue such a claim in the  
17 district court if Dugaboy had a pending proof of administrative  
18 claim on file in the bankruptcy case. Well, soon after that  
19 hearing, Your Honor, the Dugaboy complaint was dismissed, and a  
20 few days later the DAF complaint was filed. That complaint has  
21 never been served on Highland.

22 The second lawsuit is also a lawsuit filed by the  
23 Sbaiti firm on behalf of an entity called PCMG in the district  
24 court. And PCMG previously held less than five one-hundredths  
25 of a percent interest in a certain fund managed by highland.

1 The lawsuit alleges that Highland acted improperly to sell  
2 certain assets of the fund, thereby damaging PCMG. That  
3 complaint has also never been served on Highland.

4 The Plaintiffs sought a stay of those matters before  
5 Highland could file a response, and the court -- the district  
6 court's entered stays in those matters. And Highland has filed  
7 motions for reconsideration and the motions to dismiss because  
8 they violate the injunction.

9 But, importantly, Your Honor, if you read the  
10 motions, Highland does not argue that Plaintiffs do not have a  
11 remedy for the alleged wrongs they say they suffer. Rather,  
12 Highland's argument is that any claims alleged in those  
13 lawsuits, just like any claims alleged in the lawsuit before  
14 Your Honor today, must proceed in bankruptcy court as part of  
15 the claims objection process. That's where they will have  
16 their day in court. The lawsuits don't go away. The  
17 injunction prevents them from continuing on in district court.

18 Accordingly, Highland is being totally consistent in  
19 all matters, and the litigations may not proceed there but must  
20 proceed before Your Honor. And, of course, none of these three  
21 matters are implicated by the Fifth Circuit appeal.

22 Your Honor, the amended motion was procedurally  
23 improper and is substantively without merit. And for all these  
24 reasons, we request that the Court deny the stay motion and  
25 proceed with the hearing on the motion to dismiss.

1 Thank you, Your Honor.

2 THE COURT: All right.

3 Mr. Sbaiti, you get the last word.

4 MR. SBAITI: Thank you, Your Honor.

5 Your Honor, the administrative claim process that was  
6 described as being the way that these claims were supposed to  
7 proceed, by the language of the order that we read, does not  
8 allow for these claims. Those claims are limited to a specific  
9 category of claims that don't include the claims that are  
10 alleged in this lawsuit.

11 And in any event, this lawsuit wasn't filed as an  
12 administrative claim. So if that's the case and it needs to be  
13 refiled or reasserted as an administrative claim, then I think  
14 that's a subject for another day. All I know is that we have  
15 this injunction right now that either should stay this case  
16 pending the appeal, which I'll address the issue on appeal in a  
17 moment, or it should be dismissed, perhaps without prejudice so  
18 that it can be refiled properly as an administrative claim if  
19 that's what's supposed to happen, because I guess this converts  
20 the matter.

21 The appeal, the subject of the appeal as to the  
22 injunction, Your Honor, the appeal actually encompasses many of  
23 the issues that we're talking about in this case. Now Mr.  
24 Pomerantz tries to narrow the scope of what's up on appeal, and  
25 that may indeed be the argument that they're going to present



1 to the Fifth Circuit or that they've presented to the Fifth  
2 Circuit.

3 But the actual issue up on appeal is the  
4 enforceability and validity of the order for a variety of  
5 reasons which includes the provision that we're talking about  
6 and the enforceability of the provision that we're talking  
7 about because it gets rid of particular claims. And I guess  
8 the argument back is, no, it doesn't because there's now an  
9 alternative means of going there.

10 Mr. Pomerantz says that we shouldn't have proffered a  
11 motion to enforce the reference. That proffer, however, was  
12 because Judge Boyle's reference to this Court didn't deal with  
13 our motion to -- our cross-motion to withdraw the reference.  
14 All it dealt with was their motion to enforce the reference as  
15 a -- to enforce the standing order in the district court. And  
16 that's all she ordered was she cited the standing order and the  
17 statutes, I think it's 157(a), and that's really all it did.

18 So it left open the question of whether she wanted  
19 Your Honor to deal with the withdrawal of the reference  
20 specifically as to the 12(b)(6) issue in the first instance.  
21 It didn't resolve the question. It doesn't purport to resolve  
22 that question. And it's not unheard of for the district court  
23 then to send the matter to the bankruptcy court and then to  
24 piecemeal which proceedings the withdrawal of the reference is  
25 applicable to and then all the other proceedings would stay

1 with Your Honor or with the bankruptcy court.

2           So we weren't flouting the district court's order,  
3 and we certainly weren't flouting any of the previous orders.  
4 And the threat of a sanction for simply exercising our rights  
5 in due course is not well taken.

6           Now Mr. Pomerantz says, well, the DAF and CLO Holdco  
7 are not parties to the appeal. I don't think that's relevant  
8 because if the provision is struck by the Fifth Circuit, it's  
9 not only struck for the appellants, it's struck as to all.  
10 It's either valid or it's invalid. And even if it's declared  
11 to be invalid only as to the appellants, it's not suddenly  
12 valid as to everyone else who didn't appeal. That's not  
13 generally how these appeals have worked.

14           If the Court doesn't stay this matter, Your Honor,  
15 and doesn't dismiss it, we still maintain, Your Honor, that as  
16 it stands today, the question on the merits have been mooted  
17 and we cannot proceed. I think what Mr. Pomerantz is hoping  
18 for or the debtor is hoping for is a provision where our hands  
19 are potentially tied to argue the motion.

20           And if the Court tells us they're not, then we'll  
21 certainly argue the 12(b)(6). But what I don't want to do is  
22 argue a 12(b)(6) motion that on its face appears to violate the  
23 permanent injunction and then be held in contempt for violating  
24 that injunction.

25           And so that's why we've asked for the Court to either

1 stay the matter under its inherent jurisdiction or to -- if  
2 you're going to -- if it's not going to be stayed, then we  
3 believe it has to be dismissed according to the permanent  
4 injunction as it stands right now.

5 THE COURT: All right.

6 The motion to stay is denied. The amended motion to  
7 stay is likewise denied. This is an odd argument. I guess one  
8 might say the traditional four-factor test for a stay of a  
9 proceeding has really not been the subject of the argument here  
10 for a stay.

11 So suffice it to say the four-prong test for a stay,  
12 you know, hasn't been met here. There hasn't been a showing of  
13 substantial likelihood of success on the merits or irreparable  
14 injury if the stay's not granted or a stay will not  
15 substantially harm others or the stay would serve a public  
16 interest.

17 But going on to the arguments that were focused on by  
18 movant, I just don't think that you have shown that, you know,  
19 either the exculpation clause or the injunction provisions of  
20 the plan somehow tie your hands in arguing the 12(b)(6) motion,  
21 defending against the 12(b)(6) motion today or I just think  
22 that your arguments reflect, frankly, a misunderstanding of how  
23 the injunction language and exculpation language applies here.

24 So the motion for stay is denied, and I will ask Mr.  
25 Pomerantz to submit an order reflecting the Court's ruling.

1           So it looks like we have another procedural matter,  
2 Mr. Sbaiti. You filed a motion to strike reply appendix of the  
3 Plaintiffs quite a while back. So did you want to present  
4 that?

5           MR. SBAITI: Yes, Your Honor. I think it's a very  
6 simple procedural issue.

7           Generally, a party that files a 12(b)(6) is limited  
8 to the four corners of the complaint. And if there's a  
9 contract incorporated or a document incorporated as an  
10 intrinsic part of the complaint, you know, that's usually  
11 considered under the 12(b)(6) motion.

12           What the Defendants did, what the debtor here did is  
13 they filed a bunch of evidence in their 12(b)(6), essentially  
14 attempting to argue it as a summary judgment. We raised that  
15 in our response. So as part of our response, we objected to  
16 all the evidence. But then on the reply, they filed a bunch  
17 more evidence both without leave and improperly, basically  
18 sandbagged us.

19           And so we raised two points for striking that  
20 evidence. One was akin to the first argument, which is it's  
21 not an evidentiary hearing. It's not an evidentiary process in  
22 the first instance. A 12(b)(6) motion has to assume that the  
23 facts pled are true, and then the question is whether they  
24 state a claim.

25           And, secondly, adding them to the reply is especially

1 egregious because the reply is the last word. And we didn't  
2 have an opportunity to respond, and we also don't think it's  
3 relevant nor should we have to respond to a whole bunch of  
4 extra evidence that was attached.

5 That's essentially the basis of our motion, Your  
6 Honor.

7 MR. POMERANTZ: Your Honor, the simple answer to the  
8 issue is we filed the reply of the appendix in connection with  
9 the motion to enforce the reference. We didn't file it in  
10 connection with the motion to dismiss. The motion to enforce  
11 the reference is moot. So what Mr. Sbaiti, his whole argument  
12 doesn't make any sense.

13 As a substantive matter, just there wasn't any  
14 evidence. It was pointing to court pleadings, orders, and  
15 stuff. So it's irrelevant. I don't know why it's still on the  
16 docket. It shouldn't be on the docket since it related to the  
17 motion to enforce the reference.

18 THE COURT: All right. Mr. Sbaiti, did you just  
19 simply --

20 MR. SBAITI: Your Honor, much of that evidence was --

21 THE COURT: -- misunderstand or what?

22 MR. SBAITI: I think we might have because it was  
23 filed as a separate item, and it may have been miscalendared or  
24 misapplied on our system. But the way it was presented to us  
25 when we got it was it appeared to be evidence in support of,

1 well, I guess both, but certainly evidence that was averted to  
2 in the reply.

3 But if they're saying that the Court's not going to  
4 consider it, then that moots the motion and I think we can move  
5 on.

6 MR. POMERANTZ: Yes, Your Honor. I had nothing to do  
7 with his motion. I guess there was another mistake on their  
8 end. I guess that stuff happens occasionally.

9 THE COURT: Okay. All right. So I'll deny it as  
10 based on a mistake that's been acknowledged here. And so with  
11 that, let's have an order cleaning that up, as well, Mr.  
12 Pomerantz, please.

13 With that, we'll move on to the Defendants' motion to  
14 dismiss complaint. I think, Mr. Pomerantz, you said Mr. Morris  
15 will be making this argument?

16 MR. POMERANTZ: That is correct, Your Honor.

17 THE COURT: All right.

18 Mr. Morris, I'll hear your argument.

19 MR. MORRIS: Good morning, Your Honor. John Morris  
20 for Pachulski Stang Ziehl & Jones for the reorganized debtor.  
21 Can you hear me okay?

22 THE COURT: I can. Thank you.

23 MR. MORRIS: Okay.

24 Your Honor, this is a bit like Groundhog's Day. I  
25 believe that we're going to spend the next half hour or an hour

1 discussing the very issues that were before the Court earlier  
2 this year on the HarbourVest 9019 motion.

3           As the Court will recall from the June 8 hearing,  
4 there is a complaint that's been filed ostensibly by the DAF  
5 and CLO Holdco. As Your Honor will recall, the testimony  
6 established that Mark Patrick had just been installed as the  
7 trustee, had no knowledge of the prior events, and Mr. Dondero  
8 and Mr. Sbaiti spent quite some time together formulating this  
9 particular complaint that is nothing less than a collateral  
10 attack on the Court's prior order.

11           I'd like to, if I can, just walk through a PowerPoint  
12 presentation to try to make the debtor's position quite clear,  
13 if I may.

14           THE COURT: You may.

15           MR. MORRIS: And I would ask my assistant, Ms. Canty  
16 (phonetic), to put up the first slide.

17           Your Honor, you'll recall that last December, the  
18 debtor filed its motion under Rule 9019 for court approval of a  
19 settlement. The debtor was completely and utterly transparent  
20 in what the terms of the settlement were.

21           Very briefly, as set forth in Appendix 2 or Exhibit 2  
22 which was the motion itself, in Paragraph 32, Your Honor, the  
23 debtor set forth the terms of the transaction for which it was  
24 seeking approval. Those terms included in the very first  
25 bullet point a statement that HarbourVest shall transfer its

1 entire interest in CLOF to an entity to be designated by the  
2 debtor.

3           And that's an important point that we'll talk about  
4 in a number of different contexts, Your Honor. The debtor made  
5 it very clear at the very first moment of this matter that it  
6 was not going to acquire the asset but the asset was going to  
7 be transferred to an entity to be designated by the debtor.  
8 The debtor's motion filed last December clearly stated the  
9 value of the interest that it would be acquiring in return.  
10 That was also set forth in Paragraph 32 in a footnote.

11           It didn't say that it was the fair market value. It  
12 said the method of valuation was the net asset value and gave a  
13 valuation date of December 1st so that all parties in interest  
14 who received the motion understood the economics of the deal.  
15 And the deal that the debtor was asking the Court to approve  
16 was one whereby HarbourVest would receive certain claims and in  
17 exchange for those claims, they were going to transfer their  
18 interest in CLO -- HCLOF.

19           The debtor also filed on the docket for all to see a  
20 copy of the settlement agreement. The settlement agreement  
21 sets forth the terms of the deal, including again the statement  
22 that HarbourVest "will transfer all of its rights, title, and  
23 interest in HCLOF." It actually says to an affiliate or an  
24 entity to be designated by the debtor. And the transfer  
25 agreement itself was also put on the docket.



1           So that's where things stood just before Christmas.  
2 I know that there's some due process and other type arguments  
3 that are in the Plaintiffs' opposition to the motion. But, of  
4 course, the undisputed facts are that the debtor timely filed  
5 the motion. The time period was consistent with all applicable  
6 rules. Nobody ever asked the debtor for an extension of time.  
7 Nobody ever filed a motion for an extension of time. And so  
8 those due process arguments I think carry no weight at all.

9           So the debtor filed the motion. And if we can go to  
10 the next slide, we see what the responses were, and there were  
11 several. All of the responses, the only responses were  
12 objections to the motion filed by Mr. Dondero and his certain  
13 of his affiliated entities.

14           Mr. Dondero's objection can be summarized as follows.  
15 He made the following observations and asserted the following  
16 objections to the proposed settlement. The first thing he said  
17 is that the settlement far exceeds the bounds of  
18 reasonableness. Now, of course, one cannot make a  
19 determination of reasonableness without having an understanding  
20 of value. The debtor was giving something and it was getting  
21 something.

22           And so Mr. Dondero understood that the issue of value  
23 was front and center. If there was any mistake about it, he  
24 also noted that he understood that as part of the settlement  
25 and, again, I've written this incorrectly, HarbourVest will

1 transfer its entire interest in HCLOF to the debtor. That is  
2 not what Mr. Dondero understood. In fact, Mr. Dondero  
3 understood that it would transfer its entire interest in HCLOF  
4 "to an entity to be designated by the debtor," again, making it  
5 clear that he knew exactly what the debtor was doing here. And  
6 that can be found at Appendix 4 in Footnote 3 on Page 1 if you  
7 want the exact quote from Mr. Dondero's pleading.

8           In the same footnote, he also specifically  
9 acknowledges that he understood the valuation. He understood  
10 the method valuation. He understood the valuation date of  
11 December 1st. And he urged the Court in his pleading to  
12 scrutinize the settlement to make clear that the available  
13 value of the investment should be realized by the debtor's  
14 estate.

15           And this is such a critical point, Your Honor. His  
16 concern was that by placing the value in an entity other than  
17 the debtor itself, that the Court wouldn't have jurisdiction  
18 over that asset. That was his concern. So not only did he  
19 understand that the asset was going to be transferred to an  
20 affiliate, he wanted to make sure that this Court had  
21 jurisdiction over the asset.

22           And, of course, Mr. Seery in his testimony and  
23 otherwise, we provided the Court with all the comfort it needed  
24 to know that even though it was being assigned to a special-  
25 purpose vehicle wholly-owned by the debtor, it would

1 nevertheless be subject to the Court's jurisdiction.

2 Mr. Dondero's trusts also filed an objection if we  
3 can go to the next slide.

4 Dugaboy and Get Good represented by Douglas Draper  
5 made the following observations and asserted the following  
6 objections to the HarbourVest Settlement. They, too, made  
7 clear that they understood that the asset was going to be  
8 transferred to an entity designated by the debtor. They, too,  
9 acknowledge that they understood that the debtor was valuing  
10 the asset at approximately \$22 million as of December 1st. And  
11 their objection was that the Court couldn't evaluate the  
12 settlement without knowing how the asset was valued, without  
13 knowing whether the debtor could acquire the asset, very  
14 critical point.

15 These are the points that are made in the complaint.  
16 These are the exact same points that are made in the complaint.  
17 And also the Court couldn't evaluate the settlement unless they  
18 understood that the value would be inure to the benefit of the  
19 debtor's estate, again, mimicking Mr. Dondero's concern that by  
20 placing the asset in an affiliate of the debtor, that it might  
21 not be subject to the Court's jurisdiction.

22 Finally, and most importantly, if we can go to the  
23 next slide. The Plaintiff, CLO Holdco, filed an objection to  
24 the 9019 motion. And this is just so critical. And this is  
25 the Groundhog Day aspect that I specifically speak of. CLO

1 Holdco's objection was based solely on its assertion that it  
2 had a superior right to the opportunity to acquire the asset  
3 that was being transferred by HarbourVest. It only made one  
4 argument in support of its contention that it had a superior  
5 right, but that argument was specifically premised on the  
6 membership agreement, Section 6.1 and 6.2 of the membership  
7 agreement.

8 CLO Holdco, the Plaintiff in the underlying action,  
9 argued to this Court that HarbourVest had no authority to  
10 transfer the asset without complying with the right of first  
11 refusal that would give CLO Holdco the opportunity to take the  
12 asset for itself. That's what this Court was told. CLO Holdco  
13 didn't make this argument fleetingly. They provided an  
14 extraordinarily detailed analysis of Sections 6.1 and 6.2 of  
15 the membership agreement and concluded "that HarbourVest must  
16 effectuate the right of first refusal before it can transfer  
17 its interest in HCLOF. That was the objection. Objections  
18 have consequences, as Your Honor knows.

19 If we can go to the next slide.

20 By filing an objection, CLO Holdco and the trusts and  
21 Mr. Dondero became participants in the litigation.  
22 Notwithstanding the Plaintiffs' arguments to the contrary, when  
23 they file the objections, they participate in what's called a  
24 contested matter. And in a contested matter, they had every  
25 right to take all discovery on any issue that was related to

1 the 9019 motion, including the transfer, the disposition of the  
2 asset to an affiliate of the debtor, the valuation of the asset  
3 that's being received, the merits of the settlement itself, the  
4 causes of action, whether, you know, what communications that  
5 were, the negotiations, what did Mr. Seery and Mr. Pugatch  
6 discuss? Right?

7           They could have taken any discovery they wanted. And  
8 they did avail themselves of discovery, in fact. They did -- I  
9 don't know why they did what they did, but they chose to take  
10 one deposition, and that was Mr. Pugatch, okay.

11           His deposition transcript, I think is at Exhibit 7,  
12 or Appendix Number 7, and it was a long deposition. It really  
13 was. And they asked Mr. Pugatch at the deposition if he knew  
14 what the value of the asset that was being transferred was.  
15 And he said \$22.5 million. So it wasn't just Mr. Seery or the  
16 debtor who was subscribing to this valuation. The party on the  
17 other side of an arm's length negotiation was subscribing to  
18 the exact same valuation.

19           The Plaintiffs could have taken whatever discovery  
20 they wanted. This is a full and fair opportunity to  
21 participate in the litigation. We proceeded to trial. Before  
22 we got there, actually, the debtor filed its response to CLO  
23 Holdco's objection and proffered its own very detailed and  
24 apparently very persuasive analysis that CLO Holdco's objection  
25 was without merit, that CLO Holdco had no right of first

1 refusal under the facts and circumstances as they existed, and  
2 with Grant Scott, Mr. Dondero's childhood friend at the helm,  
3 we got to Court for the contested hearing on the debtor's 9019  
4 motion, and CLO Holdco withdrew their objection.

5           And I've put up on the screen just an excerpt of the  
6 transcript because, you know, when we talk about whether or *res*  
7 *judicata* should apply, because was there a hearing on the  
8 merits? Was there a decision on the merits? Just look at the  
9 words of CLO Holdco's lawyer. "CLO Holdco has had an  
10 opportunity to review the reply briefing and after doing so has  
11 gone back and scrubbed the HCLOF corporate documents based on  
12 our analysis of Guernsey law."

13           And some of the arguments of counsel in those  
14 pleadings and our review of the appropriate documents, counsel  
15 obtained the authority from Mr. Scott to withdraw the CLO  
16 Holdco objection based on the interpretation of the member  
17 agreement. We were grateful for that and the Court  
18 specifically said in response, "That eliminates one of the  
19 major arguments that we had anticipated this morning."

20           Apparently, the Plaintiffs believe that those events  
21 have no meaning and that this Court's reliance on CLO Holdco's  
22 substantive withdrawal of its objection has no meaning. I  
23 think they're wrong, and we'll get to that in a moment.

24           We proceeded with the hearing. Mr. Seery and  
25 Mr. Pugatch testified at length. If you look at Footnote 3,

1 you'll see Mr. Seery testified for almost 70 pages of  
2 testimony. Mr. Pugatch testified for almost 45 pages of  
3 testimony. His testimony was exhaustive. And, again, any of  
4 the objecting parties had the right to ask whatever questions  
5 they want.

6 But I do want to just note a few things that aren't  
7 up on the screen right now. If you go to Appendix 9, Your  
8 Honor, which is the transcript of the hearing, at Page 13, you  
9 will see that the very first thing I discussed in my opening  
10 statement was the economics and how with a valuation of \$22.5  
11 million this deal made sense for the debtor.

12 You will see from Pages 30 to 42 there is extensive  
13 testimony from Mr. Seery about the amount and the value of the  
14 asset. But the most important part of Mr. Seery's testimony is  
15 that he explains how it came to be that HarbourVest agreed to  
16 transfer its interest in HCLOF to an affiliate of the debtor.  
17 And that came about, not because Mr. Seery or the debtor was  
18 initially at all interested in doing this. The whole idea  
19 originated with HarbourVest.

20 They wanted to extract themselves from the Highland  
21 platform. They wanted to give this piece up. So there's no  
22 conspiracy going on here. The unrebutted testimony that all of  
23 the objecting parties had an opportunity to challenge was that  
24 the whole idea originated with Mr. Pugatch and with  
25 HarbourVest. I think that's an important point to take into

1 account.

2           And finally, again, from the hearing, if you look at  
3 at Appendix 9, you'd also find that Mr. Pugatch, again,  
4 testified, as he had in his deposition, as to the value of the  
5 interest being transferred. So we completed the testimony. We  
6 rested our case having had a full and fair opportunity to  
7 contest the motion. The objecting parties rested as well. And  
8 we got to the point where we had to prepare the notice, and we  
9 were discussing that at the hearing, if we can go to the next  
10 slide.

11           And it's very important, because again, this was all  
12 done transparently, and it was all done on the record. And  
13 after the close of evidence, I addressed the order that was  
14 going to be prepared. I specifically said that I wanted to  
15 make clear that we were going to include a provision, "that  
16 specifically authorizes the debtor to engage in, to receive  
17 HarbourVest the asset, you know, the HCLOF interest," right. I  
18 wanted everybody to know that was what was going to happen, and  
19 then I said, "The objection has been withdrawn." I think the  
20 evidence is what it is and we want to make sure that nobody  
21 thinks they're going to go to a different court somehow to  
22 challenge the transfer. But yet, that is exactly what the  
23 complaint seeks to do.

24           Having put everybody on notice as to where we were  
25 going, as to what the evidence showed, the debtor drafted and



1 the Court adopted an order, and the order says, among other  
2 things, that HarbourVest was authorized to transfer its  
3 interest to the debtor. Actually, it says, "to a wholly owned  
4 and controlled subsidiary of the debtor," pursuant to the  
5 transfer agreement, "without the need to obtain the consent of  
6 any party or to offer such interest first to any other investor  
7 in HCLOF." So the Court heard the 9019 motion pursuant to a  
8 Bankruptcy Rule and entered an order that was unambiguous and  
9 that the Plaintiffs did not appeal from.

10 We can go to the next slide.

11 At a very high level, Your Honor, it is just crystal  
12 clear that the complaint is just inextricably intertwined with  
13 the 9019 proceedings and the order itself. I think Mr. Sbaiti  
14 would agree with me that but for the order that approved the  
15 transfer of the asset and the testimony about the value of that  
16 asset, they have no claims.

17 Every single claim is predicated on what happened in  
18 the 9019 hearing. Every single claim is predicated on the  
19 Court's order approving the transfer of the asset and the  
20 testimony and evidence that was adduced in relation to that  
21 asset.

22 There were really only two issues that the Court -- I  
23 mean, if you want to think about it at its most simplistic  
24 level, the Court was being asked to assess, is it fair, is it  
25 reasonable, is it legally permissible for the debtor to give

1 something. In this case, allowed claims and releases, and to  
2 get something in return. In this case, HarbourVest's interest  
3 in HCLOF and releases in return. And that is really the  
4 gravamen of the complaint.

5           The complaint is based whether it's breach of  
6 fiduciary duty or RICO or breach of contract or tortious  
7 interference, whatever the claim is, none of them exist if the  
8 debtor doesn't get this. They just don't exist. And that is  
9 why the complaint and the proceeding are inextricably  
10 intertwined. And if you just take a look at just one paragraph  
11 of the pleading, it says at the core of this lawsuit is the  
12 fact that HCM, that's the then debtor, purchased the  
13 HarbourVest interests in HCLOF for \$22.5 million knowing that  
14 they were worth far more than that. There's not a cause of  
15 action that exists in the complaint that isn't dependent on  
16 Paragraph 36.

17           So if we can go to the next slide with that  
18 background, I'd like to argue why under 12(b), the complaint  
19 should be dismissed because the claim should be barred under  
20 the doctrine of *res judicata*. Luckily, Your Honor, there is at  
21 least one area of agreement between the parties here, and that  
22 is the purpose of the doctrine and the elements that have to be  
23 satisfied in order to meet the burden of proof necessary to  
24 have the claims barred. And in Footnote 1, you can -- I've  
25 tried to just be helpful to the Court to show that we may not

1 cite to the exact same cases, but the parties agree that the  
2 doctrine is intended to foreclose the re-litigation of claims  
3 that were or could have been raised in a prior action and that  
4 there's four elements that have to be satisfied for the  
5 doctrine to apply.

6           The parties have to be either identical or at least  
7 in privity, the judgment in the prior action had to have been  
8 rendered by a court of competent jurisdiction. Number three,  
9 the prior action had to have been concluded by a judgment on  
10 the merits. And the last one is that the same claim or cause  
11 of action was involved in both suits. So I just want to spend  
12 a few minutes now, Your Honor, going through those four  
13 elements to show the Court how easily the reorganized debtor  
14 meets this standard.

15           If we can go to the next slide, I can take care of  
16 the first two elements very quickly.

17           The first element, the debtor asserted that the  
18 Plaintiffs were parties or in privity with parties to the prior  
19 proceeding. That's at Paragraph 17 of the motion to dismiss.  
20 The debtor relies on the deposition testimony of Grant Scott,  
21 who was then the trustee of the DAF.

22           CLO Holdco is a wholly-owned subsidiary of the DAF,  
23 or wholly controlled, in any event, and Mr. Scott's testimony  
24 was that he was the only director and there were no employees  
25 of either entity. So we, in our motion, put forth evidence to

1 establish the first element, and I don't believe, maybe I've  
2 missed it. I don't believe that the Plaintiffs have contested  
3 that element. If they have, I think Mr. Scott's testimony will  
4 carry the day, in any event.

5           The second element as to whether or not a court of  
6 competent jurisdiction is the entity or the court that rendered  
7 the ruling. Of course, that's been met, too. The Plaintiffs,  
8 in their opposition to the motion to dismiss, suggested that  
9 the bankruptcy court would have lacked jurisdiction if their  
10 cross motion to withdraw the reference was granted. They said  
11 if the district court decides that mandatory withdrawal  
12 applies, then it cannot find that the bankruptcy courts already  
13 entered final judgment was rendered on Plaintiffs' causes of  
14 action and had jurisdiction to do so. I think that's just a  
15 clear misstatement of the law.

16           But in any event, Your Honor, at this point, I  
17 believe it's irrelevant because the district court, in fact,  
18 sent the case back to Your Honor and back to this Court. And  
19 so, at the end of the day, Plaintiffs' argument doesn't hold  
20 water because of the district court's ruling, which can be  
21 found -- the order of reference can be found at Docket  
22 Number 64. And so I think that easily takes care of the second  
23 prong.

24           The third prong is whether -- if we can go to the  
25 next slide -- the prior proceeding resulted in a judgment on

1 the merits. And this is really the critical point, Your Honor.  
2 As the Court knows, the whole doctrine of *res judicata* is  
3 designed to prevent, as the parties agree, the re-litigation of  
4 claims. Stated another way, it's to bring finale. It's to  
5 make sure that the Court doesn't hear the same claims and the  
6 same issues that either were brought or that could have been  
7 brought in a prior proceeding. And so, we believe that we  
8 easily meet the standards set forth in the third prong. The  
9 9019 order necessarily determined that the *quid pro quo* that I  
10 described earlier was fair, reasonable, and legally  
11 permissible.

12           Notwithstanding their assertions to the contrary, the  
13 Plaintiffs are most definitely seeking to unwind at least one  
14 half of the Court's order by belatedly claiming that they are  
15 entitled to the benefit of the bargain while leaving Highland  
16 burdened, frankly, with the claims that HarbourVest got as part  
17 of the deal. I will tell you, Your Honor, and this is  
18 argument, the debtor would never have asked for, and I don't  
19 believe that the Court would ever have granted, the 9019 motion  
20 if they thought that there was a risk in the future that  
21 Highland wouldn't get the benefit of the bargain and it was  
22 incumbent upon CLO Holdco and the DAF, and frankly, any party  
23 in interest, to stand up and be counted and tell the Court and  
24 the debtor, why the debtor was not entitled to do this deal and  
25 CLO Holdco did that. They actually did.

1           They stood up and they filed an objection and they  
2 said we have a superior right to this asset in the form of a  
3 right of first refusal. They wound up folding in the face of  
4 persuasive argument, and I respect the lawyer who did that. I  
5 just do. But that was the time to speak up, and that's why it  
6 is on the merits because that is exactly what *res judicata* is  
7 intended to do. It's intended to have everybody put your cards  
8 on the table. You don't put one card on the table and say, I'm  
9 going to challenge this under 6.2 of the members agreement, but  
10 I'm not going to tell you that I also think you owe me a  
11 fiduciary duty under the Advisors Act or as the control party  
12 or under any other theory that they had. They can't do that.  
13 That's exactly what the problem is here.

14           If we can go to the next slide. Is it a judgment on  
15 the merits? The debtor and the Court relied on CLO Holdco's  
16 representation that it was withdrawing its argument, its claim,  
17 its contention, its assertion that it had a superior right to  
18 obtain the HarbourVest interest in HCLOF. Again, they did so  
19 not whimsically, not because Mr. Kane was going to be out of  
20 town and he couldn't make the hearing. He did it after, and I  
21 don't think this matters frankly, but I think it's worth noting  
22 that he did it after an extremely careful analysis. I would  
23 tell you, Your Honor, that -- well, I would argue, Your Honor,  
24 that even if Mr. Kane at CLO Holdco had never filed an  
25 objection, if they'd never filed -- if they'd gotten notice

1 that this was happening and they sat silently, that would have  
2 been enough for *res judicata* because the issue before the Court  
3 was whether it was legally permissible for the debtor to  
4 acquire this asset.

5           And if they had an obligation, if they owed a duty to  
6 another party, it wouldn't have been legally permissible. And  
7 if somebody believed that it wasn't legally permissible because  
8 a duty was owed to them, they had an obligation to speak up.  
9 And so I think it's very important, particularly for the  
10 collateral estoppel argument that I'll make in a moment, that  
11 CLO Holdco did in fact file an objection. It was based on the  
12 breach of contract claim that's in their complaint. It's the  
13 exact same claim. And they withdrew it. I think it's very,  
14 very important. I think it highlights why *res judicata*  
15 applies. I think it is the linchpin of the collateral estoppel  
16 argument.

17           But at the end of the day, I think if they say  
18 nothing, they should be estopped or precluded under *res*  
19 *judicata* from now asserting -- it would be like -- I was  
20 thinking about this earlier, Your Honor. If you'll remember  
21 earlier this year, Mr. Dondero and his entities have kind of a  
22 habit of withdrawing objections at the last minute. We had a  
23 couple of sale hearings earlier this year. And the issue was  
24 valuation, you know, and the process, and could the debtor meet  
25 its burden of proving that the sale outside of the ordinary

1 course of business was in the debtor's best interest. And they  
2 sold that restaurant. And Mr. Dondero objected. And at the  
3 last second, they withdrew the objection. Did they sue  
4 tomorrow? Does Your Honor really think that they could bring a  
5 lawsuit tomorrow and say they just found a document or theory  
6 on which the debtor had an obligation to give them a right of  
7 first refusal, even though we've already closed on the  
8 transaction, even though they were given notice of the  
9 transaction, even though they filed an objection to the  
10 transaction, even though they withdrew the objection? Would  
11 the Court tolerate for one second a new pleading tomorrow from  
12 Mr. Dondero that the debtor actually had a fiduciary duty to  
13 give him a right of first refusal to buy that asset under  
14 whatever theory, just because he pleads it and the Court has to  
15 accept as true the allegations in the complaint? I think not.  
16 And I think it's worth thinking about that to highlight just  
17 how -- just how wrong this is.

18           Continuing on. You know, the Plaintiffs in  
19 opposition say it can't be a trial on the merits because we  
20 weren't parties. Of course they were parties. Again, they  
21 filed an objection. They were the parties to the contested  
22 matter, full stop. They rely on a case called Applewood and  
23 they say, this is the very first point they make in their  
24 brief. Applewood, if it wasn't *res judicata* in Applewood, how  
25 could it possibly be *res judicata* here? But the facts are just



1 so inapposite, right?

2           In Applewood, you had a garden variety plan and  
3 release where the debtor and the officers and directors got a  
4 discharge. No objection to it. And a secured lender later on  
5 sought to sue guarantors who happened to be officers and  
6 directors. And the court, not surprisingly, said that the  
7 confirmation order wouldn't prevent the secured lender from  
8 going after the officers and directors, not in their  
9 capacities, as such, but in their capacity as guarantors, which  
10 were never part of the confirmation order. That just doesn't  
11 apply here because here, we have the debtor making a motion  
12 before the Court in which it sought permission and authority to  
13 acquire a particular asset. Anybody who had a claim to that  
14 asset should have stepped forward and put their cards on the  
15 table.

16           And again, CLO Holdco put their cards on the table  
17 and they lost, and they folded. To use the poker analogy, they  
18 folded. And to hear them come into Court today and say we're  
19 going to sue you because I reshuffled the deck, it's not right  
20 and Applewood has no relevance.

21           Finally, Your Honor, you know, it's not on the  
22 merits, they say, because you know, Mr. Seery and the debtor  
23 hid the true value of the asset, and had we only known the true  
24 value of the asset, we would have made all of these other  
25 claims. The fact of the matter is, you either have a fiduciary

1 duty or you don't. And if you had a fiduciary duty, they  
2 should have spoken up and they did only under 6.2, but they  
3 did.

4 But here's the important part, Your Honor. Take the  
5 allegations as true. You have to take all of the allegations  
6 as true, not just some of them. And if you look at  
7 Paragraph 127 of the complaint, and I would ask Ms. Canty to go  
8 to Appendix 11 and let's just put Paragraph 127 up on the  
9 board.

10 Here's the irony of the whole thing, right. The  
11 whole complaint is based on the fact that somehow Mr. Seery was  
12 engaged in insider trading. They accused him of insider  
13 trading, and they say he didn't disclose the full value of the  
14 asset. Just read Paragraph 127. James Dondero, who was on the  
15 board of MGM, is the tippee. You've got an insider trading  
16 case -- I mean, I don't represent MGM. I'm not with the SEC.  
17 I don't know why Mr. Dondero thought he should be telling  
18 Mr. Seery in December, 2020. It's not clear if it was before  
19 or after the 9019 motion was filed. But Mr. Dondero is the  
20 very source of information -- you can't make this up. He's the  
21 very source of the information that he now complains Mr. Seery  
22 didn't disclose.

23 Of course, Mr. Dondero, the trust, CLO Holdco could  
24 have asked Mr. Seery at any time, how did you come up with your  
25 valuation? Mr. Dondero, knowing that he had supplied to

1 Mr. Seery, according to Paragraph 27, please take it as true  
2 for purposes of this motion only. He's the source of the  
3 inside information. And now he has the audacity to come to  
4 this Court, notwithstanding the Court's approval, all of the  
5 time and money and effort spent in the 9019 process, and say,  
6 Mr. Seery was wrong because he didn't tell CLO Holdco and the  
7 DAF about the information that Mr. Dondero gave to Mr. Seery.  
8 It's not right.

9           It was a judgment on the merits. And if Mr. Dondero  
10 or the DAF or CLO Holdco or the trust wanted to challenge the  
11 valuation, they had every opportunity to do so. And based on  
12 Paragraph 127, if the Court accepts it as true, shame on them.  
13 Shame on them for not pursuing this issue before. The guy gave  
14 Mr. Seery, according to this allegation, and I'm just going to  
15 leave it there, inside information. And he sits there in  
16 silence, right? It says, look at the last sentence: "The news  
17 of the MGM purchase should have caused Seery to revalue HCLOF's  
18 investment." Seriously?

19           The third element is (indiscernible). The fourth  
20 element, if we can go to the next slide.

21           Are they the same claims? Did the claims arise from  
22 the same set of operative facts? I've addressed this pretty  
23 clearly already, so I don't want to belabor the point. But  
24 obviously, both the 9019 motion and the complaint arise solely  
25 from the debtor's settlement with HarbourVest. The debtor's

1 acquisition of HarbourVest's interest in HCLOF and the debtor's  
2 valuation of that interest. Without those three facts, there  
3 is no complaint. It's just not credible to argue that the  
4 fourth element is not met.

5 The case law is clear. It's quoted in the  
6 Plaintiffs' opposition. It's not just the test of whether the  
7 claims are the same. It's whether the claim is the same as  
8 that which was brought or could have been brought.

9 In their opposition, the Plaintiffs contend that the  
10 claims "did not write them until after the settlement was  
11 consummated," and that the first time the plaintiffs heard  
12 about the valuation of HarbourVest's interests was at the  
13 January 14, 2021, hearing. I think I quoted that. If you  
14 look, I don't know if it's Page 10 or Paragraph 10; the way I  
15 wrote it, it's probably Page 10. I think that's a quote right  
16 out of there. But of course, as we saw the debtor disclosed  
17 the valuation in its very initial motion, CLO Holdco's counsel  
18 elicited valuation testimony directly from Mr. Pugatch, so that  
19 was before the hearing.

20 And of course, Mr. Dondero and the trusts both cited  
21 in their objections the valuation. The notion that this was  
22 not right, just -- it's contradicted by their own conduct,  
23 their objections, their questions in deposition, the  
24 information that was contained in the motion that they objected  
25 to.

1 I do want to go off-script for just a minute, if we  
2 could just take that down because I know that this is probably  
3 something that Mr. Sbaiti may argue. And that is, well, gee,  
4 but you have to take the allegation as true that Mr. Seery  
5 wasn't honest, that Mr. Seery lied to the court. I don't  
6 understand why there's not a fraud cause of action in there,  
7 but there's not. But that's their theory.

8 And gee, how does he get to skate away Scott free if  
9 he's allowed to do that with impunity, right? I will tell you,  
10 Your Honor, of course you've seen Mr. Seery many times. You've  
11 made your own assessments of his credibility. I'm not here to  
12 argue the merits, but I will just say that the Defendants, if  
13 ever forced to, will contest the allegation.

14 But here's the thing, and here's the important point  
15 about, you know, whether or not he could lie with impunity and  
16 say, I suspect that's where Mr. Sbaiti is going to want to go.

17 Mr. Seery said what he said. And he had a reason to  
18 speak, and he spoke, and he said what he said and he told  
19 everybody who would listen exactly what he was doing and how he  
20 was doing it. For whatever reason, the objectors put the  
21 valuation front and center. It's right in their objections.  
22 They noted the objections. But for whatever reason, they did  
23 nothing.

24 Whether they were negligent or whether they were  
25 lying in wait is kind of irrelevant. They had a full and fair

1 opportunity to contest this issue. And if they had done so,  
2 and the evidence proved what they're now alleging, they can't  
3 tell you what would have happened. So, you know, HarbourVest  
4 may have taken a different position. The Court may have done  
5 something.

6           We're never going to know now because Mr. Seery and  
7 the debtor are getting away with something, but because they  
8 put in evidence that went unchallenged by Mr. Dondero and the  
9 Plaintiffs. It simply went unchallenged. And they say, oh,  
10 gee, that's because we didn't know. Well first of all, you  
11 didn't ask. And second of all, again, the source of the inside  
12 information, the reason that Mr. Seery should have known the  
13 asset was worth more. The reason that he should have refrained  
14 from trading and not engaged in insider information was  
15 Paragraph 127. It was Mr. Dondero.

16           Here's another thing. If -- if again Mr. Seery had  
17 not been honest with the Court and that was ever brought out,  
18 Maybe HarbourVest -- maybe HarbourVest would have had a right  
19 to complain. There's a lot in the complaint about oh,  
20 HarbourVest was misled. The actual evidence that's in the  
21 record, and this is part of res judicata, Mr. Seery testified  
22 very clearly to the arm's length negotiation that took place.  
23 He told the Court under oath that the negotiations were  
24 contentious.

25           He told the Court under oath that in order to try to

1 resolve the case, he and Mr. Pugatch went off and had their own  
2 private conversation without lawyers. They could have taken  
3 discovery on any of that, right. What did you guys talk about?  
4 It's certainly not privileged. They had every opportunity.  
5 But what we do know is that Mr. Pugatch under oath, in  
6 deposition, and at trial, said the value is \$22.5 million.

7           So I don't think Mr. Pugatch or HarbourVest is ever,  
8 ever, every going to complain about the transaction they did.  
9 Because of what the evidence simply shows. But again, you've  
10 got the Plaintiffs in their complaint saying that somehow the  
11 debtor and Mr. Seery in negotiating this transaction has now  
12 exposed the debtor to liability. It just makes no sense.

13           So there was a time and there was a place to  
14 challenge Mr. Seery. Somebody, you know, maybe HarbourVest  
15 could have done something, maybe they could still do something.  
16 I don't know. If they really think that there's a problem,  
17 maybe we'll hear from HarbourVest someday. But the Plaintiffs  
18 have no right to complain. They just don't. They knew  
19 everything. They were the source of the inside information.  
20 They sat on their hands, and they shouldn't be allowed to do  
21 what they're doing now.

22           If we can go to the next slide. I want to move to  
23 the next theory and try to finish this up. The next theory is  
24 that the Plaintiffs' claims are barred by judicial estoppel.  
25 The judicial estoppel argument is really, really very

1 straight-forward. And it's important because if the Court  
2 thinks about this the way I do, it's that the whole issue of  
3 valuation is completely irrelevant to the Plaintiffs unless  
4 they can show that they were owed some kind of duty, that they  
5 had some superior right to acquire the asset. But that's  
6 exactly the issue that CLO Holdco relied upon and withdrew and  
7 should now be estopped from pursuing. Right.

8           The legal standard, again the parties agree on, that  
9 in order to be estopped, the party must take an inconsistent  
10 position. And the party must have convinced the Court to  
11 accept that position. Again, both prongs are easily met here  
12 in just a few sentences from the January 14 hearing. You have  
13 Mr. Kane saying that he understands and acknowledges and admits  
14 that they have no superior right to the investment. And the  
15 Court relying on that very representation in declining to  
16 conduct a hearing and render a ruling on the merits of the  
17 claim that was withdrawn. The objection that was withdrawn.

18           And for the avoidance of doubt, after Mr. Draper  
19 spoke on behalf of the Trust, the Court, at Page 22 engaged in  
20 the following colloquy. The Court asked Mr. Draper:

21           "THE COURT: Were you saying that the Court still  
22 needs to drill down on the issue of whether the  
23 debtor can acquire HarbourVest's interest in HCLOF.

24           "MR. DRAPER: No.

25           "THE COURT: Okay. I was confused whether you were



1 saying I needed to take an independent look of that.

2 Now that the objection has been withdrawn of CLO

3 Holdco, you're not pressing the issue.

4 "MR. DRAPER: No. I am not."

5 Okay. You can call it res judicata, you can call it  
6 judicial estoppel, collateral estoppel, the two prongs are  
7 easily met. They're taking an inconsistent position today and  
8 through all kinds of different theories, including the one that  
9 they withdrew, the Plaintiffs assert that they had a superior  
10 right to acquire the interest from HarbourVest.

11 And they should have asserted those rights at the  
12 hearing. That was the time. And they should be estopped now  
13 from taking a completely inconsistent position from the one  
14 that was before the Court. And I just do want to point out,  
15 the statement from a case called Hall vs. G.E. Plastic. And  
16 it's interesting, Your Honor, because there's only a few cases  
17 that I focused on, because this is really more fact intensive.  
18 And there isn't a dispute as to the, you know, the elements of  
19 these matters.

20 But it is interesting that the Plaintiffs, you know,  
21 generally ignore all of the cases that we cite to. One which  
22 is Hall vs. G.E. Plastic, where the Court said that the focus  
23 on the prior success or judicial acceptance requirements is to  
24 minimize the degree of a party contradicting a Court's  
25 determination, based on a party's prior position. That's the

1 whole point of the exercise. You can't do this. You can't do  
2 this.

3 Just quickly, that leaves the individual arguments as to  
4 each of the five causes of action and I just want to go through  
5 some highlights. There's a negligence claim, Your Honor. And  
6 we did not file a pleading, but the Court can certainly take  
7 judicial notice of the fact that the effective date has  
8 occurred. Under the effective date, the plan is now effective.  
9 That includes the exculpation clause, as Mr. Pomerantz, I think  
10 accurately and without contradiction pointed out earlier, the  
11 exculpation clause applies specifically to the debtor and to  
12 negligence claims. And that's not a matter that's at all  
13 subject to appeal.

14 So I think just to add to the arguments that we have  
15 in our papers, which I adopt and do not abandon for any  
16 purpose, I would add to the argument on negligence, that it's  
17 now precluded, as a result of the plan becoming effective.

18 The fiduciary duty count suffers from numerous defects. I  
19 just want to point out a couple of them. They don't respond to  
20 the argument under Corwin, that under the Advisor's Act, there  
21 is no private right of action to sue for damages arising from a  
22 breach of fiduciary duty. This claim rears its head in  
23 virtually every single complaint. They've never addressed  
24 Corwin. Corwin is binding on this Court, and it is unambiguous  
25 that there is no private right of action to sue for damages for

1 breach of fiduciary duty under the Advisor's Act.

2           They ignore Goldstein. Goldstein is not from the  
3 Fifth Circuit, but it's very persuasive authority that advisors  
4 do not owe fiduciary duties to their individual investors.  
5 Instead, they owe fiduciary duty to their client. Their client  
6 is the entity with whom they're in contractual privity. And so  
7 in this case, there's no fiduciary duty there, either.

8           The breach of contract claim. Again I just -- I  
9 would just say quickly, Your Honor, it's barred under judicial  
10 estoppel. Even if it wasn't, it's clear based on Mr. James'  
11 analysis and admission that the debtor's, or the reorganized  
12 debtor's interpretation of 6.2 is accurate. And you know, I  
13 said this in the beginning. Now let me tie it in a bow because  
14 the breach of contract claim, and the tortuous interference  
15 claim are both tied to the same thing. And that is the  
16 assertion that the Plaintiffs had a right under the membership  
17 agreement, a right of first refusal.

18           And they basically say that the debtor was playing  
19 games. That they shouldn't be able to get through 6.2 by  
20 assigning it to an affiliate. And that's where I go back, Your  
21 Honor, and just remind the Court that the debtor told the whole  
22 world exactly what they were doing in their motion. And their  
23 objections, Mr. Dondero and the Trusts both acknowledge to the  
24 whole world that they understood exactly what was happening.

25           In fact, their concern was not that it was going to

1 the debtor, but that it might be going to an affiliate outside  
2 of the bankruptcy court's jurisdiction. And for them to now  
3 say, having taken all of those positions -- talk about  
4 inconsistent positions. They should be barred from saying  
5 today, that the use of an affiliate to effectuate the  
6 transaction was wrongful, because they actually told the Court  
7 that they needed to -- that the Court needed to make sure that  
8 it had jurisdiction over the very entity they now say somehow  
9 shouldn't have been allowed to get the asset.

10           It's a bit much. So that takes care of the tortuous  
11 interference.

12           The RICO claim, Your Honor, again is a motion.  
13 There's so many different aspects to it. But I don't think the  
14 Court needs to get past the Supreme Court holdings in HJ, Inc.  
15 Again, just simply ignored by the Plaintiffs in their  
16 opposition to the motion to dismiss. In HJ, Inc., the Court --  
17 the Supreme Court did an exhaustive analysis to try to  
18 determine and ultimately did determine, what a pattern of  
19 racketeering activity meant. And the Supreme Court came to the  
20 following formulation. That it had to have two or more  
21 predicate related offenses that amounted to a threat of  
22 continued criminal activities.

23           You know, the notion here is that the debtor and Mr.  
24 Seery engaged in insider trading. We've already -- I've  
25 already mentioned that according to the complaint, which the

1 Court can take as true. Mr. Dondero, himself, was the tippee.  
2 But be that as it may, they don't come close to meeting the  
3 very high standards set forth by the Supreme Court in HJ, Inc.  
4 to show that whatever conduct Mr. Seery and the debtor engaged  
5 in, and if you take the allegations as true, in not telling  
6 what the fair value of the asset was, that that doesn't amount  
7 to a hill of beans for purposes of RICO. That you don't have  
8 any, I think predicate acts. I think here's the Court,  
9 predicate acts extending over a few weeks or months,  
10 threatening no future criminal conduct, do not meet RICO  
11 pleading grounds. Right.

12 Security fraud claims cannot be predicate acts for  
13 purposes of RICO. That is also clear. And that is really, I  
14 mean they say mail, wire and fraud. But what's really at heart  
15 is the 10(b)(5). Okay, it's the 10(b)(5) claim. Again, Mr.  
16 Seery being -- I mean Mr. Dondero being the tippee. But those  
17 are just some of the reasons.

18 None of, you know, that the RICO claim fails. You  
19 know, I'll otherwise rely on the papers, unless the Court has  
20 specific questions as to any of the other pieces of the motion  
21 to dismiss the RICO claim, or any other aspect of the  
22 Defendants' motion. I think this is clear. I think we win, no  
23 matter how you slice it. It's just wrong. It's just wrong.

24 This Court will never, ever have a final order if Mr.  
25 Dondero is able to engineer complaints such as this, which seek

1 to assert claims that absolutely positively could have and  
2 should have been brought at the time the debtor made its  
3 motion.

4 Unless the Court has any questions, I have nothing  
5 further.

6 THE COURT: I do not. All right.

7 Mr. Sbaiti, I'm going to let you have as much time as  
8 Mr. Morris. He took 55 minutes. As I mentioned, I have a hard  
9 stop at 12:00 to do a swearing in ceremony. So if you're not  
10 finished in 40 minutes, then I'm going to have to take a break  
11 and come back and let you finish. All right?

12 MR. SBAITI: Thank you, Your Honor. Although I don't  
13 think I'm going to be much longer than 35-ish minutes.

14 THE COURT: Okay.

15 MR. SBAITI: if not less.

16 THE COURT: Okay.

17 MR. SBAITI: I think you'll be able to be done by --  
18 we'll be able to be done by noon.

19 THE COURT: All right. Thank you.

20 MR. SBAITI: Thank you, Your Honor. Your Honor, may I  
21 share my screen?

22 THE COURT: You may.

23 MR. SBAITI: Thank you, Your Honor. Do you see my  
24 Power Point, Your Honor?

25 THE COURT: I do.

1 MR. SBAITI: Thank you, Your Honor. I don't know  
2 what which one you see. Is it the --

3 THE COURT: I see presentation.

4 MR. SBAITI: With the full page?

5 THE COURT: Yes, uh-huh.

6 MR. SBAITI: Okay, yeah, great. I just want to make  
7 sure we're on the right page. Thank you, Your Honor. So Your  
8 Honor, the defendant debtor is a registered investment advisor.  
9 And it all begins with that. And this where the distinctions  
10 between what happened in the 9019 and I'll get to the elements  
11 of res judicata through argument.

12 But the first thing that has to be identified is that  
13 the Defendant is a registered investment advisor. The  
14 objection filed by Holdco back during the 9019 was an objection  
15 against HarbourVest selling its interest by filing the right of  
16 first refusal. It did not deal with the investment advisor  
17 feature of Highland's relationship. And I'll get to why the  
18 9019 doesn't preclude these arguments today.

19 This is essentially the structure. Highland was the  
20 investment advisor of HCLOF, and Holdco is an investor in  
21 HCLOF. And so Highland would owe a fiduciary duty under the  
22 Advisor's Act against -- to CLO Holdco.

23 Highland also had a direct advisor relationship with  
24 the DAF. And so under the Investment Advisor's Act, it owed  
25 fiduciary duties to both of those entities. The law governing

1 registered investment advisors is that it's a federally  
2 recognized and defined fiduciary duties. The fiduciary duty to  
3 there's a fiduciary duty to affirmatively keep the advisee  
4 informed and the fiduciary duty not to self-deal, i.e., not to  
5 trade ahead of an advisee and opportunity that an advisee would  
6 want or expect and without the advisee's expressed informed  
7 consent.

8           This is a federally recognized and defined fiduciary  
9 duty and it's actionable under state fiduciary duty laws.  
10 While Mr. Morris ended his argument by saying we didn't deal  
11 with their case law saying that there's no private right of  
12 action under the Advisor's Act, the fact of the matter is that  
13 Judge Boyle, about ten years ago, found that a state -- the  
14 breach of fiduciary duty claim can be predicated on breaches of  
15 federally imposed fiduciary duties under the Advisor's Act.  
16 And that's what Douglass v. Beakley held. And that's actually  
17 what we cited in our response. So I'm not sure why he would  
18 argue that we haven't addressed the issue of where does this  
19 private right of action come from.

20           Federal Law supplies the rules of the relationship  
21 and State Law provides the cause of action for those breaches.  
22 Now the scope of that has been expounded upon by many cases.  
23 The Fifth Circuit held in Laird, as a fiduciary, the standard  
24 of care to which an investment advisor must adhere imposes an  
25 affirmative duty of utmost good faith and full and fair



1 disclosure to all material facts, as well as an affirmative  
2 obligation to employ reasonable care to avoid misleading his  
3 clients.

4           The word "affirmative" there is important because it  
5 means the investment advisor is not supposed to wait to be  
6 asked. The investment advisor as an affirmative duty to  
7 proactively provide the information to the client.

8           The next standard comes from the SEC. We call it the  
9 SEC interpretation letter. It's a release that came out in  
10 2019. And to meet it's duty of loyalty, an advisor must make  
11 full and fair disclosure to its clients of all material facts  
12 relating to the advisor relationship. Material facts relating  
13 to the advisor relationship include the capacity at which the  
14 firm is acting with respect to the advice provided.

15           The SEC had another release in 2000 -- or excuse me,  
16 in that same release, the SEC said the duty of loyalty requires  
17 that an advisor not subordinate its clients interests to its  
18 own. In other word, an investment advisor must not place its  
19 own interest ahead of its clients' interests. An advisor has a  
20 duty to act in the client's best interest, not its own.

21           The SEC general instruction three to part 2 of Form  
22 ADV, that every investment advisor has to pull out. And this  
23 is cited in our papers. As a fiduciary, you must also seek to  
24 avoid conflicts of interest with your clients, and at a  
25 minimum, make full disclosure of all material conflicts of

1 interest between you and your clients that could affect the  
2 advisor relationship. This obligation requires that you provide  
3 the client with sufficiently specific facts, so that the client  
4 is able to understand the conflicts of interest you have, and  
5 the business practices in which you engage, and can give  
6 informed consent to such conflicts or practices or reject them.

7 And, finally, the Third Circuit in Belmont said:

8 "Under the best interest test, an advisor may benefit  
9 from a transaction recommended to a client if, and  
10 only if, that benefit, and all related details of the  
11 transaction are fully disclosed."

12 These fiduciary duties are unwaivable by the advisor.  
13 Any condition, stipulation or provision binding any person to  
14 waive compliance with any provision of this subchapter, or with  
15 any rule, regulation or order thereunder shall be void.

16 So the lawsuit does not allege that the HarbourVest  
17 settlement should be undone or unwound. I'd like to move to  
18 that point. Mr. Morris says well, you have to unwind half of  
19 the settlement. Maybe HarbourVest doesn't have to give back  
20 what it got, but Highland would still be saddled with the cost  
21 of the settlement, but not with the benefit of the settlement.

22 Well, actually that's not true. There's two points  
23 that we would make on that. Number one, our suit is a suit for  
24 damages. In other words, the suit would be a suit for money  
25 damages, based on the difference between the value of the asset

1 and what HarbourVest or what the actual value of the asset that  
2 was represented, \$22.5 million. So the second point, though,  
3 is that even under a situation where CLO or Holdco or the DAF,  
4 or even HCLOF were to purchase the HarbourVest suit, the  
5 expectation would obviously be that they'd pay the \$22.5  
6 million that Highland paid for it.

7           So Highland is -- so it's not unwinding, and there's  
8 no saddling Highland with a burden that they didn't otherwise  
9 have, I think that's a misrepresentation. But we're not  
10 seeking to unwind the lawsuit -- or excuse me, unwind the  
11 settlement.

12           Now Mr. Morris is correct, the representation of  
13 value by Mr. Seery is -- is one of the main points here. And  
14 the representation was that the value of the entire asset. Not  
15 just the shares of MGM, but the value of the entire asset was  
16 \$22.5 million. So in other word, nearly half of HCLOF was  
17 represented to be worth \$22.5 million. It was argued by  
18 counsel on Page 14 of the January 14th transcript, and then on  
19 Page 112 of that transcript, Mr. Seery specifically says the  
20 current value is right around \$22.5 million.

21           Now that was also in some of the filing papers and  
22 Mr. Morris put up the evidence to Your Honor that Mr. Pugatch,  
23 on behalf of HarbourVest also parroted that number. But  
24 there's not any evidence today about where that number came  
25 from, or whether he was simply relying on Highland's

1 representation of that value.

2           Now as a general rule, in these 12(B)(6) motions, as  
3 I said before, we don't look at the evidence because the whole  
4 point of discovery is to find out what's behind a lot of the  
5 evidence. That's been quoted. The amount of evidence that  
6 went into the 9019 motion as not necessarily full-blown  
7 discovery.

8           I understand Mr. Morris saying well, they could have  
9 asked the question. But as I just showed you, they shouldn't  
10 have to ask the question. There should be fair and full  
11 disclosure of all the material facts. And if it turns out,  
12 which we believe it is true, that by January, the value of  
13 HCLOF was twice what it was represented, or the HarbourVest  
14 portion of HCLOF was twice as to what it was represented,  
15 that's a material omission that Highland had an affirmative  
16 duty to not misrepresent. Irrespective of the questions being  
17 asked.

18           The DAF found out later on that the representation of  
19 the value wasn't true. Now Mr. Morris talked for a very long  
20 time about all the opportunities that somebody, Mr. Dondero,  
21 somebody other than CLO Holdco. In addition to CLO Holdco,  
22 could have asked the magic question to find out whether or not  
23 they were telling the truth. But that runs right in the face  
24 of the standards set forth by the SEC and by the Courts as to  
25 the affirmative obligation of an advisor to disclose all the

1 material benefits that they're going to get as part of a trade.  
2 The idea being that when you're a registered investment advisor  
3 and you want to engage in a transaction, you make a full  
4 disclosure and say this is the transaction. It's worth 41, but  
5 I'm paying 22-1/2. But here's why I'd like to be able to do  
6 it. And then that's the discussion that happens.

7           That clearly didn't happen here. And when it turned  
8 out that there was this entirely huge upside that they were  
9 gaining the benefit of, and maybe HarbourVest didn't care, that  
10 that was a false statement. Now the reason we don't have a  
11 common law fraud claim, or that we don't necessarily hang our  
12 hat on a fraud claim is we don't have enough evidence as it  
13 stands today, to specifically say that Mr. Seery intentionally  
14 misrepresented that. Although we believe that it was grossly  
15 reckless of him to do so. But we don't really need a fraud  
16 claim with a gross recklessness standard. We have a breach of  
17 fiduciary duty, which basically gets us to the same place.

18           So the timeline we have is September 30th was the  
19 last valuation of HCLOF assets provided by HCMLP. And the  
20 value of HCLOF, at that time, or the HarbourVest of that value,  
21 would have been about 22.5 million. So what it appears to be  
22 is that in January or in late December, the valuation that was  
23 being done -- what was being reported, wasn't the current  
24 valuation. It was the valuation as of the end of the third  
25 quarter of 2020.

1           On December 22nd, the motion to approve the  
2 settlement with HarbourVest was filed. HCMLP should have had  
3 or would have had up-to-date valuations of the HCLOF assets,  
4 but didn't necessarily disclose them as being different than  
5 the 22.5 million. On January the 14th, Your Honor, held the  
6 9019 hearing. And then that same day, Your Honor entered the  
7 approval order.

8           And finally, in March, the DAF learns the true value  
9 of HLOF assets as of January 2021 and starts to look into it.  
10 Now Mr. Morris makes much of the fact that well, Mr. Dondero at  
11 least knew that he had tipped them off, Mr. Seery. And if you  
12 actually read Paragraph 127, you'll see specifically what it's  
13 purported that he said. He said stop trading in the MGM  
14 assets, because MGM might be in play. So you can't trade  
15 because I'm an advisor, Mr. Dondero's an insider, he's the  
16 tipper, not the tippee. Mr. Seery becomes the tippee under  
17 that theory of the case, and he has to, and is required to,  
18 because of their affiliation at the time, he's required to  
19 cease trading. And that was the purpose of saying that.

20           The collateral issue that we point is that he at the  
21 very least knew about that, and that should have caused him to  
22 revalue, if he hadn't done so at the time. Not that, knowing  
23 that alone is sufficient to know what the value of HCLOF  
24 actually was on that date. That's a complete misrepresentation  
25 of the point and purpose of that allegation.

1           And as Your Honor knows, under 12(B)(6)  
2 jurisprudence, the way this is supposed to go is we get the  
3 benefit of every inference based upon the allegations, not the  
4 movant. So the first violation is that the debtor as an IRA  
5 failed to affirmatively disclose the true current valuation of  
6 HCLOF and failed to keep the DAF and CLO Holdco reasonably  
7 informed of the value of the assets.

8           And the debtor as an IRA, failed to obtain CLO  
9 Holdco's with the DAF's informed consent before it traded in  
10 the asset, because it didn't have all of the information. The  
11 typical remedy for breach of fiduciary duty is typically  
12 damages for any loss suffered by the Plaintiff as a result of  
13 the breach. I don't think there's a debate there.

14           So now we get to Mr. Morris' key argument. His key  
15 argument is that we should be talking about res judicata. The  
16 elements of res judicata and I think we agree is you have to  
17 have identical parties in the action; the prior judgment was  
18 rendered by a Court of competent jurisdiction; the final  
19 judgment was final on the merits, and the cases involved the  
20 same causes of action or the same transaction and nexus of  
21 facts.

22           Now I'm going to skip to three, because I think  
23 that's one of the key points that we disagree with them on.  
24 There is no case, Your Honor, that we could find, and no case  
25 that I read them citing that says an order on an 9019 has

1 preclusive effect under res judicata under an objector to the  
2 settlement. We looked. We looked in the Fifth Circuit. We  
3 looked outside of the Fifth Circuit. No District Court, no  
4 Fifth Circuit Court of Appeals' opinion we could find held that  
5 a 9019 order has res judicata effect on an objector's  
6 objection. And I think the reason is pretty simple. Is it  
7 doesn't.

8           Because the Plaintiff's claims, here our claims  
9 hadn't even accrued. We have a four year statute of  
10 limitations, but I think more importantly is that, as the Fifth  
11 Circuit said, the 9019 motion grants the Court discretion.  
12 It's not supposed to be a mini trial. The Court can approve a  
13 settlement over even the valid objection of an objector. It's  
14 not a trial on the merits. It's not supposed to be a trial on  
15 the merits. It's not supposed to be a disposition on the  
16 merits.

17           So the fact that Your Honor could have approved the  
18 9019 settlement with HarbourVest, even if we had a valid  
19 objection, means this isn't a disposition on the merits, as res  
20 judicata would envision. It wasn't a trial on the merits, even  
21 though it was withdrawn.

22           The other elements that we would point out to is that  
23 neither the DAV nor Holdco were parties to the dispute between  
24 HarbourVest and Highland. And this keys off of the issue that  
25 I just raised. The cases that are cited by the debtor to Your



1 Honor all have to do with where one of the settling parties is  
2 trying to undo the settlement for some collateral reason. And  
3 the Courts have held, no, that's res judicata, because you were  
4 a party to the action. HarbourVest brought the claims against  
5 Highland. Highland settled those claims.

6 CLO Holdco was collateral to that settlement, it's  
7 not a -- excuse me, collateral to that dispute. It's not a  
8 party to that dispute. Its claims weren't being resolved by  
9 the settlement. And while you have a notice to all creditors  
10 and those objections can be raised, there was not inherently  
11 any manner for resolving those objections on their own merits.  
12 Only -- it was only resolved in so far as deciding whether or  
13 not the settlement was in the best interest of the debtor,  
14 which Your Honor decided, and we don't challenge that. But we  
15 do argue that it caused damages and the debtor shouldn't get  
16 off for those damages.

17 The fourth element is that the --

18 THE COURT: Just for the record, the standard in a  
19 9019 context is not best interest of the debtor, right?

20 MR. SBAITI: Your Honor, I mean that's what the rule  
21 says and Your Honor's order --

22 THE COURT: That is not what the rule says. The rule  
23 is actually very sparsely worded and then we have Fifth Circuit  
24 case law and U.S. Supreme Court law that talk about what the  
25 standard is.

1 MR. SBAITI: Yes, Your Honor. And there are five --

2 THE COURT: And it's -- is it fair?

3 MR. SBAITI: There are five elements.

4 THE COURT: Is it fair and equitable and in the best  
5 interest of the estate given a long list --

6 MR. SBAITI: Correct, Your Honor. And I didn't mean  
7 to --

8 THE COURT: -- of considerations that the Court is  
9 supposed to consider that "bear on the wisdom of the  
10 settlement." Okay. So it's actually much more involved, is my  
11 point, than is it in the best interest of the estate. Is it in  
12 the best interest of the estate and fair and equitable given  
13 all factors bearing on the wisdom of the compromise? And then  
14 we have a long laundry list of things the Court should consider  
15 as part of that analysis.

16 MR. SBAITI: That's a --

17 THE COURT: I just bring that up because if I'm still  
18 -- my brain is still stuck five minutes ago on your comment  
19 that you can't find any case saying that an order approving a  
20 9019 compromise has res judicata effect on creditors. And it's  
21 -- let me just say it's shocking to me that someone would argue  
22 otherwise. Bankruptcy is a collective proceeding --

23 MR. SBAITI: Your Honor --

24 THE COURT: -- where creditors can weigh in and  
25 object and raise whatever arguments they think the Court should

1 consider that bear on the wisdom of the compromise. And the  
2 Fifth Circuit in Foster Mortgage has said the Court should give  
3 great deference to the views of the creditors, the paramount  
4 interest of creditors.

5           So it's a really sort of shocking proposition that  
6 the order approving a 9019 compromise wouldn't have res  
7 judicata effect on all parties and interests who got notice of  
8 that. So if you have any elaboration on that, I'd like to hear  
9 it.

10           MR. SBAITI: Your Honor, we looked at the Fifth  
11 Circuit cases that they cited, which I believe included that  
12 case. And even in that case, the point that we made in our  
13 papers and the point I was trying to arrive at is that among  
14 the factors, yes, the Court should give great deference to the  
15 creditors. But among the factors is not that the objections  
16 lack merit or are meritless or that they wouldn't be winnable  
17 if they were simply standalone claims.

18           And that was really the only point I was trying to  
19 make is that Your Honor has discretion. Granted it's -- as you  
20 mentioned, it's not unfettered discretion. It's bounded by  
21 standards and there are -- there is, I know, about five  
22 standards Your Honor has to consider or the Court has to  
23 consider. But among those, that laundry list of standards, is  
24 not that the Court finds that any objection lacks merit. And  
25 that was really the only point I was making.

1           And in terms of the case law, we looked at the Fifth  
2 Circuit. We looked, frankly, outside the Fifth Circuit as much  
3 as we could, and because this is actually not an easy one to  
4 research, as it turned out, despite the language. And we also  
5 looked for district court opinions in the Fifth Circuit to see  
6 did any district court or did any court of appeals give this  
7 type of approval to the standard that a 9019 order has res  
8 judicata effect on a claim raised in an objection by a  
9 creditor.

10           And we couldn't find any and I read all the cases  
11 that Mr. Morris cited in his papers, and they didn't cite one  
12 that explicitly said that. They tried to drive at it through  
13 insinuation that, well, if the Court has to give great  
14 deference or if the Court has to take into account the  
15 underlying facts and the fact that there is discovery, surely  
16 that must mean this is akin to the trial on the merits. And I  
17 think that's where we simply disagree in good faith. I'm not  
18 ascribing any bad intention. But we disagree that that's where  
19 the law goes.

20           Res judicata is not -- while it's supposed to stop  
21 the relitigation of issues, it is predicated on there having  
22 been actual litigation of those issues. And when HarbourVest  
23 and Highland settle a case and my clients show up with an  
24 objection, even though they withdraw an objection, that, in our  
25 opinion -- and we're asking the Court to see it our way -- is

1 not trial on the merits. It's not a disposition on the merits  
2 of the objection in and of itself. Some objections we can --

3 THE COURT: But the context matters. In the context  
4 of a 9019 compromise, the hearing is about look at the bonafide  
5 ease of the settlement. And it's either fair and equitable and  
6 in the best interest of the estate or not. And an objector can  
7 say this is a terrible settlement and here's why it's a  
8 terrible settlement and let me cross-examine the movant and let  
9 me put on my own witness that will enlighten the Court as to  
10 why this is a terrible settlement, why I say terrible, why it's  
11 not fair and equitable.

12 That's your chance to convince the Court, don't  
13 approve this settlement because there are, you know, 14  
14 problems with it. And if you convince the Court, then you  
15 convince the Court and it's not approved. If you don't, you  
16 appeal, and we do have an appeal of the settlement order.

17 So, again, I'm not understanding the "res judicata  
18 doesn't apply" argument.

19 MR. SBAITI: Your Honor, if I could riff on two  
20 points based upon what you just said, if I could address those.

21 The first is there are clearly two kinds of  
22 objections that get -- at least two kinds of objections that  
23 get raised in these 9019 approval hearings. The two that you  
24 heard recounted, some were this is bad for the estate. There's  
25 reasons why we don't think the estate will benefit from it and

1 it will be harmed from it.

2           And those types of objections, which I believe mostly  
3 comprise the objections that Mr. Morris was talking about  
4 because they are concerns for the estate. And so creditors who  
5 want to get money from the estate are concerned that the  
6 settlement will not enter (phonetic) to the benefit of the  
7 estate, and therefore, not enter to their benefit as creditors.  
8 That's number one.

9           But those don't adhere in a lawsuit. Those aren't  
10 claims for damages that the settlement is going to create for  
11 the person objection or for the party objecting. There's a  
12 whole separate set of objections similar to the ones HCLCO  
13 Holdco raised where that what inheres in the objection is this  
14 is actually going to cause us some kind of damage.

15           And so, the factors though, don't require the Court  
16 in those second set of instances to say, well, you know what?  
17 Not only do I think you're wrong, but I think that your  
18 lawsuit, the underlying causes of action that give rise to this  
19 objection, have no merit on their own face, that the discovery  
20 is not there to support them, that a jury is not going to find  
21 there. I am now the trier or the Court is now the trier of  
22 fact on the merits of the underlying causes of action that  
23 animate the objection.

24           And that's where I believe we're diverging with the  
25 debtor on the law. It goes too far to say that a 9019 hearing

1 where the Court in the end has discretion to approve it, even  
2 over a meritorious objection by any party, regardless of what  
3 bucket of objections the objection falls into. It goes -- our  
4 argument today, Your Honor, and we're asking the Court to see  
5 it our way, is that that would go too far. That an actual  
6 cause of action shouldn't be eradicated simply because of the  
7 9019 process because, as you pointed out, the Court does have  
8 to go through a litany of factors.

9           And if the Court determines that it's fair and it's  
10 more equitable to overrule the objection, the Court has that  
11 discretion. And we're not here to unwind that discretion.

12           But the settlement process did violate certain  
13 obligations and did cause my client damages. And that's what  
14 we're saying isn't precluded.

15           THE COURT: Okay.

16           MR. SBAITI: The fourth element, Your Honor, which I  
17 guess in many ways maps on to the argument I just made to Your  
18 Honor is that the cases, the underlying cases, do not involve  
19 the same claims. Plaintiffs' claims arise from the settlement  
20 process itself and not from the underlying issues being settled  
21 between HarbourVest and Highland. So that's why we think at  
22 least three of the four elements aren't met here. And we'll  
23 reserve on the papers, you know, whether jurisdiction was  
24 applicable because I think that's probably water under the  
25 bridge at this point in the oral argument.

1           Now, Mr. Morris attacks the case that we cite,  
2 Applewood Chair vs. Three Rivers Planning. And he argues that,  
3 well, this is not applicable. And the argument he made however  
4 was he put it in the context of, well, the parties there, the  
5 issue was you had guarantors who were not parties in their  
6 capacity as guarantors. But that's not actually what the Court  
7 held.

8           The Court didn't say that the release wasn't  
9 applicable to them because they didn't appear as parties in  
10 their guarantee capacities. They -- the Court held that, well,  
11 the specific discharge language doesn't enumerate those  
12 specific guarantees, and so therefore it's not released.

13           And where this dovetails, we believe, as closely as  
14 we can, this isn't a 9019 case. This is a final confirmed  
15 plan. But where it dovetails with what our argument is, is  
16 that the Court there as well was essentially saying the  
17 underlying causes of action weren't really presented to us, so  
18 we're not -- we -- and the confirmation of the plan didn't  
19 involve disposing of them, so we're not going to say that they  
20 are precluded. And we think that that's as close an analogy as  
21 we've found in the Fifth Circuit to the issues here today.

22           So I would say, Your Honor, that we believe that  
23 dispenses with the res judicata argument. The judicial  
24 estoppel argument, they conflate the language. I'll go back to  
25 this for a second. They conflate the language of judicial



1 estoppel on the success of the claim. None of the cases they  
2 cite on judicial estoppel involved where a party took a  
3 position, withdrew their argument, and then the Court moved on.

4           Mr. Morris tries to convert a judicial estoppel claim  
5 into a judicial reliance claim, which is not the purpose of the  
6 doctrine and is not the doctrine at all. The doctrine is that  
7 if you take a successful position in one court, you can't take  
8 the opposite position in another court. CLO Holdco didn't take  
9 a successful position in one court and then change its position  
10 later on. In fact, its positions, as Mr. Morris stated, are  
11 remarkably similar. They're not inconsistent, which is the  
12 problem with their judicial estoppel argument. And we -- I  
13 think we fairly briefed that in our papers and we'll otherwise  
14 rest on the papers.

15           To deal -- to address the actual claims, again, I  
16 come back to the idea of a fiduciary duty claim, which is our  
17 lead claim. And to be clear, it's a state claim predicated on  
18 the violation of federally imposed fiduciary duties.

19           And I'm looking for a clock to make sure I'm not  
20 abusing Your Honor's time, and I don't have one right in front  
21 of me because my screen -- my screen is up.

22           Your Honor, the Douglass v. Beakley case is, like I  
23 said, is Judge Boyle's case. It specifically provides a cause  
24 of action based upon violations of the Advisers Act. We also  
25 cite about four or five other cases in footnote 8 of our

1 response from other circuits, including the Third Circuit, the  
2 Belton case that I referred to earlier, all of which held that,  
3 yes, a state fiduciary duty claim can be predicated on breaches  
4 of a federal Advisers Act violation.

5           The other point that they make on the fiduciary duty  
6 claim is they argue HCMLP doesn't owe fiduciary duties to CLO  
7 Holdco. And the cases they cite, Your Honor, we dealt with in  
8 the papers why they were distinguishable, because in those  
9 cases they were dealing with the fact that there wasn't any  
10 harm or any direct relationship. But what they ignore is the  
11 actual language of the Advisers Act, which is important.

12           Well, first of all, Mr. Seery admitted in his own  
13 testimony during the approval hearing in July of 2019 that he  
14 says, "We owe." He says, "There are third party investors in  
15 the fund -- in these funds who have no relation whatsoever to  
16 Highland, and we owe them a fiduciary duty both to manage their  
17 assets prudently, but also to seek to maximize value." I think  
18 Mr. Seery was absolutely correct when he said that. Highland  
19 owes fiduciary duties to the investors in the funds that  
20 Highland manages. The core of our case is that Highland is  
21 using or abusing the assets of the funds it managed in HCLOF  
22 for its own enrichment, which is a classic breach of fiduciary  
23 duty case under the Advisers Act.

24           Now -- excuse me. The other point that I would say,  
25 Your Honor, is that there is a statutory basis for us to argue

1 a breach of fiduciary duty. Excuse me. I didn't mean to stop  
2 sharing. I apologize.

3 Are you back with me, Your Honor, on my --

4 THE COURT: Yes.

5 MR. SBAITI: -- PowerPoint?

6 THE COURT: Yes.

7 MR. SBAITI: Sorry about that, Your Honor. I just  
8 hit the wrong thing. I'm not very technologically savvy. Here  
9 we go.

10 So Holdco is an investor in HCLOF, which is a pooled  
11 investment vehicle. A pooled investment vehicle under the case  
12 law we cite is simply defined as an investment vehicle that  
13 doesn't publicly solicit investors and has few than 100  
14 investors. Highland advises it. That's the same holding in  
15 TransAmerica Mortgage, by the way, which we also cite.

16 15 U.S. C. Section 80(b)(6) establishes the federal  
17 fiduciary standards to govern the conduct of registered  
18 investment advisers. That's also the TransAmerica case. 15  
19 U.S.C. Section 80(b)(6)(D) delegated to the SEC the power to  
20 decide the scope of those duties that are imposed under the  
21 statute. And so the SEC enacted 17 C.F.R. Section 275.206(4)-  
22 8.

23 And it expressly states, and we cite the statute or  
24 the regular in full in our papers, that the fiduciary duties  
25 are owed to investors in the pooled investment vehicles. It

1 specifically says that. It talks about two different duties  
2 owed and they're owed to the investors in the vehicles, which  
3 means they're owed to Holdco as an investor in HCLOF, which is  
4 the vehicle that Highland manages.

5 It's black and white in the regulation. And we  
6 haven't seen any response. There was no response of that in  
7 the reply that was filed, Your Honor. And so the argument that  
8 there's not a fiduciary duty owed to Holdco because it's merely  
9 an investor in HCLOF simply doesn't comport with the law.

10 And finally, the petition lays out the basis for our  
11 claims including the applicable federal and state law.  
12 Plaintiffs' response lays out why the legal arguments aren't  
13 opposite at the 12(b)(6) stage and Rule 9(b) is met where  
14 necessary under the federal claim. And I'm trying to unshare  
15 so that I can get back to regular argument.

16 I'd like to briefly address Mr. Morris' argument,  
17 Your Honor. Your Honor, I re-raise my argument that I made  
18 before, which is that a 12(b)(6) motion and hearing is not the  
19 appropriate time for all the evidence that was poured in here.  
20 And I understand Mr. Morris' contention, well, it's really hard  
21 to ignore all the history of this case. But a lot of that  
22 history really boils down to things that were actually admitted  
23 in the complaint. The complaint recognized there was a 9019.  
24 But what Mr. Morris wants to do is go beyond that and to go to  
25 what people said and what they must have meant. What Mr.

1 Dondero must have meant in his objection, what Dugaboy must  
2 have meant by their objection, what Mr. Pugatch must have meant  
3 by his testimony.

4 All of that is highly improper at this stage of the  
5 proceeding, Your Honor. It's outside of the 12(b)(6) confines.  
6 It's outside the four corners of the complaint. And we object  
7 to all of that evidence being considered.

8 THE COURT: Let me --

9 MR. SBAITI: The question we --

10 THE COURT: Let me ask you about that procedural  
11 point.

12 MR. SBAITI: Yes, Your Honor.

13 THE COURT: As we know, 12(d) provides that if  
14 matters outside the pleadings are presented to and not excluded  
15 by the Court in a 12(b)(6) motion, the motion must be treated  
16 as one for a summary judgment under Rule 56 and all parties  
17 must be given a reasonable opportunity to present all the  
18 material that is pertinent to the motion.

19 Are you -- what are you arguing? That I should treat  
20 it as a motion for summary judgment and give you more time to  
21 present other materials? I mean, you both presented an  
22 appendix, okay. And I'm telling you we're seeing this more and  
23 more, I've noticed. People are going beyond the four corners  
24 of a motion to dismiss and attaching things. And there's some,  
25 you know, Fifth Circuit authority that says, well, if what is

1 attached is integral to understanding, you know, an allegation  
2 or whatever in the pleading, you know, there is some discretion  
3 to go outside the four corners.

4           So I'm trying to understand the point you're making  
5 with this. Are you saying I should treat it as a motion for  
6 summary judgment or do these attachments really -- you know, do  
7 I have authority under the Fifth Circuit to consider them as  
8 part of the 12(b)(6) motion or not?

9           MR. SBAITI: Typically, in our experience, Your  
10 Honor, is when a summary or when a 12(b)(6) is going to be  
11 treated as summary judgment under 12(d), the Court says that  
12 and then the parties are given an opportunity, as you said, to  
13 go do some discovery in order to put together the evidence and  
14 materials to then come back and respond as a summary judgment.  
15 We responded to a 12(b)(6) and objected to the evidence. If  
16 the Court wants to treat it as a summary judgment, then we  
17 would ask for an opportunity for -- to conduct discovery in  
18 order to be able to respond as a summary judgment motion, but  
19 we didn't -- because we responded to a 12(b)(6) --

20           THE COURT: You did the same thing though. You did  
21 the same thing in your response. You submitted an appendix of  
22 evidence, if you want to call it evidence. As someone pointed  
23 out, it's stuff from the bankruptcy court record. I don't  
24 think it went beyond what was already in the bankruptcy court.

25           MR. MORRIS: And if I -- can I be heard on this, Your

1 Honor?

2 THE COURT: You can. You can.

3 MR. MORRIS: Just to respond. This is really quite  
4 simple. The motion to dismiss is based on res judicata. Res  
5 judicata necessarily requires a review of what happened in  
6 connection with the prior hearing. There's nothing that we  
7 have identified or put forth in the appendix or on our exhibit  
8 list except for the pleadings in the 9019, the transcripts, the  
9 one deposition transcript, the one trial transcript, the  
10 settlement agreement, the transfer agreement. I'd love to know  
11 what the Court couldn't or shouldn't take judicial notice of.  
12 There is no emails. There is no -- there is no -- there is no  
13 extrinsic evidence, if you will. All of this is either on the  
14 docket or was presented as part of the hearing.

15 THE COURT: Yeah. I'm just trying to ferret --

16 MR. MORRIS: And it's necessary. And it's necessary  
17 for the motion.

18 THE COURT: Yeah. I'm just trying to ferret out the  
19 procedural position that's being asserted here. And I don't  
20 have the case cites off the top of my brain, but there is  
21 authority from at least the Northern District judges, if not  
22 the Fifth Circuit, saying in a 12(b)(6) motion I can take  
23 judicial notice of items in the record. And then, you know,  
24 there -- I know there's Fifth Circuit authority saying I can go  
25 beyond the four corners in a 12(b) context if it's just basic,

1 you know, explaining things that are in allegations. You know,  
2 such as --

3 MR. SBAITI: May I address that, Your Honor?

4 THE COURT: -- such as if a contract is in dispute,  
5 okay. Like there's no way you can have a cause of action under  
6 the contract and here's the contract. So I'm just trying to  
7 nail down your procedural position here.

8 MR. SBAITI: Your Honor, the distinction I was trying  
9 to make that I don't think I put as artfully as I might be able  
10 to put now is in a 12(b)(6) if there's a contract, as you said,  
11 if there's a legal document, a contract and order that's  
12 integral to the case, Your Honor can take judicial notice of  
13 that. Generally, a court can take judicial notice of filings  
14 in a bankruptcy, the fact that they were filed.

15 So the transcripts, which Your Honor can't take  
16 judicial notice of, is the truth of those. And that was what I  
17 was objecting to is it's one thing for him to say an objection  
18 was filed and therefore, because an objection was filed, that  
19 should be it. That was your only chance. I'm not saying Mr.  
20 Morris can't make that argument.

21 But when he goes beyond the fact of the filing or the  
22 fact that there was a transcript or the fact that there was a  
23 deposition and starts to read from the depositions or read from  
24 the filings and say this is what those mean, that goes against  
25 the 12(b)(6) parameters because, number one, now it's



1 substantive evidence and not simply a judicial notice of  
2 something that's right there in front of the Court, i.e.,  
3 something on its own docket. Because those statements and the  
4 interpretation of those statements are subject to credibility  
5 findings. They're subject to clarification. They're subject  
6 to rebuttal. That's the purpose of discovery.

7           And so if Your Honor -- and Mr. Morris is right.  
8 Usually, res judicata involves knowing what happened in the  
9 prior proceedings. So if all he wants to do is rest on the  
10 fact that an objection was filed by CLO Holdco and maybe even  
11 other people, and that should be it and he thinks that's enough  
12 for Your Honor to say res judicata applies, then I don't think  
13 we have a problem. It's when he goes beyond that and says,  
14 Your Honor, these people must have known and this is what they  
15 meant by their argument, that's what I'm asking Your Honor not  
16 to consider. And if Mr. Morris wants you to consider that,  
17 that's a summary judgment motion and we should have the  
18 opportunity to do discovery at the very least into the issues  
19 he has now raised as supporting his res judicata defense which  
20 he has the burden of proof on.

21           MR. MORRIS: Your Honor, this is one of the strangest  
22 arguments I have ever heard. I'm allowed to offer the Court  
23 and the Court is allowed to accept the documents, but I'm not  
24 allowed to read them. I'm not allowed to make arguments. I  
25 don't understand what that even means. If it were a contract,

1 I would be allowed to put the contract in front of Your Honor,  
2 but I wouldn't be able to argue why the contract doesn't say  
3 what the Plaintiff says. I don't get it.

4 THE COURT: Okay.

5 MR. MORRIS: That's --

6 THE COURT: Just I've heard enough on this. I don't  
7 think we have moved into Rule 12(e), that realm of me needing  
8 to treat this as a motion for summary judgment. I think the  
9 so-called evidence, the appendix that was attached to the  
10 motion as well as the appendix that was attached to Plaintiffs'  
11 response, it's stuff that I can take judicial notice of that's  
12 in the record of this Court and I can look at it. You know, it  
13 is what it is, the record of this Court.

14 All right. So I have nine people waiting in  
15 chambers. I'm trying to figure out should I take a break now  
16 or are you fairly close to wrapping up. Either answer is fine,  
17 Mr. Sbaiti. I just need to figure out who I make wait here.

18 MR. SBAITI: I have -- oh, I'm sorry. I didn't mean  
19 to interrupt you, Your Honor. I was just going to say I have  
20 five minutes left, but I know Mr. Morris probably wants to come  
21 back. So if you want to break now and we can come back at  
22 whenever the Court wants us to, we can do so.

23 THE COURT: All right. Why don't you make your final  
24 five minutes and then we'll take a break?

25 MR. SBAITI: Okay. Thank you, Your Honor.

1 I just wanted to address some of the arguments that  
2 Mr. Morris raised in his argument. The first thing is -- and I  
3 addressed this in part -- but Mr. Morris makes a big deal about  
4 paragraph 127 of the complaint and essentially suggests that  
5 we're the -- or that Mr. Dondero is the perpetrator of a  
6 nefarious scheme. Whereas, what the pleading actually says,  
7 and I again encourage Your Honor to re-read -- to read it  
8 specifically, is that Mr. Dondero warned Mr. Seery not to trade  
9 in the stock and not to make any transactions because the stock  
10 was going to appreciate in value.

11 That has two implications for us, Your Honor. Number  
12 one, it means Mr. Seery was a tippee of insider information,  
13 and number two, it means that Mr. Seery, if he did trade on  
14 that information or if he did pass that information on to  
15 someone else, that is a problem from the Advisers Act  
16 standpoint, which is really the only purpose of saying that.

17 While paragraph 127 also says that that should have  
18 caused Mr. Seery to revalue the NAV of HCLOF, it does not state  
19 and we did not plead that the entire value of HCLOF is tied to  
20 the MGM stock. So the insinuation that that somehow gave us  
21 inside information about what the true value of HCLOF was and  
22 we should have known or that Mr. Dondero should have known is  
23 simply untrue.

24 The other argument Mr. -- that Mr. Morris likes to  
25 harp on is that CLO Holdco withdrew its argument, but he

1 characterizes Mr. Kane's withdrawal testimony -- as he says,  
2 Mr. Kane admitted that CLO Holdco lacked the superior right to  
3 obtain the HarbourVest. If you read the very language that was  
4 highlighted on Mr. Morris' slide, that's not what Mr. Kane  
5 says. Mr. Kane says, "We've gone back to the drawing board.  
6 We've read your reply. And my client has given me permission  
7 to withdraw the argument or withdraw the objection." That's  
8 all he said. There was not an admission that he was wrong.  
9 There was not an admission that they had made a mistake. There  
10 was simply an admission that they decided to withdraw the  
11 objection for whatever reason.

12           Lastly, on the specific claims --

13           THE COURT: That's not an accurate description of the  
14 record. He said he looked at --

15           MR. SBAITI: Your Honor, I was reading it along with  
16 him.

17           THE COURT: -- Guernsey Law. And I don't know if his  
18 words were deep dive.

19           MR. SBAITI: Yeah.

20           THE COURT: But he had looked at the agreements  
21 extensively. That's just not what he said.

22           MR. SBAITI: And he said he was with -- Your Honor,  
23 he said he was withdrawing. He didn't say we were wrong. He  
24 didn't say we don't have a claim. What he said was, "We're  
25 withdrawing the objection."

1 THE COURT: After doing an extensive look at the  
2 agreements in Guernsey Law, okay, so.

3 MR. SBAITI: Sure. But, Your Honor, he might have --  
4 he could just as easily thought we have a chance, but it's not  
5 a good one. And frankly, we'll be here for 20 days and we're  
6 withdrawing it for that reason because we'll live to fight  
7 another day. Your Honor, there's an innumerable number. To  
8 simply say that he admitted that they didn't have a correct  
9 claim, it's just he didn't say that. That's all. That's the  
10 only point I'm making.

11 Your Honor, I don't disagree with the debtor that the  
12 Court's exculpation clause gets rid of the negligence claim  
13 which was obviously filed before the effective date, so that  
14 claim is gone.

15 And I think the last argument that Mr. Morris makes  
16 on the RICO claim is the federal court, the Supreme Court  
17 standard for pleading a RICO claim, that acts that only  
18 continue for a few weeks are not -- don't set out a RICO claim.  
19 Your Honor, in our response to that, we actually submitted an  
20 amended complaint that shows that the type of acts we're  
21 talking about, the pattern of the debtor using its investor  
22 vehicles assets to liquidate is a long pattern and practice  
23 than simply the HarbourVest suit. And so, we move to amend on  
24 that basis to satisfy that pleading defect, which is the main  
25 one that they focused on.

1 That's all I have, Your Honor.

2 THE COURT: All right. Thank you.

3 We're going to take a 15 minute break and come back.

4 I'll ask Mr. Jordan and Mr. Bessette did they have anything  
5 they wanted to say today. I know they joined in the debtor's  
6 motion. And then we'll let Mr. Morris have rebuttal.

7 All right. So we'll be back in 15 minutes.

8 THE CLERK: All rise.

9 MR. MORRIS: Thank you, Your Honor.

10 (Recess at 12:05 p.m./Reconvened at 12:23 p.m.)

11 THE CLERK: All rise.

12 THE COURT: All right. Please be seated.

13 We're back on the record in Charitable DAF v.  
14 Highland Capital. All right. So I promised I was going to go  
15 back to counsel for Highland CLO Funding, Ltd. So Mr. Jordan,  
16 Mr. Bessette, is there anything you wanted to say for oral  
17 argument?

18 MR. JORDAN: Thank you, Your Honor. John Jordan on  
19 behalf of HCLOF.

20 Our points are two procedural points. The first is  
21 as the Court anticipated, in our motion to dismiss filed back  
22 in August, we joined in the motion to dismiss of Highland. And  
23 so to the extent that the Court after deliberation is inclined  
24 to grant that motion, we would ask that as a joining party,  
25 HCLOF be pulled along with that.

1           The second procedural point is that back in our  
2 motion to dismiss, we pointed out that the complaint does not  
3 actually allege anything against HCLOF. In the story, we're  
4 essentially the football and neither Oklahoma nor UT. And we  
5 pointed that out as an additional argument to what you've heard  
6 today. That motion was never responded to. The deadline by  
7 agreement was extended to October 11th. And the lack of  
8 response was, we believe, not inadvertent but simply an  
9 acknowledgment that HCLOF is not a party that anything is being  
10 claimed against.

11           It particularly makes sense since effectively and in  
12 rough numbers, they're half owned by both sides. So for every  
13 dollar that HCLOF spends hanging around the case, the parties  
14 are paying essentially 100 cents collectively. So for that  
15 reason, we would ask, and subject to Mr. Sbaiti's input,  
16 whether the Court would ask us or direct us to upload an order  
17 granting our motion as unopposed. We just feel like we don't  
18 have any role in this case.

19           THE COURT: All right.

20           Mr. Sbaiti, what about that?

21           MR. SBAITI: Your Honor, they were originally added  
22 as a nominal party. And as a nominal party, because of the  
23 potential need to have a derivative action, I think that based  
24 upon Highland's arguments and the arguments that we had, I  
25 don't think the derivative action is necessary for us to

1 maintain on a go-forward basis. And so we don't oppose them  
2 being dismissed.

3 THE COURT: All right. Then I assume, Mr. Morris,  
4 you don't have any problem with this, correct?

5 MR. MORRIS: No, Your Honor.

6 THE COURT: Okay. So I'll look for the parties to  
7 submit an agreed order of dismissal of HCLOF after the hearing.  
8 All right?

9 MR. JORDAN: Thank you, Your Honor.

10 THE COURT: All right. Mr. Morris, you get the last  
11 word.

12 MR. MORRIS: Thank you, Your Honor. I hope to be  
13 relatively brief. I really just want to focus on the arguments  
14 concerning whether or not the order that was entered by this  
15 Court was an order that was entered on the merits.

16 As the Court is well aware, a 9019 motion filed by a  
17 debtor is done so on notice. It is to give all parties in  
18 interest an opportunity to be heard, not just as to whether or  
19 not the debtor meets its burden of proof under Rule 9019 but  
20 whether or not the Court can find, as it must, that the  
21 proposed settlement is in the best interest of the estate.

22 The purpose of -- I mean that is the purpose of the  
23 giving notice so that everybody has a chance to be heard. The  
24 questions that the Court asked, the questions that every  
25 bankruptcy court asks in a 9019 is can the debtor do this deal,



1 should the debtor do this deal, is it in the best interest of  
2 the estate to do this deal.

3 And, you know, the idea that a 9019 order is somehow  
4 res judicata only to the parties to a settlement is just  
5 something that doesn't make any sense to me because it  
6 abrogates so many rules that exist that allows and encourages  
7 and requires parties who have objections to be heard.

8 Mr. Sbaiti's clients filed an objection. They  
9 initiated a contested matter. They obtained rights. They were  
10 litigants. They are litigants in a contested matter where  
11 they're required to tell the Court what objections they have to  
12 the settlement, and they did that.

13 Mr. Sbaiti, you know, told me that I wasn't allowed  
14 to characterize the words that are used in the documents that  
15 have now been admitted by the Court. And, yet, I heard him say  
16 that maybe Mr. Kane (phonetic) really meant to tell Your Honor  
17 that he was withdrawing the claim because he was going to save  
18 it for another day.

19 I'd just ask the Court to look at the transcript. I  
20 don't have to interpret it at all. And I'd ask the Court to  
21 read the words. I can put them back up on the screen, but  
22 they're pretty short. It's at Pages 7 and 8 of the transcript  
23 of what Mr. Kane told you and what you said in response. It's  
24 on the page, not my interpretation, and what the import of that  
25 was.

1 Mr. Sbaiti believes, I guess, if one is allowed to  
2 engage in such conduct without consequence, that one is allowed  
3 to allow to file objections, cause the Court and the litigants  
4 to participate, to give discovery, to write briefs, to do  
5 analyses, withdraw it on the basis of their own good faith  
6 analysis of Guernsey law of the documents and somehow say it's  
7 irrelevant. Not what the law is, not what res judicata is  
8 intended to do.

9 He should have put all of his cards on the table. In  
10 fact, I think that Mr. Kane believed he was putting all of his  
11 cards on the table because that's what he did. He filed a very  
12 comprehensive objection. He asserted a right to the  
13 opportunity that the debtor was proposing to take in the 9019  
14 motion. That's what he was doing. He was objecting on the  
15 basis that he claimed his client had a superior right to this  
16 asset.

17 And he didn't -- like I said earlier, Your Honor, I  
18 don't think he would be permitted, I don't think these claims  
19 would fly today if no objection was filed. But the fact that  
20 there was renders, I think, indisputable that there was a  
21 finding on the merits, right. And the only reason that the  
22 Court didn't rule on Mr. Kane's motion, the only reason the  
23 Court didn't rule on it is because Mr. Kane withdrew it.

24 Is that really the way this process is supposed to  
25 work, that one can tell the Court that after a review of the

1 documents, I'm going to withdraw the objection and then file a  
2 claim for damages three months later with a different client,  
3 with a different control person, with a different lawyer?

4 That's okay under doctrine of res judicata? I don't think so.

5           They had a full and fair opportunity. The fact that  
6 this was somehow -- you know, they're denigrating the fact that  
7 this was a 9019 motion. There's not supposed to be a mini-  
8 trial. Your Honor had discretion as to what to do. Every  
9 court in every bench trial has discretion as to what to do and  
10 whether or not to overrule objections and whether or not to  
11 sustain [sic] objections. That's what judges to.

12           And there's nothing offensive about the fact that it  
13 happened in the context of a 9019 motion. They don't get to  
14 sit on their hands and wait to fight another day. If they  
15 believed that the debtor was exposing itself to liability, and  
16 that's what they actually say in the opposition, that's what I  
17 actually think they say in the complaint, accept it as true,  
18 they believe that the debtor created liability for itself by  
19 rendering -- by entering into this transaction.

20           Shouldn't they have raised their hand and said you  
21 can't do this deal, right? And the only response to that --  
22 they have to that is they had no idea about value. Paragraph  
23 127, Your Honor, Mr. Dondero, the architect of this complaint,  
24 as was proven on June 8th, knew very well about value. And it  
25 doesn't matter that it was only MGM. Your Honor commented on

1 that at the June 8th hearing in a different context. But  
2 everybody knows, right, it is. He sits on the board of MGM.

3 And I'm sorry if I called him a tippee instead of a  
4 tipper. But if this complaint goes forward, we'll dig into  
5 that real deep. But there's no reason it ought to, Your Honor.  
6 This case ought to be dismissed on res judicata grounds. It  
7 should be dismissed on judicial estoppel grounds. And it  
8 should be dismissed for all the reasons that I said in my  
9 argument in my brief.

10 But I do just want to close with one point, and that  
11 is to read from a case called Goldstein, which I think I  
12 alluded to earlier on this issue of whether there's a fiduciary  
13 duty that's owed by an advisor to an investor and a fund:

14 "At best, it is counterintuitive to characterize the  
15 investors in a hedge fund as the clients of the  
16 advisors. The advisor owes fiduciary duties only to  
17 the fund, not to the fund's investors."

18 There's a lot of discussion about fiduciary duties,  
19 Your Honor. But to the extent that they have any basis to  
20 defeat the motion to dismiss on res judicata or collateral  
21 estoppel grounds, we hope and we trust and we know the Court  
22 will review the case law vigorously to test some of the  
23 assertions to that.

24 I have nothing further, Your Honor.

25 THE COURT: All right. Well, thank you to all of

1 you.

2           As a reminder, I don't think you need it, but as a  
3 reminder, I am essentially acting as a magistrate for Judge  
4 Boyle in this action. And whichever way I go on whichever  
5 theories, I think she would expect a thorough write-up. It  
6 would, of course, be in the form of a report and recommendation  
7 for her to either adopt or not if I dispose of some or all of  
8 the counts in the lawsuit.

9           Even to the extent I deny dismissal, even though the  
10 rule typically does not require a court to make detailed  
11 findings and conclusions in connection with a denial of a  
12 motion to dismiss, again, since I'm sitting as a magistrate, I  
13 think Judge Boyle would expect some thorough explanations and  
14 reasoning from me.

15           So that's my way of saying I'm taking this under  
16 advisement. I am going to drill down on some of the cases that  
17 have been argued. I think some important issues are raised  
18 here that need some thorough reasoning.

19           So I will do the best to get this out without too  
20 much delay. I think there's probably zero chance, zero chance  
21 I'm going to get it done by the end of the year. We're just  
22 too behind with some of our under-advisements. But I will try  
23 earnestly to get it out fairly soon after the first of the  
24 year. All right?

25           Thank you. You all have a good holiday.

1 THE CLERK: All rise.  
2 (Proceedings concluded at 12:37 p.m.)

3 \* \* \* \* \*

4  
5 C E R T I F I C A T I O N

6 We, DIPTI PATEL, KAREN WATSON, CRYSTAL THOMAS, AND  
7 PATTIE MITCHELL, court approved transcribers, certify that the  
8 foregoing is a correct transcript from the official electronic  
9 sound recording of the proceedings in the above-entitled  
10 matter, and to the best of my ability.

11  
12 /s/ Dipti Patel

13 DIPTI PATEL, CET-997

14  
15 /s/ Karen Watson

16 KAREN WATSON, CET-1039

17  
18 /s/ Crystal Thomas

19 CRYSTAL THOMAS, CET-

20  
21 /s/ Pattie Mitchell

22 PATTIE MITCHELL

23 LIBERTY TRANSCRIPTS

DATE: November 23, 2021

24

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 19**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which



was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>				<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>				<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Vol. 8

001349

001352

001359

001361

001369

001381

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				

001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

BTXN 208 (rev. 07/09)

IN RE: Charitable DAF Fund, LP v. Highland Capital Management, L.P.

Evidentiary hearing Case # 22-03052-sgj

DEBTOR

**TYPE OF HEARING**

Highland Capital Management, L.P.

**VS**

Charitable DAF Fund, LP

**PLAINTIFF / MOVANT**

**DEFENDANT / RESPONDENT**

Gregory Demo

Jonathan E. Bridges

**ATTORNEY**

**ATTORNEY**

**EXHIBITS**

SEE EXHIBIT LIST

EXHIBIT 17 Admitted – Declaration of James P. Seery Jr.

Court took Judicial Notice of Exhibits 1-13, 21, and 22

M. Edmond

AUGUST 3, 2022

Stacey G Jernigan

REPORTED BY

HEARING DATE

JUDGE PRESIDING

PACHULSKI STANG ZIEHL & JONES LLP  
 Jeffrey N. Pomerantz (CA Bar No. 143717)  
 John A. Morris (NY Bar No. 266326)  
 Gregory V. Demo (NY Bar No. 5371992)  
 Hayley R. Winograd (NY Bar No. 5612569)  
 10100 Santa Monica Blvd., 13th Floor  
 Los Angeles, CA 90067  
 Telephone: (310) 277-6910  
 Facsimile: (310) 201-0760  
 Email: jpomerantz@pszjlaw.com  
 jmorris@pszjlaw.com  
 gdemo@pszjlaw.com  
 hwinograd@pszjlaw.com

-and-

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

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

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

In re:	§ Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§ Case No. 19-34054-sgj11
Reorganized Debtor.	§
THE CHARITABLE DAF FUND, L.P.,	§ Adversary Proceeding No.
Plaintiffs,	§ 22-03052-sgj
vs.	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§
Defendant.	§
	§

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



**REORGANIZED DEBTOR’S WITNESS AND EXHIBIT LIST WITH  
 RESPECT TO EVIDENTIARY HEARING TO BE HELD ON AUGUST 3, 2022**

Highland Capital Management, L.P. (the “Reorganized Debtor”) submits the following witness and exhibit list with respect to *Highland Capital Management, L.P.’s Amended Motion to Dismiss* [Docket No. 19], which the Court has set for evidentiary hearing at 2:30 p.m. (Central Time) on August 3, 2022 (the “Hearing”) in the above-styled adversary proceeding (the “Adversary Proceeding”).

**A. Witnesses:**

1. James P. Seery, Jr.;
2. Any witness identified by or called by any other party; and
3. Any witness necessary for rebuttal.

**Exhibits:**

Number	Exhibit	Offered	Admitted
1.	<i>Proof of Claim 177</i> , filed in Case No. 19-34054-sgj by The Dugaboy Investment Trust		
2.	<i>Original Complaint</i> , Case No. 21-cv-01479-S, D.I. 1 (N.D. Tex. June 23, 2021)		
3.	<i>Order (i) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief</i> , Case No. 19-34054-sgj, D.I. 1943 (Bankr. N.D. Tex. Feb. 22, 2021)		
4.	<i>Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> , Case No. 19-34054-sgj, D.I. 1808 (Bankr. N.D. Tex. Jan. 22, 2021)		
5.	<i>Original Complaint</i> , Adv. Proceeding No. 22-03052, D.I. 1-1 (Bankr. N.D. Tex. May 25, 2022)		
6.	<i>Schedule of Contracts and Leases to Be Assumed</i> , Case No. 19-34054-sgj, D.I. 1875-5 (Bankr. N.D. Tex. Feb. 1, 2021)		
7.	<i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> , Case No. 19-34054-sgj, D.I. 2700 (Bankr. N.D. Tex. Aug. 11, 2021)		

Number	Exhibit	Offered	Admitted
8.	<i>Certificate of Service of Vincent Trang re: Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> , Case No. 19-34054-sgj, D.I. 2747 (Bankr. N.D. Tex. Aug. 19, 2021)		
9.	<i>Plaintiff's Motion to Stay All Proceedings</i> , Adv. Proceeding No. 22-03052, D.I. 6 (Bankr. N.D. Tex. May. 25, 2022)		
10.	<i>Electronic Order</i> , Adv. Proceeding No. 22-03052, D.I. 7 (Bankr. N.D. Tex. May. 25, 2022)		
11.	<i>Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order</i> , Adv. Proceeding No. 22-03052, D.I. 8 (Bankr. N.D. Tex. May. 25, 2022)		
12.	<i>Plaintiff's Motion to Dismiss</i> , Adv. Proceeding No. 22-03052, D.I. 11 (Bankr. N.D. Tex. May. 25, 2022)		
13.	<i>Order</i> , Adv. Proceeding No. 22-03052, D.I. 18 (Bankr. N.D. Tex. May. 25, 2022)		
14.	<i>Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P.</i> , dated November 1, 2014		
15.	<i>Amended and Restated Memorandum and Articles of Association of Highland Multi Strategy Credit Fund, Ltd.</i> , as adopted on 1 November 2014		
16.	<i>Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P.</i> , dated November 1, 2013		
17.	<i>Declaration of James. P. Seery, Jr., in Support of Amended Motion to Dismiss</i>		
18.	<i>Cayman Hotel and Golf Incorporated v. Resort Gems Limited Grand Court</i>		
19.	The Contracts (Rights of Third Parties) Law, 2014		
20.	<i>Ebbw Vale Urban DC v. South Wales Traffic Area</i>		
21.	June 25, 2021, Hearing Transcript		
22.	November 23, 2021, Hearing Transcript		
23.	Any document entered or filed in the Adversary Proceeding, including any exhibits thereto		

Number	Exhibit	Offered	Admitted
24.	Any document entered or filed in the Reorganized Debtor's Bankruptcy Case, including any exhibits thereto		
25.	All exhibits necessary for impeachment and/or rebuttal purposes		
26.	All exhibits identified by or offered by any other party at the Hearing		

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: August 1, 2022.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)

-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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

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

**EXHIBIT 1**

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** The Dugaboy Investment Trust  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
The Dugaboy Investment Trust 300 Crescent Court, Ste. 700 Dallas, TX 75201  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)  Contact phone _____ Contact email <u>gscott@myersbigel.com</u>	Contact phone _____ Contact email _____  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

---

7. How much is the claim? \$ See attached Exhibit "A". Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
  
See attached Exhibit "A"

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/23/2020  
MM / DD / YYYY

/s/Grant Scott  
 Signature

Print the name of the person who is completing and signing this claim:

Name Grant Scott  
First name Middle name Last name

Title Trustee

Company The Dugaboy Investment Trust  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 4140 Park Lake Ave., Suite 600, Raleigh, NC, 27612

Contact phone 919-854-1407 Email gscott@myersbigel.com





For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> The Dugaboy Investment Trust 300 Crescent Court, Ste. 700  Dallas, TX, 75201 <b>Phone:</b> <b>Phone 2:</b> <b>Fax:</b> <b>Email:</b> gscott@myersbigel.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See attached Exhibit "A"	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See attached Exhibit "A"	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Grant Scott on 23-Apr-2020 5:01:59 p.m. Eastern Time <b>Title:</b> Trustee <b>Company:</b> The Dugaboy Investment Trust		
<b>Optional Signature Address:</b> Grant Scott 4140 Park Lake Ave., Suite 600  Raleigh, NC, 27612 <b>Telephone Number:</b> 919-854-1407 <b>Email:</b> gscott@myersbigel.com		

**Exhibit A**

The Dugaboy Investment Trust (“Claimant”), an investor in certain funds managed by the Debtor, including Highland Multi-Strategy Credit Fund, L.P. and Highland Multi-Strategy Credit Fund, Ltd., may have claims against the Debtor relating to the post-petition actions or inactions of the fund investment manager in managing these funds pursuant to Debtor’s Fourth Amended and Restated Limited Partnership Agreement and that certain Third Amended and Restated Investment Management Agreement by and between Highland Multi-Strategy Credit Fund, L.P., Highland Multi-Strategy Credit Fund, Ltd., and the Debtor, as amended from time to time. While the potential claims relate to the post-petition actions or inactions of the fund investment manager, Claimant is filing this claim to preserve all potential rights, claims, and causes of action it may have against the Debtor under these prepetition agreements relating to the investment manager’s actions or inactions in managing these funds.

## **EXHIBIT 2**

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

THE DUGABOY INVESTMENT TRUST, §

*Plaintiff,* §

v. §

HIGHLAND CAPITAL MANAGEMENT, §  
LP, §

*Defendant.* §

Cause No. \_\_\_\_\_

**ORIGINAL COMPLAINT**

This matter concerns grave accounts of self-dealing and deception and seeks redress for violation of federal law including, but not limited to, violations of the Advisers Act of 1940, and other state causes of action.

**I.**

**PARTIES**

1. Plaintiff, The Dugaboy Investment Trust (“Plaintiff”), is a Delaware perpetual non-revocable trust with its principal place of business in Dallas County, Texas.

2. Defendant Highland Capital Management LP (“Highland” or “HCMLP”) is a Delaware limited partnership, whose principal place of business is in Dallas, Texas.

**II.**

**JURISDICTION AND VENUE**

3. Subject matter jurisdiction is proper in this court under 28 U.S.C. § 1331, and under 28 U.S.C. § 1334 because the suit arises out of post-petition acts or omissions of the debtor and certain of its principals.

4. This Court has general personal jurisdiction over Defendant Highland Capital Management, LP, because it has continuously done business in this state, and the causes of action arise from the acts or omissions committed in this state.

5. Venue is proper in this Court because a substantial number of the acts or omissions giving rise to this lawsuit and the causes of action asserted herein occurred in Dallas County.

### III.

#### **FACTUAL BACKGROUND**

6. HCMLP is a registered investment advisor (“RIA”) subject to the regulations of the Securities Exchange Commission.

7. HCMLP is both the advisor of and investor in Highland Multi Strategy Credit Fund, LP (“Multistrat”), a Delaware limited partnership. Highland Multi Strategy Credit Fund GP, L.P., itself a Delaware limited partnership, is the general partner of Multistrat, and HCMLP is the sole member of the general partner of Highland Multi Strategy Credit Fund GP, L.P.

8. HCMLP’s advisory capacity is governed, or at all relevant times was governed, by the Third Amended and Restated Investment Management Agreement, effective November 1, 2013 (the “IMA”).

9. The purpose of Multistrat as a vehicle was stated as such: “The Fund's investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.”

10. The Confidential Private Placement Memorandum for Multistrat disclosed that “[t]he Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the ‘Advisers Act’).

Each prospective investor will be required to make a representation to indicate that it is a 'qualified client' as defined in the Advisers Act.”

**11.** Because of these agreements and roles as the General Partner and RIA, Highland owed contractual and fiduciary duties to Plaintiff, as an investor in Multistrat.

**12.** James Seery, the principal, CEO, and CRO of HCMLP in its capacity as a debtor, admitted under oath that HCMLP owes fiduciary duties to the investors of the funds HCMLP manages—which would include Multistrat—and therefore, has admitted under oath that HCMLP and its governed persons owe fiduciary duties to the investors in Multistrat, which includes Plaintiff, the Charitable DAF Fund, Ltd., and Highland Capital Management Services, Inc., among others.

**13.** As an investment vehicle advised at all times and controlled at all times by HCMLP, Multistrat purchased and owned a pool of viaticals—investments in life insurance policies keyed to the lives of other persons. When a person passes away, the life insurance money is paid to the owner of the policy—in this case, Multistrat.

**14.** The notional value of the viatical pool was approximately \$145 million.

**15.** In or around August 2020, HCMLP sold the entire viatical pool for approximately \$35,000,000 – less than one quarter of the insured value.

**16.** The policies insured people aged 90 on average, suggesting that the policies were highly likely to pay off in the ensuing few years given the age and life expectancies of the insureds, as well as considering the actuarial impact of the COVID pandemic.

**17.** In the spring of 2020, Multistrat raised funds specifically for the purpose of paying the premiums on the viatical pool—amounts raised, borrowing availability, and liquid securities provided enough cash to pay the premiums. But HCMLP did not pursue this path as promised.

Instead, it sold the assets. To this day it is unclear why the policies were sold, and why, just prior to a planned mediation.

18. Furthermore, the process of selling was severely flawed. For example, the health assessments used to determine the likelihood and timeline for the payout were two years old. HCMLP did not cause new, up-to-date health assessments to be performed, and instead was content to rely on stale information or worse, no information at all.

19. Furthermore, HCMLP made no effort to adjust the projected life expectancies due to the increasing age of the insureds during a process that stretched over seven months, nor for the potential impact of COVID on people over the age of 90, which would have impacted the price..

20. Equally troubling is that Multistrat obtained the funds to pay the premiums from another investor—yet, it apparently did not use the funds for that purpose.

21. HCMLP apparently used the proceeds of the sale to pay itself, notwithstanding the fact that there were redeemed interests waiting to be paid—interests to whom HCMLP also owed fiduciary duties.

22. In short, HCMLP caused Multistrat to sell the viatical pool at a substantially discounted amount to curry favor with the brokers and buyers in the marketplace for no apparent benefit to Multistrat’s investors or the debtor’s estate.

### III.

#### **CAUSES OF ACTION**

##### **First Cause of Action** **Breach of Fiduciary Duty**

23. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

24. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.

**25.** The contracts set forth above—the subscription agreement and the IMA—impose and incorporate the duties and obligations of the Investment Advisers Act of 1940.

**26.** Under this federal law, an investment adviser is a fiduciary.<sup>1</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.

**27.** The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules, but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”

**28.** To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>2</sup> In order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

---

<sup>1</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. IA2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”)).

<sup>2</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).



29. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>3</sup>

30. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

31. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

32. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

33. HCMLP’s CEO testified under oath that he and HCMLP were aware of these duties and had to comply with them.

34. Section 204 of the Advisers Act requires HCMLP to carry written policies and procedures that must be followed in order to adhere to its federal obligations.

35. Section 206 of the Advisers Act prohibits transactions by an adviser that were accomplished via a “deceit” on a client or prospective client, e.g., by concealing the role and

---

<sup>3</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *SEC v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

interest the adviser has in the transaction, or via engaging in a course of conduct that has a tendency to mislead a client or which is manipulative.

**36.** These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

**37.** The Advisors Act declares any contract that was made in violation of its provisions or regulations, or any contract that has been performed in violation of the Advisors Act, **void**.

**38.** The Advisors Act created a private right of action to void unlawful agreements and acts and to seek such equitable relief as accompanies such claims.

**39.** Texas law allows a fiduciary plaintiff to seek damages for breaches of fiduciary duty and to seek disgorgement of all ill-gotten gains obtained by a fiduciary.

**40.** Plaintiff has been damaged due to the breaches of fiduciary duty outlined herein, and it is entitled to recover damages, punitive damages, and attorneys' fees.

**41.** To the extent this claim must be brought as a derivative action, it is plain that the demand requirement under Delaware law could not be met because serving a demand on Highland or to sue Highland would have been futile.

**Second Cause of Action**  
**Breach of Contract**

42. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

43. The contracts set forth above—the subscription agreement and the IMA—impose a duty of prudent investment management for the benefit of the investors in Multistrat and incorporate the duties and obligations of the Investment Advisers Act of 1940.

44. The violations set forth above constitute a breach of each or both of these agreements.

45. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the , viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

46. Plaintiff has been damaged by the breaches of contract outlined herein.

47. Plaintiff is entitled to recover damages and attorneys' fees.

**JURY DEMAND AND PRAYER**

48. Plaintiff demands trial by jury.

49. Plaintiff respectfully requests judgment and an order:

- Disgorging all ill-gotten gains in an amount to be determined at trial;

- Voiding the IMA agreements herein with HCMLP pursuant to the Advisers Act;
- Awarding damages in an amount to be determined at trial;
- Awarding punitive damages in an amount to be determined at trial;
- Awarding attorneys' fees and costs in an amount to be determined at trial;
- Awarding all interim and final relief to which Plaintiff is legally or equitably entitled under the facts and circumstances raised herein.

Dated: June 23, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti* \_\_\_\_\_

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

**Counsel for Plaintiff**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 The Dugaboy Investment Trust

**(b)** County of Residence of First Listed Plaintiff Dallas County  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
 Sbaiti & Company PLLC, 2200 Ross Avenue, Suite 4900W,  
 Dallas, TX 75201 (T: 214-432-2899)

**DEFENDANTS**  
 Highland Capital Management, LP

County of Residence of First Listed Defendant Dallas County  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff  
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)  
 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from Another District (specify)  
 6 Multidistrict Litigation - Transfer  
 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. § 80b-1

Brief description of cause:  
Adviser's Act

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** \_\_\_\_\_ **CHECK YES only if demanded in complaint:**

**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE Stacey G. Jernigan DOCKET NUMBER 19-34054-sgj11 NDTXBK

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

003805

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

## **EXHIBIT 3**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 22, 2021

United States Bankruptcy Judge

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

In re:

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

Debtor.

) Chapter 11

) Case No. 19-34054-sgj11

**ORDER (I) CONFIRMING THE FIFTH AMENDED  
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court<sup>2</sup> having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.





*Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

*Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

*Certificate of Service* dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed<sup>3</sup> pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;<sup>4</sup> (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

---

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

<sup>4</sup> The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor’s Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor’s Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an “asset monetization plan” because it involves the orderly wind-down of the Debtor’s estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor’s economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are



offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor’s Operational History.** The Debtor’s primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor’s current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was “run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits.” The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor’s Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has



continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.<sup>5</sup> As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,<sup>6</sup> and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

---

<sup>5</sup> This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

<sup>6</sup> See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court’s order authorizing the appointment of Mr. Seery as the Debtor’s Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.<sup>7</sup> The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called “Barton Doctrine” (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

---

<sup>7</sup> See *Order Approving the Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the “July 16 Order”)

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing

were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

**17. Questionability of Good Faith as to Outstanding Confirmation**

**Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court



questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor’s 2008 return, which the Debtor believes arise from Get Good’s equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor’s alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the “Highland Advisors and Funds.” *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post’s credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors’ request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.’s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States’ (IRS) Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty’s Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty’s claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the “Plan Modifications”). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were



distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trust Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.



45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

**46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

**47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure**

**Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity

Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).**

Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).**

The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.



- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.<sup>8</sup> Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

**69. Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

**70. Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

---

<sup>8</sup> See Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor’s release of the Debtor’s and Estate’s claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a “disguised” release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor’s conditional release of claims against employees, as identified in the Plan, and the Plan’s conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual



fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors’ objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber’s* denial of exculpation for certain parties other than a creditors’ committee and its members is that section 524(e) of the Bankruptcy Code “only releases the debtor, not co-liable third parties.” *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors’ committee and its members on the grounds that “11 U.S.C. § 1103(c), which lists the creditors’ committee’s powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee’s performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee.” *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, *Collier on Bankruptcy*, ¶ 1103.05[4][b] (15<sup>th</sup> Ed. 2008)). *Pacific Lumber’s* rationale for permitted exculpation of creditors’ committees and their members (which was clearly policy-based and based on a creditors’ committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors’ committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor’s enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors’ committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber’s* policy of exculpating creditors’ committees and their members from “being sued by persons unhappy with the committee’s performance during the case or unhappy with the outcome of the case” is applicable to the Independent Directors in this Chapter 11 Case.<sup>9</sup>

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that “costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization.” *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero’s pot plan does not get approved, that Mr. Dondero will “burn the place down.” The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

---

<sup>9</sup> The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan’s release, discharge and release provisions (the “Injunction Provision”). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor’s assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor’s assets and those assets could be monetized for less money to the detriment of the Debtor’s creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a “third-party release.” The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms “implementation” and “consummation” are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the “Gatekeeper Provision”). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court’s time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor’s settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court’s order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero’s affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the “Dondero Post-Petition Litigation”).

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery’s credible testimony, that if Mr. Dondero’s plan proposal was not accepted, he would “burn down the place.” The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery’s testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result

in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected



Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5<sup>th</sup> Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5<sup>th</sup> Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5<sup>th</sup> Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots<sup>10</sup> – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

---

<sup>10</sup> As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**A. Confirmation of the Plan.** The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.<sup>11</sup>

**B. Findings of Fact and Conclusions of Law.** The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

**C. Objections.** Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

**D. Plan Supplements and Plan Modifications.** The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

---

<sup>11</sup> The Plan is attached hereto as Exhibit A.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**E. Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

**F. Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

**G. Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

**H. Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

**I. Preservation of Causes of Action.** Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**J. Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts



include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

**K. Cancellation of Equity Interests and Issuance of New Partnership**

**Interests.** On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

**L. Transfer of Assets to Claimant Trust.** On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

**M. Transfer of Estate Claims to Litigation Sub-Trust.** On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

**N. Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

**O. Objections to Claims.** The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

**P. Assumption of Contracts and Leases.** Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

**Q. Rejection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

**R. Assumption of Issuer Executory Contracts.** On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers<sup>12</sup> a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples” and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

**S. Release of Issuer Claims.** Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

---

<sup>12</sup> The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

**T. Release of Debtor Claims against Issuer Released Parties.** Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Feronia Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

**U. Authorization to Consummate.** The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

**V. Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

**W. Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

**X. Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,



discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**Y. Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

*provided, however,* the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

**Z. Releases by the Debtor.** On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

**AA. Injunction.** Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,

in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**BB. Duration of Injunction and Stays.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

**CC. Continuance of January 9 Order and July 16 Order.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

**DD. No Governmental Releases.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

**EE. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**FF. Cancellation of Notes, Certificates and Instruments.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

**GG. Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

**HH. Post-Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

**II. Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**JJ. Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,



federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

**KK. Notice of Effective Date.** As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

**LL. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

**MM. Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

**NN. References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

**OO. Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

**PP. Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

**QQ. Resolution of Objection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

**RR. Resolution of Objections of Scott Ellington and Isaac Leventon.**

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

**SS. No Release of Claims Against Senior Employee Claimants.** For the

avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

**TT. Resolution of Objection of Internal Revenue Service.** Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

**UU. IRS Proof of Claim.** Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

**VV. CLO Holdco, Ltd. Settlement** Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

**WW. Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

**XX. Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**YY. Dissolution of the Committee.** On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have



any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

**ZZ. Miscellaneous.** After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that



the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

**###END OF ORDER###**

**Exhibit A**

**Fifth Amended Plan (as Modified)**

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

---

In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	
	)	

---

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

---

**PACHULSKI STANG ZIEHL & JONES LLP**

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

**HAYWARD & ASSOCIATES PLLC**

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

Counsel for the Debtor and Debtor-in-Possession

---

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

ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law..... 1

    B. Defined Terms .....2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 17

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
Equity Interests ..... 18

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests..... 19

    I. Special Provision Governing Unimpaired Claims.....24

    J. Subordinated Claims.....24

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN .....24

    A. Summary .....24

    B. The Claimant Trust .....25

        1. Creation and Governance of the Claimant Trust and Litigation  
Sub-Trust.....25

        2. Claimant Trust Oversight Committee.....26

	<u>Page</u>
3. Purpose of the Claimant Trust. ....	27
4. Purpose of the Litigation Sub-Trust.....	27
5. Claimant Trust Agreement and Litigation Sub-Trust Agreement. ....	27
6. Compensation and Duties of Trustees. ....	29
7. Cooperation of Debtor and Reorganized Debtor. ....	29
8. United States Federal Income Tax Treatment of the Claimant Trust. ....	29
9. Tax Reporting. ....	30
10. Claimant Trust Assets. ....	30
11. Claimant Trust Expenses. ....	31
12. Trust Distributions to Claimant Trust Beneficiaries. ....	31
13. Cash Investments. ....	31
14. Dissolution of the Claimant Trust and Litigation Sub-Trust. ....	31
C. The Reorganized Debtor .....	32
1. Corporate Existence .....	32
2. Cancellation of Equity Interests and Release.....	32
3. Issuance of New Partnership Interests .....	32
4. Management of the Reorganized Debtor .....	33
5. Vesting of Assets in the Reorganized Debtor .....	33
6. Purpose of the Reorganized Debtor .....	33
7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets .....	33
D. Company Action .....	34
E. Release of Liens, Claims and Equity Interests.....	35
F. Cancellation of Notes, Certificates and Instruments.....	35

	<u>Page</u>
G. Cancellation of Existing Instruments Governing Security Interests.....	35
H. Control Provisions .....	35
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	36
<b>ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....</b>	<b>37</b>
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	38
<b>ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....</b>	<b>39</b>
A. Dates of Distributions .....	39
B. Distribution Agent .....	39
C. Cash Distributions.....	40
D. Disputed Claims Reserve.....	40
E. Distributions from the Disputed Claims Reserve .....	40
F. Rounding of Payments.....	40
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	41
I. General Distribution Procedures.....	41
J. Address for Delivery of Distributions.....	41
K. Undeliverable Distributions and Unclaimed Property.....	41
L. Withholding Taxes.....	42

	<u>Page</u>
M. Setoffs .....	42
N. Surrender of Cancelled Instruments or Securities .....	42
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	43
A. Filing of Proofs of Claim .....	43
B. Disputed Claims.....	43
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	43
D. Allowance of Claims and Equity Interests.....	44
1. Allowance of Claims.....	44
2. Estimation .....	44
3. Disallowance of Claims .....	44
ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	45
A. Conditions Precedent to the Effective Date .....	45
B. Waiver of Conditions.....	46
C. Dissolution of the Committee .....	46
ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	47
A. General.....	47
B. Discharge of Claims.....	47
C. Exculpation .....	47
D. Releases by the Debtor.....	48
E. Preservation of Rights of Action.....	49
1. Maintenance of Causes of Action.....	49
2. Preservation of All Causes of Action Not Expressly Settled or Released .....	49

	<u>Page</u>
F. Injunction .....	50
G. Duration of Injunctions and Stays.....	51
H. Continuance of January 9 Order .....	51
ARTICLE X. BINDING NATURE OF PLAN .....	51
ARTICLE XI. RETENTION OF JURISDICTION.....	52
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	54
A. Payment of Statutory Fees and Filing of Reports .....	54
B. Modification of Plan .....	54
C. Revocation of Plan.....	54
D. Obligations Not Changed.....	55
E. Entire Agreement .....	55
F. Closing of Chapter 11 Case .....	55
G. Successors and Assigns.....	55
H. Reservation of Rights.....	55
I. Further Assurances.....	56
J. Severability .....	56
K. Service of Documents.....	56
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	57
M. Governing Law .....	58
N. Tax Reporting and Compliance .....	58
O. Exhibits and Schedules .....	58
P. Controlling Document .....	58



---

**DEBTOR’S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

**ARTICLE I.**  
**RULES OF INTERPRETATION, COMPUTATION OF TIME,**  
**GOVERNING LAW AND DEFINED TERMS**

**A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

**B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however,* Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests



unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].



62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder



of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“*Okada*”), (c) Grant Scott (“*Scott*”), (d) Hunter Covitz (“*Covitz*”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “*Reorganized Debtor Assets*” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on



or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until

full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.



9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

**I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor’s rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited



partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust<sup>2</sup>**

1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer



of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.



4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),



as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.



**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however,* that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**

**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust



Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

## **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

## **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation



Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

## **E. Preservation of Rights of Action**

### **1. Maintenance of Causes of Action**

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

### **2. Preservation of All Causes of Action Not Expressly Settled or Released**

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

#### **F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court**

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

**ARTICLE XII.**  
**MISCELLANEOUS PROVISIONS**

**A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.



**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700



Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

### **Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jasper CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company



## **EXHIBIT 4**

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

\_\_\_\_\_  
In re: )  
 ) Chapter 11  
 )  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> ) Case No. 19-34054-sgj11  
 )  
 )  
Debtor. )  
\_\_\_\_\_)

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

**PACHULSKI STANG ZIEHL & JONES LLP**  
Jeffrey N. Pomerantz (CA Bar No.143717)  
Ira D. Kharasch (CA Bar No. 109084)  
Gregory V. Demo (NY Bar No. 5371992)  
10100 Santa Monica Boulevard, 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
ikharasch@pszjlaw.com  
gdemo@pszjlaw.com

**HAYWARD & ASSOCIATES PLLC**  
Melissa S. Hayward (TX Bar No. 24044908)  
Zachery Z. Annable (TX Bar No. 24053075)  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Telephone: (972) 755-7100  
Facsimile: (972) 755-7110  
Email: MHayward@HaywardFirm.com  
ZAnnable@HaywardFirm.com:

Counsel for the Debtor and Debtor-in-Possession

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



ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME,  
GOVERNING LAW AND DEFINED TERMS ..... 1

    A. Rules of Interpretation, Computation of Time and Governing Law..... 1

    B. Defined Terms .....2

ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS..... 16

    A. Administrative Expense Claims..... 16

    B. Professional Fee Claims..... 17

    C. Priority Tax Claims..... 18

ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS  
AND EQUITY INTERESTS ..... 18

    A. Summary ..... 18

    B. Summary of Classification and Treatment of Classified Claims and  
Equity Interests ..... 19

    C. Elimination of Vacant Classes ..... 19

    D. Impaired/Voting Classes ..... 19

    E. Unimpaired/Non-Voting Classes ..... 19

    F. Impaired/Non-Voting Classes..... 19

    G. Cramdown..... 19

    H. Classification and Treatment of Claims and Equity Interests.....20

    I. Special Provision Governing Unimpaired Claims .....24

    J. Subordinated Claims .....25

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN ..... 25

    A. Summary ..... 25

    B. The Claimant Trust .....26

        1. *Creation and Governance of the Claimant Trust and Litigation Sub-  
Trust.* ..... 26

        2. *Claimant Trust Oversight Committee* .....27

	<u>Page</u>
3. Purpose of the Claimant Trust.....	27
4. Purpose of the Litigation Sub-Trust.....	28
5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.....	28
6. Compensation and Duties of Trustees.....	29
7. Cooperation of Debtor and Reorganized Debtor.....	30
8. United States Federal Income Tax Treatment of the Claimant Trust.....	30
9. Tax Reporting.....	30
10. Claimant Trust Assets.....	31
11. Claimant Trust Expenses.....	31
12. Trust Distributions to Claimant Trust Beneficiaries.....	31
13. Cash Investments.....	31
14. Dissolution of the Claimant Trust and Litigation Sub-Trust.....	32
C. The Reorganized Debtor.....	32
1. Corporate Existence.....	32
2. Cancellation of Equity Interests and Release.....	33
3. Issuance of New Partnership Interests.....	33
4. Management of the Reorganized Debtor.....	33
5. Vesting of Assets in the Reorganized Debtor.....	34
6. Purpose of the Reorganized Debtor.....	34
7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets.....	34
D. Company Action.....	34
E. Release of Liens, Claims and Equity Interests.....	35
F. Cancellation of Notes, Certificates and Instruments.....	36
G. Cancellation of Existing Instruments Governing Security Interests.....	36

	<u>Page</u>
H. Control Provisions .....	36
I. Treatment of Vacant Classes .....	36
J. Plan Documents .....	36
K. Highland Capital Management, L.P. Retirement Plan and Trust .....	37
ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	37
A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases.....	37
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.....	38
C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases.....	39
ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS.....	39
A. Dates of Distributions .....	39
B. Distribution Agent .....	40
C. Cash Distributions.....	41
D. Disputed Claims Reserve.....	41
E. Distributions from the Disputed Claims Reserve .....	41
F. Rounding of Payments.....	41
G. <i>De Minimis</i> Distribution .....	41
H. Distributions on Account of Allowed Claims.....	42
I. General Distribution Procedures.....	42
J. Address for Delivery of Distributions.....	42
K. Undeliverable Distributions and Unclaimed Property .....	42
L. Withholding Taxes.....	43
M. Setoffs .....	43

	<u>Page</u>
N. Surrender of Cancelled Instruments or Securities .....	43
O. Lost, Stolen, Mutilated or Destroyed Securities .....	43
ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS.....	44
A. Filing of Proofs of Claim .....	44
B. Disputed Claims.....	44
C. Procedures Regarding Disputed Claims or Disputed Equity Interests .....	44
D. Allowance of Claims and Equity Interests.....	44
1. <i>Allowance of Claims</i> .....	45
2. <i>Estimation</i> .....	45
3. <i>Disallowance of Claims</i> .....	45
ARTICLE VIII. EFFECTIVENESS OF THIS PLAN .....	46
A. Conditions Precedent to the Effective Date .....	46
B. Waiver of Conditions.....	47
C. Effect of Non-Occurrence of Conditions to Effectiveness	<b>Error! Bookmark not defined.</b>
D. Dissolution of the Committee .....	47
ARTICLE IX. EXCULPATION, INJUNCTION AND RELATED PROVISIONS .....	48
A. General.....	48
B. Discharge of Claims.....	48
C. Exculpation .....	48
D. Releases by the Debtor.....	49
E. Preservation of Rights of Action.....	50
1. <i>Maintenance of Causes of Action</i> .....	50
2. <i>Preservation of All Causes of Action Not Expressly Settled or Released</i> .....	50
F. Injunction .....	51

	<u>Page</u>
G. Term of Injunctions or Stays.....	52
H. Continuance of January 9 Order .....	52
ARTICLE X. BINDING NATURE OF PLAN .....	52
ARTICLE XI. RETENTION OF JURISDICTION.....	53
ARTICLE XII. MISCELLANEOUS PROVISIONS .....	55
A. Payment of Statutory Fees and Filing of Reports .....	55
B. Modification of Plan .....	55
C. Revocation of Plan.....	55
D. Obligations Not Changed.....	56
E. Entire Agreement .....	56
F. Closing of Chapter 11 Case .....	56
G. Successors and Assigns.....	56
H. Reservation of Rights.....	56
I. Further Assurances.....	57
J. Severability .....	57
K. Service of Documents .....	57
L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code.....	58
M. Governing Law .....	59
N. Tax Reporting and Compliance .....	59
O. Exhibits and Schedules .....	59
P. Controlling Document .....	59

---

## **DEBTOR’S CHAPTER 11 PLAN OF REORGANIZATION**

---

HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### **ARTICLE I.** **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

#### **A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns;



(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

**B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.



42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.



69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any

damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized



Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized

Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

## **B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee



Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF  
CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the

Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

## **H. Classification and Treatment of Claims and Equity Interests**

### *1. Class 1 – Jefferies Secured Claim*

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

### *2. Class 2 – Frontier Secured Claim*

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

**I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.



**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor’s limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor’s current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be



cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust<sup>2</sup>**

*1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve

---

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and

monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust

Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are



investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. The Reorganized Debtor

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 20**



SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>	<p>3</p> <p>4</p>	<p>5/25/22 (10/5/21)</p> <p>5/25/22 (10/5/21)</p>	<p>9</p> <p>10</p>	<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>(15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>(1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>	<p>5</p> <p>6</p> <p>7</p>	<p>5/25/22 (10/5/21)</p> <p>5/25/22 (10/5/21)</p> <p>5/25/22 (10/5/21)</p>	<p>11</p> <p>12</p> <p>13</p>	<p>(8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>(10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)	
Vol. 8	8	5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001349	9	5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001352	10	5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
001359	11	5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
001361	12	5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
001369	13	5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>
001381				

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				



001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbautilaw.com

jeb@sbautilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.



5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in

the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

#### **E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of

doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a

contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

## **B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed



and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity

Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

## **B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the

Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall



revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

#### **H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

#### **I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

#### **J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

#### **K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.**  
**PROCEDURES FOR RESOLVING CONTINGENT,**  
**UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH**

**LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding

upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

**B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

**C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's



Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross

negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation



Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

**E. Preservation of Rights of Action**

*1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

*2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final

Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or**

arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state,

Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or

expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such

orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.** **MISCELLANEOUS PROVISIONS**

### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

### **B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

### **C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement



executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this

Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:



**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego

the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

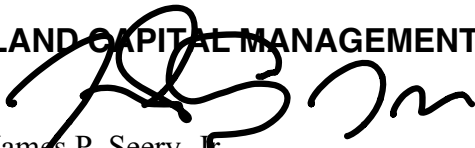
In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

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

By:   
James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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

and

**HAYWARD & ASSOCIATES PLLC**

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

*Counsel for the Debtor and Debtor-in-Possession*

## **EXHIBIT 5**

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

THE CHARITABLE DAF FUND, LP.,

*Plaintiff,*

v.

HIGHLAND CAPITAL MANAGEMENT,  
L.P.,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Cause No. \_\_\_\_\_

**ORIGINAL COMPLAINT**

This matter concerns self-dealing and seeks redress for violation of state and federal law, including, but not limited to, violations of the Advisers Act of 1940, and other state causes of action.

**I.**

**PARTIES**

1. Plaintiff The Charitable DAF Fund, L.P. (“Plaintiff” or “DAF”) is a limited partnership formed under the laws of the Cayman Islands.

2. Defendant Highland Capital Management L.P. (“Highland” or “HCMLP”) is a Delaware limited partnership, whose principal place of business is in Dallas, Texas, at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

**II.**

**JURISDICTION AND VENUE**

3. Subject matter jurisdiction is proper in this Court under 28 U.S.C. § 1331 and under 28 U.S.C. § 1334 because the suit arises out of post-petition acts or omissions of the debtor and certain of its principals.

4. This Court has personal jurisdiction over Defendant Highland Capital Management, L.P. because it has continuously done business in this state, and the causes of action arise from the acts or omissions committed in this state.

5. Venue is proper in this Court because a substantial number of the acts or omissions giving rise to this lawsuit and the causes of action asserted herein occurred in Dallas County.

### III.

#### **FACTUAL BACKGROUND**

6. HCMLP is a registered investment advisor (“RIA”) subject to the regulations of the Securities Exchange Commission.

7. HCMLP is both the advisor of and investor in Highland Multi Strategy Credit Fund, L.P. (“Multistrat”), a Delaware limited partnership. Highland Multi Strategy Credit Fund GP, L.P., itself a Delaware limited partnership, is the general partner of Multistrat, and HCMLP is the sole member of the general partner of Highland Multi Strategy Credit Fund GP, L.P.

8. HCMLP’s advisory capacity is governed, or at all relevant times was governed, by the Third Amended and Restated Investment Management Agreement, effective November 1, 2013 (the “IMA”).

9. The purpose of Multistrat as a vehicle was stated as such: “The Fund's investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.”

10. The Confidential Private Placement Memorandum for Multistrat disclosed that “[t]he Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the ‘Advisers Act’).

Each prospective investor will be required to make a representation to indicate that it is a ‘qualified client’ as defined in the Advisers Act.”

11. Because of these agreements and roles as the General Partner and RIA, Highland owed contractual and fiduciary duties to Plaintiff as an investor in Multistrat.

12. James Seery, the principal, CEO, and CRO of HCMLP. in its capacity as a debtor, admitted under oath that HCMLP owes fiduciary duties to the investors of the funds HCMLP manages—which would include Multistrat—and therefore, has admitted under oath that HCMLP and its governed persons owe fiduciary duties to the investors in Multistrat, which include Plaintiff, The Charitable DAF Fund, and Highland Capital Management Services, Inc., among others.

13. As an investment vehicle advised at all times and controlled at all times by HCMLP, Multistrat purchased and owned a pool of viaticals—investments in life insurance policies keyed to the lives of other persons. When a person passes away, the life insurance money is paid to the owner of the policy—in this case, Multistrat.

14. The notional value of the viatical pool was approximately \$145 million.

15. In or around August 2020, HCMLP sold the entire viatical pool for approximately \$35,000,000—less than one quarter of the insured value.

16. The policies insured people aged 90 on average, suggesting that the policies were highly likely to pay off in the ensuing few years given the age and life expectancies of the insureds, as well as considering the actuarial impact of the COVID pandemic.

17. In the spring of 2020, Multistrat raised funds specifically for the purpose of paying the premiums on the viatical pool—amounts raised, borrowing availability, and liquid securities provided enough cash to pay the premiums. But HCMLP did not pursue this path as promised.

Instead, it sold the assets. To this day, it is unclear why the policies were sold, and why, just prior to a planned mediation.

18. Furthermore, the process of selling was severely flawed. For example, the health assessments used to determine the likelihood and timeline for the payout were two years old. HCMLP did not cause new, up-to-date health assessments to be performed, and instead was content to rely on stale information or worse, no information at all.

19. Furthermore, HCMLP made no effort to adjust the projected life expectancies due to the increasing age of the insureds during a process that stretched over seven months, nor for the potential impact of COVID on people over the age of 90, which would have impacted the price..

20. Equally troubling is that Multistrat obtained the funds to pay the premiums from another investor—yet, it apparently did not use the funds for that purpose.

21. HCMLP apparently used the proceeds of the sale to pay itself, notwithstanding the fact that there were redeemed interests waiting to be paid—interests to whom HCMLP also owed fiduciary duties.

22. In short, HCMLP caused Multistrat to sell the viatical pool at a substantially discounted amount to curry favor with the brokers and buyers in the marketplace for no apparent benefit to Multistrat’s investors or the debtor’s estate.

### III.

#### **CAUSES OF ACTION**

##### **First Cause of Action** **Breach of the Advisers Act**

23. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
24. Highland’s actions violate the Advisers Act.
25. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.



26. The IMA imposes and incorporates the duties and obligations of the Investment Advisers Act of 1940.

27. Under this federal law, an investment adviser is a fiduciary.<sup>1</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.

28. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”

29. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>2</sup> In order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

---

<sup>1</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s “references to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. 2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”).

<sup>2</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

30. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>3</sup>

31. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

32. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

33. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

34. Therefore, Plaintiff seeks to declare the sale of the viaticals void because they were accomplished in violation of the Advisers Act.

35. Plaintiff further seeks to declare the agreement(s) between Highland and Multistrat void because they were continued in violation of the Advisers Act.

### **Second Cause of Action** **Breach of Fiduciary Duty**

36. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

---

<sup>3</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *Sec. & Exch. Commission v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

37. As an RIA, HCMLP is subject to the Investment Advisers Act of 1940.

38. The IMA imposes and incorporates the duties and obligations of the Investment Advisers Act of 1940.

39. Under this federal law, an investment adviser is a fiduciary.<sup>4</sup> This includes a duty of care, a duty of loyalty, and a duty to refrain from engaging in transactions in which it is not a disinterested person.

40. The duty of loyalty imposed by the Advisers Act of 1940 is not specifically defined in the Advisers Act or in Commission rules, but reflects a Congressional recognition “of the delicate fiduciary nature of an investment advisory relationship” as well as a Congressional intent to “eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.”

41. To meet its duty of loyalty, an adviser must make full and fair disclosure to its clients of all material facts relating to the advisory relationship, including disclosing transactions in which the advisor has an interest, and to disclose all pertinent facts of a transaction that could affect the client or the client’s interest.<sup>5</sup> In order for disclosure to be full and fair, it should be

---

<sup>4</sup> *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963). *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”); Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing *Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. IA2106 (Jan. 31, 2003) (“Investment Advisers Act Release 2106”)).

<sup>5</sup> *SEC v. Capital Gains*, supra, at 200 (“Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.”). Investment Advisers Act Release 3060, supra, footnote 15 (“as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship”); see also General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.”).

sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.

42. This fiduciary duty also requires an adviser “to adopt the principal’s goals, objectives, or ends.” This means the adviser must, at all times, serve the best interest of its client and not subordinate its client’s interest to its own. In other words, the investment adviser cannot place its own interests ahead of the interests of its client and must at all times act for the interests of its investors.<sup>6</sup>

43. Here, the goals of Multistrat included “to seek attractive risk adjusted returns, consistent with the preservation of capital and prudent investment management.”

44. The duty of care includes, among other things: (i) the duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client’s transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.

45. These fiduciary duties are **unwaivable**, and any agreement made in derogation of the obligations under the Advisers Act is **void**.

46. HCMLP’s CEO testified under oath that he and HCMLP were aware of these duties and had to comply with them.

47. Section 204 of the Advisers Act requires HCMLP to carry written policies and procedures that must be followed in order to adhere to its federal obligations.

---

<sup>6</sup> Investment Advisers Act Release 3060 (adopting amendments to Form ADV and stating that “[u]nder the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own,” citing Investment Advisers Act Release 2106, supra footnote 15). *SEC v. Tambone*, 550 F.3d 106, 146 (1st Cir. 2008) (“Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund...”); *SEC v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.”).

48. Section 206 of the Advisers Act prohibits transactions by an adviser that were accomplished via a “deceit” on a client or prospective client, e.g., by concealing the role and interest the adviser has in the transaction, or via engaging in a course of conduct that has a tendency to mislead a client or which is manipulative.

49. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

50. The Advisers Act declares any contract that was made in violation of its provisions or regulations, or any contract that has been performed in violation of the Advisers Act, **void**.

51. The Advisers Act created a private right of action to void unlawful agreements and acts and to seek such equitable relief as accompanies such claims.

52. Texas law allows a fiduciary plaintiff to seek damages for breaches of fiduciary duty and to seek disgorgement of all ill-gotten gains obtained by a fiduciary.

53. Plaintiff has been damaged due to the breaches of fiduciary duty outlined herein, and it is entitled to recover damages, punitive damages, and attorneys’ fees.

54. To the extent this claim must be brought as a derivative action, it is plain that the demand requirement under Delaware law could not be met because serving a demand on Highland or to sue Highland would have been futile.

**Third Cause of Action**  
**Breach of Contract**

55. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

56. The IMA imposes a duty of prudent investment management for the benefit of the investors in Multistrat and incorporate the duties and obligations of the Investment Advisers Act of 1940.

57. The violations set forth above constitute a breach of each or both of these agreements.

58. These breaches include, but are not limited to (1) selling the viatical pool at a distressed price when it was not in distress and there was no need for Multistrat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) concealing the purpose behind the sale of the viatical pool and the conflicts of interest that inhere in the transaction; (5) causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multistrat (e.g., by failing to conduct an auction, obtaining competitive bids, and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

59. Plaintiff has been damaged by the breaches of contract outlined herein.

60. Plaintiff is entitled to recover damages and attorneys' fees.

**JURY DEMAND AND PRAYER**

61. Plaintiff demands trial by jury.
62. Plaintiff respectfully requests judgment and an order:
  - Disgorging all ill-gotten gains in an amount to be determined at trial;
  - Voiding the sale and other relevant agreements herein with HCMLP pursuant to the Advisers Act;
  - Awarding damages in an amount to be determined at trial;
  - Awarding punitive damages in an amount to be determined at trial;
  - Awarding attorneys' fees and costs in an amount to be determined at trial;
  - Awarding all interim and final relief to which Plaintiff is legally or equitably entitled under the facts and circumstances raised herein.

Dated: July 22, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: [mas@sbaitilaw.com](mailto:mas@sbaitilaw.com)

[jeb@sbaitilaw.com](mailto:jeb@sbaitilaw.com)

**Counsel for Plaintiff**

**EXHIBIT 6**



### Schedule of Contracts and Leases to Be Assumed

1. Advisory Services Agreement, dated November 21, 2011, effective June 20, 2011, by and between Carey International, Inc., and Highland Capital Management, L.P.
2. Amended and Restated Advisory Services Agreement, dated March 4, 2013, by and between Trussway Holdings, Inc., and Highland Capital Management, L.P.
3. Reference Portfolio Management Agreement, dated March 4, 2004, by and between Highland Capital Management, L.P., and Citibank N.A.
4. Advisory Services Agreement, dated May 25, 2011, by and between CCS Medical, Inc., and Highland Capital Management, L.P.
5. Amended and Restated Advisory Services Agreement, dated February 28, 2013, by and between Cornerstone Healthcare Group Holding, Inc., and Highland Capital Management, L.P.
6. Prime Brokerage Agreement by and between Jefferies LLC and Highland Capital Management, L.P., dated May 24, 2013.
7. Amended and Restated Shared Services Agreement, dated August 21, 2015, by and between Highland Capital Management, L.P., and Falcon E&P Opportunities GP, LLC.
8. Amended and Restated Administrative Services Agreement, effective as of August 21, 2015, by and between Highland Capital Management, L.P., and Petrocap Partners II GP, LLC.
9. Office Lease, between Crescent Investors, L.P., and Highland Capital Management, L.P.
10. Paylocity Corporation Services Agreement, between Highland Capital Management, L.P., and Paylocity Corporation, dated November 19, 2012.
11. Electronic Trading Services Agreement, between SunTrust Robinson Humphrey Inc., and Highland Capital Management, L.P., dated February 6, 2019.
12. Letter Agreement, between FTI Consulting, Inc., and Highland Capital Management, L.P., dated November 19, 2018.
13. Administrative Services Agreement, dated January 1, 2018, between Highland Capital Management, L.P., and Liberty Life Assurance Company of Boston.
14. Electronic Communications: Customer Authorization & Indemnification, between Highland Capital Management, L.P., and The Bank of New York Mellon Corporation, dated August 9, 2016.
15. Letter Agreement, dated August 9, 2016, Electronic Access Terms and Conditions, by and between The Bank of New York Mellon Trust Company, N.A., and Highland Capital Management, L.P.
16. Shared Services Agreement by and between Highland HCF Advisor, Ltd., and Highland Capital Management, L.P., dated effective October 27, 2017.

17. Sub-Advisory Agreement, by and between Highland HCF Advisors, Ltd., and Highland Capital Management, dated effective October 27, 2017.
18. Collateral Management Agreement, dated November 2, 2006, by and between Highland Credit Opportunities CDO Ltd. and Highland Capital Management, L.P.
19. Management Agreement, dated November 15, 2007, between Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Partners Master L.P., Highland Restoration Capital Partners GP, LLC, and Highland Capital Management, L.P.
20. Investment Management Agreement, between Highland Capital Multi-Strategy Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
21. Investment Management Agreement, between Highland Capital Multi-Strategy Master Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
22. Management Agreement, dated August 22, 2007, between and among Highland Capital Management, L.P., and Walkers Fund Services Limited, as trustee of Highland Credit Opportunities Japanese Unit Trust.
23. Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013.
24. Investment Management Agreement, dated March 31, 2015, by and among Highland Select Equity Master Fund, L.P., Highland Select Equity Fund GP, L.P., and Highland Capital Management, L.P.
25. Amended and Restated Investment Management Agreement, dated February 27, 2017, by and among Highland Prometheus Master Fund L.P., Highland Prometheus Feeder Fund I, L.P., Highland Prometheus Feeder Fund II, L.P., Highland SunBridge GP, LLC, and Highland Capital Management, L.P.
26. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
27. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
28. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
29. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
30. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
31. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
32. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.

33. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
34. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
35. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
36. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
37. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
38. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
39. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
40. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
41. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
42. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
43. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.
44. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
45. AT&T Managed Internet Service, between Highland Capital Management, L.P. and AT&T Corp., dated February 24, 2015.
46. ViaWest, Master Service Agreement, dated October 3, 2011, between Highland Capital Management, L.P. and ViaWest
47. Stockholders' Agreement, dated April 15, 2005, by and between American Banknote Corporation and Highland Capital Management, L.P.
48. Stockholders' Agreement and Amendment No. 1, dated January 25, 2011, by and between Carey Holdings, Inc. and Highland Capital Management, L.P.
49. Stockholders' Agreement and Amendment, dated March 24, 2010, by and between Cornerstone Healthcare Group Holding, Inc. and Highland Capital Management, L.P.
50. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
51. Stock Purchase and Sale Agreement and Amendment, dated January 16, 2013, by and between Progenics Pharmaceuticals, Inc. and Highland Capital Management, L.P.

52. Stockholders' Agreement and Amendments, dated October 24, 2008, by and between JHT Holdings, Inc. and Highland Capital Management, L.P.
53. Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P., dated February 25, 2013, by and between Highland Dynamic Income Fund GP, LLC and Highland Capital Management, L.P.
54. Highland Multi-Strategy Fund, L.P. Limited Partnership Agreement, dated July 6, 2006, by and between Highland Multi-Strategy Fund GP, L.P. and Highland Capital Management, L.P.
55. Operating Agreement of HE Capital, LLC (as amended), dated September 27, 2007, by and between ENA Capital, LLC Ellman Management Group, Inc. and Highland Capital Management, L.P.
56. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund II, LLC, dated February 27, 2007, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
57. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund, LLC, dated July 19, 2006, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
58. Highland Capital Management, L.P., Limited Liability Company Agreement of Highland Receivables Finance 1, LLC, by and between Highland Capital Management, L.P. and Highland Capital Management, L.P.
59. Agreement of Limited Partnership of Highland Restoration Capital Partners, L.P. and Amendments, dated November 6, 2007, by and between Highland Restoration Capital Partners GP, LLC and Highland Capital Management, L.P.
60. Agreement of Limited Partnership of Highland Select Equity Fund GP, L.P., dated October 2005, by and between Highland Select Equity Fund GP, LLC and Highland Capital Management, L.P.
61. Agreement of Limited Partnership of Penant Management LP, dated December 12, 2012, by and between Penant Management GP, LLC and Highland Capital Management, L.P.
62. Agreement of Limited Partnership of Petrocap Incentive Partners III, LP, dated April 12, 2018, by and between Petrocap Incentive Partners III GP, LLC, Petrocap Incentive Holdings III, LP and Highland Capital Management, L.P.
63. Amended and Restated Agreement of Limited Partnership of Petrocap Partners II, LP, dated October 30, 2014, by and between Petrocap Partners II GP, LLC, Petrocap Incentive Partners II, LP and Highland Capital Management, L.P.
64. Agreement of Limited Partnership of Highland Credit Opportunities CDO GP, L.P., dated December 29, 2005, by and between Highland Credit Opportunities CDO GP, LLC and Highland Capital Management, L.P.
65. Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P., dated November 1, 2014, by and between Highland Multi Strategy Credit Fund GP, L.P. and Highland Capital Management, L.P.

66. DUO Security, 2 factor authentication, by and between DUO Security and Highland Capital Management, L.P.
67. GoDaddy Domain Registrations, by and between GoDaddy and Highland Capital Management, L.P.
68. Highland Loan Fund, Ltd. et al, Investment Management Agreement, dated July 31, 2001, by and between Highland Loan Fund, Ltd. et al and Highland Capital Management, L.P.
69. E Mailflow Monitoring, by and between Mxtoolbox and Highland Capital Management, L.P.
70. Cloud single sign on for HR related employee login, by and between Onelogin and Highland Capital Management, L.P.
71. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
72. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
73. Order Addenda, dated January 28, 2020, by and between CenturyLink Communications, LLC and Highland Capital Management, L.P.
74. Service Agreement (as amended), dated April 1, 2005, by and between Intex Solutions, Inc. and Highland Capital Management, L.P.
75. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
76. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
77. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
78. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
79. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
80. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
81. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
82. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

83. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
84. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
85. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
86. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
87. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.
88. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
89. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
90. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
91. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
92. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
93. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
94. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
95. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
96. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
97. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust



98. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
99. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
100. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
101. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
102. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
103. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
104. Securities Account Control Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Highland CDO Opportunity Fund, Ltd.; JPMorgan Chase Bank, National Association
105. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
106. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
107. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
108. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
109. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
110. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
111. Extension/Buy-Out Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Citigroup Financial Products Inc.; Citigroup Global Markets Inc.
112. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
113. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
114. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

115. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery
116. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel
117. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms
118. Colocation Service Order dated October 14, 2019 between Highland Capital Management and Dawn US Holdings, LLC d/b/a Evoque Date Center Solutions
119. Tradesuite Web Module Services/Agreement between Highland Capital Management and DTCC ITP LLC
120. Bloomberg (Terminal) Agreement No. 306371 between Highland Capital Management and Bloomberg Finance, L.P.<sup>1</sup>
121. Master Service Agreement between Highland Capital Management and Via West
122. Amendment to Bloomberg Order Management System Addendum and Bloomberg Order Management System Schedule of Services Account No. 167969 between Highland Capital Management and Bloomberg Finance, L.P.
123. Fourth Amendment to Software License and Services Agreement between Highland Capital Management and Markit WSO Corporation
124. Master Services Agreement, First Amendment to Master Services Agreement, Second Amendment and Restatement of Master Services Agreement between Highland Capital Management and Siepe Services, LLC
125. Internet Agreement Account No. 831-000-7888-651 between Highland Capital Management and AT&T
126. Landline Fax Agreement Account No. 831-000-2532-176 between Highland Capital Management and AT&T
127. Amazon Web Services Account No. 353534426569 between Highland Capital Management and Amazon Web Service, Inc.
128. Website Hosting Agreement Account No. 325667 between Highland Capital Management and WP Engine

---

<sup>1</sup> The Debtor is currently in discussions with Bloomberg regarding the assumption of this agreement.



**EXHIBIT 7**

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

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

*Counsel for the Debtor*

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

\_\_\_\_\_  
In re: )  
 ) Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> )  
 ) Case No. 19-34054-sgj11  
 )  
Debtor. )  
\_\_\_\_\_ )

**NOTICE OF OCCURRENCE OF EFFECTIVE DATE OF  
CONFIRMED FIFTH AMENDED PLAN OF REORGANIZATION  
OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

**PLEASE TAKE NOTICE** that on February 22, 2021, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered the *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1943] (the “Confirmation Order”) confirming the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as

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



amended, supplemented, or modified, the “Plan”). Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Plan and the Confirmation Order, as applicable.

**PLEASE TAKE FURTHER NOTICE** that the Effective Date of the Plan occurred on August 11, 2021.

**PLEASE TAKE FURTHER NOTICE** that, except with respect to Administrative Expense Claims that are Professional Fee Claims or as otherwise set forth in the Plan, requests for payment of an Administrative Expense Claim must be Filed with the Bankruptcy Court **no later than forty-five (45) days after the Effective Date** (the “Administrative Expense Claims Bar Date”). **HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE EXPENSE CLAIMS BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE THAT DO NOT FILE AND SERVE SUCH A REQUEST BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE EXPENSE CLAIMS AGAINST THE DEBTOR OR THE REORGANIZED DEBTOR.**

**PLEASE TAKE FURTHER NOTICE** that, unless otherwise ordered by the Bankruptcy Court, all final requests for payment of Professional Fee Claims must be Filed **no later than sixty (60) days after the Effective Date.**

**PLEASE TAKE FURTHER NOTICE** that the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtor or the Reorganized Debtor, as applicable, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan and Confirmation Order, including, without limitation: the injunction with respect to the commencement of claims and causes of action against Protected Parties set forth in Section IX.F of the Plan and Sections AA and BB of the Confirmation Order, the duration of injunction and stays set forth in Section IX.G of the Plan and Section AA of the Confirmation Order, and the continuance of the January 9 Order and July 16 Order set forth in Section IX.H of the Plan and Section CC of the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE** that on the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor’s formation documents, including the Limited Partnership Agreement.

**PLEASE TAKE FURTHER NOTICE** that the Confirmation Order and the Plan

are available for inspection. If you would like to obtain copies you may: (a) access the Debtor's restructuring website at <http://www.kccllc.net/hcmlp>; (b) call toll free: (877) 573-3984 or international: (310) 751-1829; or (c) email HighlandInfo@kccllc.com and reference "Highland" in the subject line. You may also obtain copies of any pleadings filed in this case for a fee via PACER at: [pacer.uscourts.gov](http://pacer.uscourts.gov).

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: August 11, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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

-and-

**HAYWARD PLLC**

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

*Counsel for the Debtor*

**EXHIBIT 8**

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054 (SGJ)
Debtor.	)	

**CERTIFICATE OF SERVICE**

I, Vincent Trang, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On August 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit A**; and via First Class Mail upon the service lists attached hereto as **Exhibit B** and **Exhibit C**:

- **Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.** [Docket No. 2700]

Furthermore, on August 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via First Class Mail upon “Highland Capital Management LP, For Further Delivery to Addressed Parties, 300 Crescent Ct, Ste 700, Dallas, TX 75201,” for distribution in individually addressed envelopes to each party on the service list attached hereto as **Exhibit D**; and via First Class Mail upon “Highland Capital Management LP, For Further Delivery to Addressed Parties, 13455 Noel Rd, Ste 800, Dallas, TX 75240,” for distribution in individually addressed envelopes to each party on the service list attached hereto as **Exhibit E**:

- **Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.** [Docket No. 2700]

Dated: August 19, 2021

/s/ Vincent Trang  
 Vincent Trang  
 KCC  
 222 N Pacific Coast Highway, Suite 300  
 El Segundo, CA 90245

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

# EXHIBIT A



Description	CreditorName	CreditorNoticeName	Email
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	ctimmons@abernathy-law.com; bankruptcy@abernathy-law.com; ehahn@abernathy-law.com
Counsel for NexBank	Alston & Bird LLP	Jared Slade	jared.slade@alston.com
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	jonathan.edwards@alston.com
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandeneau	debra.dandeneau@bakermckenzie.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	michelle.hartmann@bakermckenzie.com
Counsel for NWCC, LLC	Barnes & Thornburg LLP	Thomas G. Haskins, Jr.	thomas.haskins@btlaw.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	mintz@blankrome.com; jbibiloni@blankrome.com
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	John Y. Bonds, III, Bryan C. Assink	john@bondsellis.com; bryan.assink@bondsellis.com
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	schristianson@buchalter.com
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	c Carlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel for BH Equities, L.L.C.	Dentons US LLP	Casey Doherty	Casey.doherty@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Counsel to Acis Capital Management, LP and Acis Capital Management GP, LLC ("Creditors") and Joshua N. Terry and Jennifer G. Terry	Forshey & Prostok LLP	Jeff P. Prostok, J. Robert Forshey, Suzanne K. Rosen	jprostok@forsheyprostok.com; bforshey@forsheyprostok.com; srosen@forsheyprostok.com
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	selliot@frontier-ok.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	ddraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	Jhonis@RandAdvisors.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
IRS	Internal Revenue Service	Centralized Insolvency Operation	Mimi.M.Wong@irsconsent.treas.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Secured Creditor	Jefferies LLC	Director of Compliance	cbianchi@jefferies.com
Secured Creditor	Jefferies LLC	Office of the General Counsel	cbianchi@jefferies.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	asrush@jonesday.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	jbain@joneswalker.com; aanderson@joneswalker.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	artoush.varshosaz@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	james.wright@klgates.com

Description	CreditorName	CreditorNoticeName	Email
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	stephen.topetzes@klgates.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	pbessette@kslaw.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	Andrew.Clubok@lw.com; Sarah.Tomkowiak@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala, Kathryn K. George	asif.attarwala@lw.com; Kathryn.George@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	jeff.bjork@lw.com; kim.posin@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Zachary F. Proulx	Zachary.Proulx@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Counsel for Jack Yang and Brad Borud	Loewinsohn Flegle Deary Simon LLP	Daniel P. Winikka	danw@fldslaw.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Equity Holders	Mark K. Okada		mokadadallas@gmail.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arshat & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Bank	NexBank	John Danilowicz	john.holt@nexbankcapital.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD, Plano ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslough@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	judith.ross@judithwross.com; frances.smith@judithwross.com; eric.soderlund@judithwross.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	david.karp@srz.com; jay.williams@srz.com
SEC Regional Office	Securities & Exchange Commission	Richard Best, Regional Director	bankruptcynoticeshr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
Counsel to Patrick Daugherty	Spencer Fane LLP	Jason P. Kathman	jkathman@spencerfane.com

Description	CreditorName	CreditorNoticeName	Email
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel for NexPoint Real Estate Partners, LLC F/K/A HCRE Partners, LLC	Wick Phillips Gould & Martin, LLP	Brant C. Martin, Jason M. Rudd, Lauren K. Drawhorn	brant.martin@wickphillips.com; jason.rudd@wickphillips.com; lauren.drawhorn@wickphillips.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com

# EXHIBIT B

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	1700 Redbud Blvd, Ste. 300			McKinney	TX	75069
Counsel for NexBank	Alston & Bird LLP	Jared Slade	Chase Tower	2200 Ross Avenue		Dallas	TX	75201
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	One Atlantic Center	1201 West Peachtree Street		Atlanta	GA	30309
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	500 Delaware Avenue, 8th Floor	PO Box 1150		Wilmington	DE	19899-1150
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Ave			New York	NY	10018
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500		Dallas	TX	75201
Counsel for NWCC, LLC	Barnes & Thornburg LLP	Thomas G. Haskins, Jr.	2121 North Pearl Street, Suite 700			Dallas	TX	75201
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800			Wilmington	DE	19801
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	John Y. Bonds, III, Bryan C. Assink	420 Throckmorton Street, Suite 1000			Fort Worth	TX	76102
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	55 Second Street, 17th Floor			San Francisco	CA	94105-3493
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	2911 Turtle Creek Blvd.	Suite 1400		Dallas	TX	75219
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	265 E. Warm Springs Road, Suite 107			Las Vegas	NV	89119
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosselliers	Hercules Plaza	1313 North Market Street, Suite 5400		Wilmington	DE	19801
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.		301 Commerce Street, Suite 1700			Fort Worth	TX	76102
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	8080 Park Lane, Suite 700			Dallas	TX	75231
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	1105 N. Market Street, Suite 901			Wilmington	DE	19801
Counsel for BH Equities, L.L.C.	Dentons US LLP	Casey Doherty	1221 McKinney Street, Suite 1900			Houston	TX	77010
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	1221 Avenue of the Americas			New York	NY	10020-1089
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	233 South Wacker Drive	Suite 5900		Chicago	IL	60606-6361
Counsel to Acis Capital Management, LP and Acis Capital Management GP, LLC ("Creditors") and Joshua N. Terry and Jennifer G. Terry	Forshey & Prostok LLP	Jeff P. Prostok, J. Robert Forshey, Suzanne K. Rosen	777 Main Street, Suite 1550			Fort Worth	TX	76102
Secured Creditor	Frontier State Bank	Attr: Steve Elliot	5100 South I-35 Service Road			Oklahoma City	OK	73129

004069

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	100 Crescent Court, Suite 350			Dallas	TX	75201
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	200 Park Avenue			New York	NY	10066
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	3161 Michelson Drive			Irvine	CA	92612
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Broughy	650 Poydras Street, Suite 2500			New Orleans	LA	70130
Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	John Honis	87 Railroad Place Ste 403		Saratoga Springs	NY	12866
IRS	Internal Revenue Service	Attn Susanne Larson	31 Hopkins Plz Rm 1150			Baltimore	MD	21201
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	2323 Ross Avenue, Suite 600			Dallas	TX	75201
Secured Creditor	Jefferies LLC	Director of Compliance	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Secured Creditor	Jefferies LLC	Office of the General Counsel	520 Madison Avenue, 16th Floor	Re Prime Brokerage Services		New York	NY	10022
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	919 Third Avenue			New York	NY	10022-3908
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	2727 N. Harwood Street			Dallas	TX	75201
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	811 Main Street, Suite 2900			Houston	TX	77002
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artouh Varshosaz	1717 Main Street, Suite 2800			Dallas	TX	75201
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	1 Lincoln Street			Boston	MA	02110
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetztes	1601 K Street, NW			Washington	DC	20006-1600
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	901 Main Street, Suite 5200			Dallas	TX	75242-1699
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	500 West 2nd St., Suite 1800			Austin	TX	78701-4684
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	401 S. 2nd Street, Suite 200			Philadelphia	PA	19147
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000			Washington	DC	20004

**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala, Kathryn K. George	330 N. Wabash Avenue, Ste. 2800			Chicago	IL	60611
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100			Los Angeles	CA	90071
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Zachary F. Proulx	1271 Avenue of the Americas			New York	NY	10020
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207
Counsel for Jack Yang and Brad Borud	Loewinsohn Flegle Deary Simon LLP	Daniel P. Winikka	12377 Merit Drive, Suite 900			Dallas	TX	75251
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	2100 Ross Avenue, Ste 2700			Dallas	TX	75201
Equity Holders	Mark K. Okada		300 Crescent Court	Suite 700		Dallas	TX	75201
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsht & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	1201 North Market Street, Suite 1600			Wilmington	DE	19801
Counsel to Meta-e Discovery, LLC Bank	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	909 Third Avenue			New York	NY	10022
Counsel to California Public Employees' Retirement System ("CalPERS")	NexBank	John Danilowicz	2515 McKinney Ave	Ste 1100		Dallas	TX	75201
SEC Headquarters	Office of General Counsel	Louis J. Cisz, III, Esq. Securities & Exchange Commission	One Embarcadero Center, 32nd Floor			San Francisco	CA	94111
Texas Attorney General	Office of the Attorney General	Ken Paxton	100 F St NE			Washington	DC	20554
Attorney General of the United States	Office of the Attorney General		300 W. 15th Street			Austin	TX	78701
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq	Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Trustee for District of DE	Office of the United States Trustee	Linda Casey	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	844 King St Ste 2207	Lockbox 35		Wilmington	DE	19801
US Trustee for District of DE	Office of the United States Trustee	Jane M. Leamy	1100 Commerce Street, Room 976	Earle Cabell Federal Building		Dallas	TX	75242
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	J. Caleb Boggs Federal Building	844 King St Ste 2207	Lockbox 35	Wilmington	DE	19801
ISD, Wylie ISD, Plano ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	Office of the General Counsel	1200 K Street, N.W.		Washington	DC	20005-4026
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	1919 S. Shiloh Rd., Suite 310			Garland	TX	75042
Secured Creditor	Prime Brokerage Services	Jefferies LLC	1313 North Market Street, 6th Floor			Wilmington	DE	19801
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	520 Madison Avenue			New York	NY	10022
			One Rodney Square	920 North King Street		Wilmington	DE	19801



**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	325 North St. Paul Street, Suite 4500			Dallas	TX	75201
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610			Dallas	TX	75201
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	919 Third Avenue			New York	NY	10022
SEC Regional Office	Securities & Exchange Commission	Richard Best, Regional Director	New York Regional Office	Brookfield Place, Suite 400	200 Vesey Street	New York	NY	10281
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	Philadelphia Regional Office	One Penn Center, Suite 520	1617 JFK Boulevard	Philadelphia	PA	19103
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	One South Dearborn Street			Chicago	IL	60603
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	2021 McKinney Avenue Suite 2000			Dallas	TX	75201
Counsel to Patrick Daugherty	Spencer Fane LLP	Jason P. Kathman	5700 Granite Parkway, Suite 650			Plano	TX	75024
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division- Bankruptcy Section	PO Box 13258			Austin	TX	78711
DE Secretary of State Equity Holders	State of Delaware	Division of Corporations - Franchise Tax	401 Federal Street	PO Box 898		Dover	DE	19903
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	919 North Market Street, Suite 420	300 Crescent Court		Dallas	TX	75201
TX AG Office	Texas Attorney Generals Office	Bankruptcy-Collections Division	PO Box 12548			Wilmington	DE	19801
Equity Holders	The Dugaboy Investment Trust		300 Crescent Court	Suite 700		Austin	TX	78711-2548
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		300 Crescent Court	Suite 700		Dallas	TX	75201
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		300 Crescent Court	Suite 700		Dallas	TX	75201
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	300 Crescent Court	Suite 700		Dallas	TX	75201
United States Attorney General	United States Attorney General	U.S. Department of Justice	717 N. Harwood St., Suite 400	950 Pennsylvania Avenue, NW	Room 4400	Washington	DC	20530-0001
United States Bankruptcy Court	United States Bankruptcy Court	Honorable Stacey G. Jernigan	Northern District of Texas - Dallas Division	Earle Cabell Federal Building	1100 Commerce St., Rm. 1254	Dallas	TX	75242-1496
U.S. Department of the Treasury Counsel for NexPoint Real Estate Partners, LLC F/K/A HCRE Partners, LLC	US Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
	Wick Phillips Gould & Martin, LLP	Brant C. Martin, Jason M. Rudd, Lauren K. Drawhorn	3131 McKinney Avenue, Suite 500			Dallas	TX	75204

004072



**Exhibit B**  
 Core/2002 Service List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Harwood Street, Suite 500			Dallas	TX	75201
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: David Neier	200 Park Avenue			New York	NY	10166-4193
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	800 Capitol Street, Suite 2400			Houston	TX	77002
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	2121 N. Pearl Street, Suite 900	Carvel State Office Building, 8th Floor		Dallas	TX	75201
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	820 N. French Street		Wilmington	DE	19801

004073

# EXHIBIT C

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
13D Global Strategy and Research		491 N Main Street			Ketchum	ID	83340-0000	
13D RESEARCH, INC		PO BOX 2087	109 BOULDER VIEW LANE		Ketchum	ID	83340	
13D RESEARCH, INC		6115 Estate Smith Bay	Box 2/Suite 333		St. Thomas	VI	00802-1304	
1564 Entertainment, LLC		391 E. Las Colinas Blvd.	#130-428		Irving	TX	75039	
1st AMERICAN FIRE PROTECTION, INC		PO BOX 2123			Mansfield	TX	76063-2123	
1st Partners & Co		PO Box 141629			Dallas	TX	75222	
2011 PCDC Teachers Cup		25 Highland Park Village	#100-188		Dallas	TX	75205	
2-10 HOME BUYERS		10375 E HARVARD AVE			Denver	CO	80231	
2905 Maple LLC		2905 Maple Avenue			Dallas	TX	75201	
299 Credit Finance Holdings LLC		875 Third Avenue	10th Floor		New York	NY	10022	
300 Inc.		3805 Bellline Rd			Addison	TX	75001	
4CAST Inc		420 Lexington Avenue, Suite 2147			New York	NY	10170	
4th Bin, Inc.		703 3rd Avenue	6th Floor		New York	NY	10017	
A. Dean Jenkins		Address on File						
A.S.A.P. Advisor Services		5000 Olde Towne Parkway	Suite 100		Marietta	GA	30068	
AA GMT		4700 AMERICAN BLVD			Ft. Worth	TX	76155	
Aaron, Phillip B.		Address on File						
ABALON BUSINESS MACHINES & SERVICES		60 E 42ND ST			New York	NY	10167	
Abayarathna, Sahan		Address on File						
Abbit Stonecypher		Address on File						
Aberdeen Loan Funding, Ltd.	c/o Walkers SPV Limited	Walker House 87 Mary Street	George Town		Grand Cayman		KY1-9002	Cayman Islands
Aberdeen Loan Funding, Ltd.		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Aberdeen Loan Funding, Ltd. and State Street Bank and Trust Company	Aberdeen Loan Funding, Ltd. c/o Walkers SPV Limited, Walker House	87 Mary Street	George Town		Grand Cayman		1-9902	Cayman Islands
Aberdeen Loan Funding, Ltd. and State Street Bank and Trust Company	State Street Bank and Trust Company	200 Clarendon St	Mail Code EUC 108		Boston	MA	02116	
Ableco, LLC		299 Park Avenue	Floor 21-23		New York	NY	10171	
Ablon and Co., PLLC		10000 N. Central Expy #1400			Dallas	TX	75231	
ABM		PO Box 419860			Boston	MA	02241-9860	
ABM Janitorial Services		P.O. Box 951864			Dallas	TX	75395	
ABM Texas General Services, Inc.		2020 Westridge Drive			Irving	TX	75038-0000	
About Faces Entertainment, LLC		5092 Dorsey Hall Drive	Suite 202		Ellicott City	MD	21042	
AboveNet Communications Inc.		PO Box 79006			City of Industry	CA	91716-9006	
Abraham Rondina		Address on File						

004075

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Abrams & Bayliss LLP	John M. Seaman	20 Montchanin Road, Suite 200			Wilmington	DE	19807	
Abrams Mediation		7616 Burns Run Suite 180			Dallas	TX	75248	
Abrams Mediation		4901 LBJ Fwy	#150		Dallas	TX	75244-6179	
Absolute Entertainment		1517 Prudential Drive			Dallas	TX	75235	
ACA Compliance Group		8403 Colesville Road	Suite 870		Silver Spring	MD	20910	
Academy Engraving Inc		271 Madison Avenue	Suite 207		New York	NY	10016	
Accessibility Today		PO Box 1757			Roanoke	TX	76262	
Accountant General	Appleby Services (Bermuda) Ltd.	PO Box HM 1179			Hamilton		HM EX	BERMUDA
Accountant General	ATTN Lorna Phillips	M Q Services Limited Victoria Place			Hamilton		HM 10	BERMUDA
ACCOUNTEMPS		PO Box 743295			Los Angeles	CA	90074-3295	
ACCOUNTEMPS		FILE 73484	PO BOX 60000		San Francisco	CA	94160-3484	
Accuity Inc. dba NRS		PO Box 7247-8077			Philadelphia	PA	19170-8077	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al		3110 Webb Ave., Suite 203			Dallas	TX	75205	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Attn Annmarie Chiarello, Rakhee V. Patel	c/o Winstead PC	500 Winstead Building	2728 N. Hanwood Street	Dallas	TX	75201	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Brian P. Shaw	Rogge Dunn Group PC	500 N. Akard St. Suite 1900		Dallas	TX	75201	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	James T. Bently	Schulte Roth & Zabel LLP	919 Third Avenue		New York	NY	10022	
Acis Capital Management L.P. and Acis Capital Management GP, LLC, et al	Joseph E. Bain	Jones Walker LLP	811 Main St. Suite 2900		Houston	TX	77002	
Ackerman McQueen Inc.		1601 Northwest Expressway	Suite 1100		Oklahoma City	OK	73118	
ACMLP Claim, LLC		4514 Cole Ave., Suite 600			Dallas	TX	75205	
Action Fire Pros		3709 S IH 35			Waxahachie	TX	75165	
Action Shred of Texas		2835 Congressman Lane			Dallas	TX	75220	
Action Shred of Texas		1420 S. Barry Ave			Dallas	TX	75223	
Act-On Software, Inc.		121 SW Morrison Street, Ste 1600			Portland	OR	97204	
Ada Hsieh		Address on File						
ADAM DYBALA		Address on File						
Adam Energy Forum		PO Box 802511			Dallas	TX	75380-2511	
ADAM FALCON		Address on File						
Adam Hanson		Address on File						
Adam Kneller		Address on File						
Adam Ostermiller		Address on File						
ADAM PETERSON		Address on File						
Adam-Permian Energy Network		1439 Wakefield Dr.			Houston	TX	77018	
ADAM-Tulsa	Attn Melissa Turgeon	3500 One Williams Center, MD 2600			Tulsa	OK	74172-0135	

004076

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Adleshaw Goddard LLP		Sovereign House, PO Box 8	Sovereign Street Leeds		West Yorkshire		LS1 1HQ	United Kingdom
Adeo Internet Marketing Inc.		2501 East Charleston Rd			Island Pond	VT	05846	
Adecco Process Service		PO BOX 12621			Albany	NY	12212	
Adeyemi Ogunkoya		Address on File						
ADISA		10401 North Meridian Street	Suite 202		Indianapolis	IN	46290	
AdMaster Compliance		1101 Arrow Point Drive	Suite 301		Cedar Park	TX	78613	
ADMIN .U.C.	State of Connecticut	Department of Labor	Employment Security Division		Hartford	CT	06104-2940	
Admiral Communications		4505 Excel Pkwy, Ste 300			Addison	TX	75001	
ADP		2735 Stemmons Fwy			Dallas	TX	75207	
ADP		PO BOX 78415			Phoenix	AZ	85062-8415	
ADP		PO Box 31001-1568			Pasadena	CA	91110-1568	
ADSUAR MUNIZ GOYCO SEDA & PEREZ-OCHOA		PO BOX 70294			San Juan	PR	00936-8294	
ADT SECURITY SERVICES, INC.	ATTN M MALDONADO	335 W 16th ST			New York	NY	10011	
ADT SECURITY SERVICES, INC.		PO BOX 371956			Pittsburgh	PA	15250-7956	
Advanced Business Group, Inc.		520 Eighth Ave, 15th Flr			New York	NY	10018	
Advanced Discovery, Inc.		13915 N Mopac Expy	Suite 400		Austin	TX	78728	
Advanced Discovery, Inc.		PO Box 102242			Atlanta	GA	30368-2242	
Advanced Discovery, Inc.		PO Box 3173			Wichita	KS	67201-3173	
Advantage Data Inc.		PO Box 961210			Boston	MA	02196-1210	
Advent Software Inc	Attn Bill Hall	600 Townsend St., Suite 4000			San Francisco	CA	94103	
Advent Software, Inc.		PO BOX 823374			Philadelphia	PA	19182-3374	
Advent Software, Inc.		Three Lincoln Centre	5430 LBJ Freeway Ste 800		Dallas	TX	75240-0000	
Advent Software, Inc.		Dept 33096 PO Box 39000			San Francisco	CA	94139-3096	
ADVENTURE PHOTO TOURS, INC.		3111 S VALLEY VIEW BLVD	X-106		Las Vegas	NV	89102	
ADVISOR CONSULTANT NETWORK INC		600 SUPERIOR AVE	SUITE 1300		Cleveland	OH	44114	
Advisor Group, Inc.		PO Box 978516			Dallas	TX	75397-8516	
Advisory Group Equity Services, Ltd.		444 Washington Street	Suite 407		Woburn	MA	01801	
Advocates Professional Services, Inc		119 North Park Ave, Suite 303			Rockville Centre	NY	11570	
AERIAL FOCUS		4885 ALPHA RD	STE 155		Dallas	TX	75244-4633	
Aerolndustry Jobs, Inc		PO Box 215			Oxford	ME	04270	
Aetna	AETNA-MIDDLETOWN	PO BOX 88863			Chicago	IL	60695-1863	
Aetna	Attn Lockbox No 804735	350 East Devon Avenue			Itasca	IL	60143	
Aetna		10275 W. Higgins Rd	Suite 500		Rosemont	IL	60018	
Aetna		PO Box 804735			Chicago	IL	60680-4108	
Aetna		PO Box 88860			Chicago	IL	60695-1860	
Aetna-COBRA		COBRA/Special Plans	PO Box 13050		Secaucus	NJ	07188-0050	
Aetna-FSA Payment Remittance		PO Box 13504			Newark	NJ	07188-0504	

004077

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Afshan Mohammed		Address on File						
Agio, LLC		201 David L Boren Blvd	Ste 250		Norman	OK	73072	
Agren Blando Court Reporting Video Inc.		216 16th Street	Suite 650		Denver	CO	80202	
Aguliar Movers, Inc.		1206 Edwards Circle			Dallas	TX	75224	
AHLUWALIA, SANJIV		Address on File						
AI Insight		P.O. Box 639250			Cincinnati	OH	45263-9250	
AICPA		PO BOX 10069			Newark	NJ	07101-3069	
AICPA		Multiple Member Payment	PO Box 2219		Jersey City	NJ	07303-2219	
AIG Advisor Group, Inc.		PO Box 978516			Dallas	TX	75397-8516	
AIMSE		12100 Sunset Hills Road	Suite 130		Reston	VA	20190	
Aimware, Inc	ATTN Joyce Welsh	16 Olde Taveme Lane			Amesbury	MA	01913	
AIQ, Inc.		270 Rutherford Blvd			Clifton	NJ	07014	
AIQ, Inc.		1500 Broadway	Suite 2900		New York	NY	10036	
Air Graffiti Dallas		4901 Harbor Ct			Flower Mound	TX	75022	
AIRBAND								
COMMUNICATIONS, INC		75 Remittance Drive	Suite 6566		Chicago	IL	60675-6566	
Aire Dynamics		2305 E BELTLINE RD	STE 190		Carrollton	TX	75006	
Aire Dynamics		305 E Beltline Rd Ste 190			Carrollton	TX	75006	
Aire Dynamics		3250 WEST STORY RD #102			Irving	TX	75038	
AirWatch, LLC		931 Monroe Drive NE	Ste 102-303		Atlanta	GA	30308	
AirWatch, LLC		PO Box 742332			Atlanta	GA	30374-2332	
Akerman Senterfitt & Edison, PA		P.O. Box 4906			Orlando	FL	32802	
AKF Reporters, Inc.		436 Blvd of the Allies			Pittsburgh	PA	15219-1314	
Akin, Gump, Strauss, Hauer & Feld LLP		1333 New Hampshire Ave, NW			Washington	DC	20036	
Akin, Gump, Strauss, Hauer & Feld LLP		DEPT. 7247-6827			Philadelphia	PA	19170-6827	
Akin, Gump, Strauss, Hauer & Feld LLP		Dept 7247-6838			Philadelphia	DE	19170-6838	
Akin, Gump, Strauss, Hauer & Feld LLP		Dept. 2909			Carol Stream	IL	60132-2909	
Akin, Gump, Strauss, Hauer & Feld LLP		2300 N Field St Ste 1800			Dallas	TX	75201-2481	
Alabama Department of Revenue	Individual and Corporate Tax Division	Corporate Income Tax Section	PO Box 327435		Montgomery	AL	36132-7435	
Alabama Power Service Organization		PO Box 1209			Eufaula	AL	36072	
Alabama Sheriffs Youth Ranches		200 Crescent Ct Ste 1900			Dallas	TX	75201	
Alan Adams		Address on File						
ALAN WELCH		Address on File						
Albion Computer Services		49 Berkely Square			London			United Kingdom
A-Legal		1201 Elm Street	Suite 2560		Dallas	TX	75270	
Alejandro Vargas		Address on File						
Alex Kanji		Address on File						
ALEX SOMERS		Address on File						

004078

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Alexanders Mobility Services		2750 Miller Park N Ste 300			Garland	TX	75042-7751	
ALEXIS ZHOU		Address on File						
ALFERMANN, NICHOLAS		Address on File						
ALICE WANG		Address on File						
All American Entertainment		5790 Fayetteville Rd.	Ste. 200		Durham	NC	27713	
All Star Group, Inc		3835 E. Thousand Oaks Blvd	Suite 282		Westlake Village	CA	91362	
ALL SYSTEMS SERVICES		7901 WHISPERING WOODS LN.			N. Richland Hills	TX	75240	
Allan Huffman		Address on File						
ALLAN PAPPWORTH		Address on File						
Allien ISD	Attn Elizabeth Weller	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Allien ISD	c/o Laurie A. Spindler, Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
ALLEN KIM		Address on File						
ALLEN, MICHAELA S.		Address on File						
ALLEN, TARA		Address on File						
Alliens Arthur Robinson		GPO Box 50			Sydney	NSW	02001	AUSTRALIA
Alliance Legal Staffing		PO Box 670534			Dallas	TX	75367	
ALLIANCE REPORTING LLC		3500 OAK LAWN AVE	SUITE 400		Dallas	TX	75219	
Allied Capital Partners		PO BOX 676649			Dallas	TX	75267-6649	
Allied Electronics Inc.	Accts Receivable Dept.	PO Box 2325			Fort Worth	TX	76113-2325	
Allison Lam	c/o Frederik Michel	Address on File						
Allison Taylor		PO Box 187			Dingmans Ferry	PA	18328	
ALPHA ELECTRICAL SERVICES INC		3727 HWY 138			Stockbridge	GA	30281	
AlphaLit		8201 Greensboro Drive	Suite 717		McLean	VA	22102	
Alphasense, Inc.		PO Box 37176			San Francisco	CA	94137-0176	
Alpine Macro		1130 Sherbrooke St West PH1			Montreal	QC	H3A2M8	Canada
Alston & Bird LLP		1201 W. Peachtree Street			Atlanta	GA	30309-3424	
Alternative Asset Investment Mgmt LLC		PO Box 5274			New York	NY	10185	
Altex Electronics, Ltd.		11342 HI 35 North			San Antonio	TX	78233	
Altus Network Solutions, Inc.		dba nFront Security	4920 Atlanta Highway, Suite 313		Alpharetta	GA	30004-2921	
Alvarez & Marsal Global Forensic and Dispute Services		555 Thirteenth Street NW, 5th Floor West			Washington	DC	20004	
Alvarez & Marsal North America, LLC		2029 Century Park East, Suite 2060			Los Angeles	CA	90067	
Alvarez and Marsal CRF Management, LLC		2029 Century Park East, Suite 2060			Los Angeles	CA	90067	
ALVAREZ, ADRIANA		Address on File						
Alvaro Idoate Photographer		18 Tapia Street			San Juan	PR	00911	
Alvaro Magalhaes		Address on File						
AM Linen Rental		1611B Tantor Rd			Dallas	TX	75229	
Amanda Coussens		Address on File						
AMANDA RUDOLPH		Address on File						
Amazon Web Services, Inc.	Attn AWS Legal	410 Terry Avenue North			Seattle	WA	98109-5210	

004079

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
AMB Janitorial Services	American Building Maintenance	PO Box 97292			Dallas	TX	75397	
Ambassador Funds		Level 8, 3 Spring St			Sydney	N8W	02000	AUSTRALIA
Ambassador Funds		STE 1202, LEVEL 12	3 SPRING ST		SYDNEY	NSW	02000	AUSTRALIA
Amber Electrical Contractors		2251 Century Center Blvd	520 Eighth Ave, 25th Floor		Irving	TX	75062	
Ambridge Partners LLC		Due Diligence Services			New York	NY	10018	
AMC Theaters		13731 Collections Center Drive			Chicago	IL	60693	
American Airlines		4255 Amon Carter Blvd	MD 4106		Fort Worth	TX	76155	
American Airlines, Inc.		PO Box 619616 MD4106			Ft Worth	TX	76155-0000	
AMERICAN APPRAISAL CANADA, INC		310 FRONT ST WEST Suite 710			TORONTO	ON	M5V 3B5	CANADA
American Arbitration Association	ATTN Kathleen Cantrell	1750 Two Galleria Tower	13455 Noel Road		Dallas	TX	75240	
American Arbitration Association		120 Broadway, 21st Floor			New York	NY	10271	
American Arbitration Association		Lackey Hershman, LLP	3102 Oak Lawn Avenue, Suite 777		Dallas	TX	75219	
American Arbitration Association		13455 Noel Road, Suite 1750			Dallas	TX	75240	
AMERICAN BANK NOTE COMPANY		PO BOX 1931			Columbia	TN	38402	
American Banknote Corporation	Attention Patrick J. Gentile	560 Sylvan Avenue			Englewood Cliffs	NJ	07632	
American Bar Association		PO Box 4745			Carol Stream	IL	60197-4745	
American Bldg. Maintenance Co.		PO Box 951864			Dallas	TX	75395-1864	
American Cancer Society	ATTN JAMIE SLOAN	1199 S Belt Line Rd Ste 160			Coppell	TX	75019-4656	
American Cancer Society	Attn Sharyn Klumb	1199 S Belt Line Rd Ste 160			Coppell	TX	75019-4656	
American Chamber of Commerce Resources		65 East Wacker Place	Suite 1804		Chicago	IL	60601	
American Express National Bank		PO Box 3001			Malvern,	PA	19355-0701	
American Federation of the Arts	c/o Becket & Lee LLP	305 East 47 St.	10 th Floor		New York	NY	10017	
American Furniture Rental		3201 E. Arkansas Lane	Suite 101		Arlington	TX	76010	
American Global Wealth Management		1600 Pennsylvania Avenue			McDonough	GA	30253	
American Heart Assoc. National Center	Attn SouthWest Affiliate-AR	PO Box 4002903			Des Moines	IA	50340-2903	
American Heart Association	c/o Cotes du Coeur	Attn Gabbi Sikes	105 Decker Ct, Ste 200		Irving	TX	75062	
American Heart Association		2550 US Highway 1			North Brunswick	NJ	08902	
American Heart Association		Greater Kansas City Community Found	1055 Broadway Blvd., Suite 130		Kansas City	MO	64105	
American Heart Association		Southwest Affiliate	105 Decker Court, Suite 200		Irving	TX	75062	
American Heart Association		7272 Greenville Avenue			Dallas	TX	75231	

004080



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
American Heart Association		8200 Brookriver Dr	Suite N-100		Dallas	TX	75247	
American Heart Association		SouthWest Affiliate - Acct Rec. PO BOX 219189	PO Box 4002031		Des Moines	IA	50340-2031	
American Language Technologies		3941 Legacy Drive, #204 830 THIRD AVE	PMB 199A		Plano	TX	75023	
AMERICAN LOCKSMITHS		Subscription Department	PO Box 15127		New York	NY	10022	
American National Bank & Trust		Attention Commercial Lending			North Hollywood	CA	91615-5127	
American National Bank & Trust		2732 Midwestern Parkway			Wichita Falls	TX	76308	
American Portfolios - Kolinsky With Mgt		2732 Midwestern Parkway			Wichita Falls	TX	76308	
American Portfolios Financial Svcs Inc.	Attn Ann Antunovich	4250 Veterans Memorial Hwy	Ste 420 E		Holbrook	NY	11741	
American Program Bureau, Inc.		4250 Veterans Memorial Hwy			Holbrook	NY	11741	
American Red Cross		One Gateway Center PO Box 4002018	Suite 751		Newton	MA	02458	
AMERICAN RESEARCH BUREAU		2386 HERITAGE WAY			Des Moines	IA	50340-2018	
American Restaurant Association		2907 126th Ter E			Salt Lake City	UT	84109-1808	
American Solutions for Business		NW#7794	PO Box 1450		Parrish	FL	34219-1629	
American Solutions for Business		PO Box 218			Minneapolis	MN	55485-7794	
American Solutions for Business		8479 Solution Center PO Box 11181A			Glenwood	MN	56334-0218	
American Stock Exchange		BOX 757510			Chicago	IL	60677-8004	
Ameriprise Financial Services, Inc.		50798 Ameriprise Financial Center			New York	NY	10286-1181	
Amicus Search Group		700 N. Pearl St	Suite # 1640		Philadelphia	PA	19175-7510	
AMIR RAO		1020 MEDFORD RD 2351 W Northwest HWY-STE 2118			Minneapolis	MN	55474	
AMX Environmental Ltd		Address on File			Dallas	TX	75201	
Amy Nguyen		111 Huntington Ave, 14th Floor			Pasadena	CA	91107	
Analysis Group		Address on File			Dallas	TX	75220-8406	
ANAND DESAI		Address on File			Boston	MA	02199	
Anchor Advisory Services Corporation		4 Court St.	Ste 207		Plymouth	MA	02360	
ANDERSON, DEREK C.		Address on File						
ANDERSON, KIRK		Address on File						
ANDREI DORENBAUM		Address on File						
ANDREI DORENBAUM		Address on File						
Andrew Hayton		Address on File						
Andrew Hilgenbrink		Address on File						
Andrew Lieberman		Address on File						

004081

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Andrew Mangin		Address on File						
Andrew Merrick Homes LLC		13455 NOEL RD	STE 1330		Dallas	TX	75240	
Andrew Parmentier		Address on File						
Andrew Rosemore		Address on File						
ANDREW STONE		Address on File						
ANDREW YACENDA		Address on File						
Andrews Kurth	Scott A. Brister, Esq.	Address on File						
Andrews Kurth		Address on File						
Andrews Kurth LLP		600 Travis St., Suite 4200			Houston	TX	77002	
Andrews Kurth LLP		PO Box 301276			Dallas	TX	75303-1276	
Andrius Balta		Address on File						
Animal Defense League		11300 Nacogdoches Rd			San Antonio	TX	78217-2318	
Anish Tailor		Address on File						
Anna Englert		Address on File						
Ansarada Pty Limited		30 South Wacker Dr	22 Floor		Chicago	IL	60606	
ANTONOVICH, THOMAS G.		Address on File						
Aon Consulting, Inc.		445 Hutchinson Ave	Ste 900		Columbus	OH	43235-0000	
Aon Consulting, Inc.		29695 Network Place			Chicago	IL	60673-1296	
APIR Systems Ltd.		PO Box 5446			Kingston	ACT	02604	AUSTRALIA
APKE & KIMBRELL, LLP		1650 HIGHWAY 6	STE 100		Sugar Land	TX	77478	
Appleby Corporate Services (Bermuda) Ltd.		PO Box HM 1179			Hamilton	HM EX	HM EX	BERMUDA
Appliance Fixx Air & Heat		PO Box 271258			Flower Mound	TX	75027-1258	
Aptiviti, Inc.		145 W 28th St Fl 9			New York	NY	10001-6114	
Aramark		2120 Hutton Dr	Suite 100		Carrollton	TX	75006	
ARCHON SOLICITORS		MARTIN HOUSE			London			United Kingdom
ARCpoint Labs of Irving		8925 Sterling Street	Suite 255		Irving	TX	75063	
ARGENTIC REAL ESTATE FINANCE LLC		40 WEST 57TH STREET	29TH FLOOR		New York	NY	10019	
Argo Partners		12 West 37th Street, 9th Floor			New York	NY	10018	
Argonaut Insurance Company		225 W Washington Street	24th floor		Chicago	IL	60606-0000	
Argosy Group		PO Box 5094			Brentwood	TN	37024	
Argosy Group		Two Washingtonian Center Blvd., Ste. 200	9737 Washingtonian Blvd., Ste. 200		Gaithersburg	MD	20878-7364	
Argosy Group LLC		9737 Washingtonian Blvd.	Ste. 100		Gaithersburg	MD	20878	
Argus Software		PO BOX 671591			Dallas	TX	75267	
Argus Software		3050 Post Oak Blvd	Suite 900		Houston	TX	77056	
Ari L. Faneuil		Address on File						
Arizona Biltmore Resort & Hotel		PO Box 740949			Los Angeles	CA	90074-0949	
Arizona Corporation Commission		Z Corp Commission - Securities DIV	1300 West Washington Street, 3rd Floor		Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		ATTN Collections Division			Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		1600 West Monroe St			Phoenix	AZ	85007	
ARIZONA DEPARTMENT OF REVENUE		PO BOX 29079			Phoenix	AZ	85038	

004082

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ARIZONA DEPARTMENT OF REVENUE		PO Box 29085			Phoenix	AZ	85038-9085	
Arizona Land Management Services, LLC		4900 North Scottsdale Rd	Suite 3000		Scottsdale	AZ	85251	
Arizona Land Management Services, LLC		PO Box 13303			Scottsdale	AZ	85267-3303	
Arizona Outback Adventures		17465 N 93rd St			Scottsdale	AZ	85255-6324	
Arizona PSPRS Trust		E Camelback Road	Suite 200		Phoenix	AZ	85016	
Arkadin, Inc.		Lockbox #32726	Collection Center Dr		Chicago	IL	60693-0726	
Arkansas Secretary of State	Business & Commercial Services Division	PO Box 8014			Little Rock	AR	72203	
Arkansas Securities Department		201 E. Markham, Rm 300	Heritage West Bldg		Little Rock	AR	72201	
Arnold, Connor		Address on File						
Arnold, Jeffrey		Address on File						
Arnstein & Lehr LLP		120 South Riverside Plaza	Ste 1200		Chicago	IL	60606-3910	
Arntzen de Besche		Address on File						
ARORA, SANDEEP		Address on File						
Arredondo, Alba M.		Address on File						
Arris Western Corp.		718 N Buckner #316			Dallas	TX	75218	
Arthouse Design		2373 Central Park Blvd	Suite 204		Denver	CO	80238	
Arthur Klausner		Address on File						
Article 1		Rua Eugen Germer, 86	Blumenau		Santa Catarina	TX	89015--140	BRAZIL
Artografx, Inc.		2611 Ancljon			Dallas	TX	75220	
ASAK Services Limited		PO Box HM 1179			Hamilton		HM EX	BERMUDA
Asante Phase I Community Association		1600 W Broadway	Suite 200		Tempe	AZ	85282	
Ashby & Geddes		PO Box 1150			Wilmington	DE	19899	
Ashley Van Hoef		Address on File						
Ashton Consulting Limited		9F, Atago East Building	3-16-11 Nishishinbashi		Minato-ku	Tokyo	105-0003	JAPAN
Ashurst LLP		Time Square Tower	7 Time Square		New York	NY	10036	
ASI Business Solutions		820 W Sandy Lake Rd Ste 100			Coppell	TX	75019-4108	
ASI Business Solutions		12801 N Stemmons Frwy Ste 710			Dallas	TX	75234-5881	
ASI, Corporate		8181 Jetstar Drive	Suite 100		Irving	TX	75063	
ASI, Corporate		3860 W. Northwest Hwy	Suite 350		Dallas	TX	75220	
Asociacion Suzuki de Violin de PR		Villa Nevarez	1026 calle 18		San Juan	PR	00927	
Aspen Publishers Inc.		7201 McKinney Circle			Frederick	MD	21704	
Aspen Publishers Inc.		PO Box 64054			Baltimore	MD	21264-4054	
Aspen Publishers Inc.		4829 INNOVATION WAY			Chicago	IL	60682-0048	
ASSAR, VATSAL		Address on File						
Asset Communications, Inc.		1764 Prospector Ave	Suite 1		Park City	UT	84060	
Asset-Backed Alert		5 Marine View Plaza # 400			Hoboken	NJ	07030-5795	
ASSIST THE OFFICER FOUNDATION		1412 GRIFFIN ST E			Dallas	TX	75215	
Assn of Asian American Invest Managers	Attn Amy Gee	50 California Street	Suite 2320		San Francisco	CA	94111	

004083

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Assoc. Asian American Investment Mgrs	c/o V. Lau, Leading Edge Invest Advisors	50 california Street, Suite 2320			San Francisco	CA	94111	
Assoc. for American Innovation, Inc.		2200 Wilson Blvd	Suite 102-533		Arlington	VA	22201	
Assoc. of Asian America Investment Mgrs		1045 N. Utah St., Suite 512			Arlington	VA	22201	
Assured Environments		45 Broadway	10th Floor		New York	NY	10019	
AST Equity Plan Solutions		123 S. Broad Street	Suite 1160		Philadelphia	PA	19109	
AST Equity Plan Solutions		PO Box 12893			Philadelphia	PA	19176-0893	
ASTRON SOLUTIONS		535 W 34TH ST	STE 407		New York	NY	10001	
ASW Law Limited		Crawford House	50 Cedar Avenue		Hamilton		0HM11	Bermuda
ASW Law Limited		Crawford House	PO Box HM2879		Hamilton		0HMLX	Bermuda
AT&T	c/o Bankruptcy	4331 Communications Dr	Fir 4W		Dallas	TX	75211	
AT&T		PO BOX 5012			Carol Stream	IL	60197	
AT&T		PO BOX 5019			Carol Stream	IL	60197	
AT&T		PO BOX 78045			Phoenix	AZ	85062	
AT&T		PO BOX 13128			Newark	NJ	07101-5628	
AT&T		PO BOX 13146			Newark	NJ	07101-5648	
AT&T		PO BOX 105068			Atlanta	GA	30348-5068	
AT&T		PO Box 105414			Atlanta	GA	30348-5414	
AT&T		PO BOX 5001			Carol Stream	IL	60197-5001	
AT&T		PO BOX 5020			Carol Stream	IL	60197-5020	
AT&T		PO Box 9005			Carol Stream	IL	60197-9005	
AT&T		PO BOX 630047			Dallas	TX	75263-0047	
AT&T		PO BOX 650661			Dallas	TX	75265-0661	
AT&T		PO BOX 660324			Dallas	TX	75266-0324	
AT&T		PO Box 660921			Dallas	TX	75266-0921	
AT&T		PO BOX 930170			Dallas	TX	75393-0170	
AT&T		PO BOX 940012			Dallas	TX	75394-0012	
AT&T		PO BOX 78225			Phoenix	AZ	85062-8225	
AT&T Internet Services	ATTN HIPOS	PO BOX 650040			Dallas	TX	75265-0040	
AT&T Internet Services		PO BOX 5016			Carol Stream	IL	60197-5016	
AT&T Internet Services		PO Box 650396			Dallas	TX	75265-0396	
AT&T Long Distance		PO Box 5017			Carol Stream	IL	60197-5017	
AT&T MOBILITY		PO Box 105773			Atlanta	GA	30348-5773	
AT&T MOBILITY		PO BOX 538695			Atlanta	GA	30353-8695	
AT&T MOBILITY		PO BOX 31287			Tampa	FL	33631-3287	
AT&T MOBILITY		PO BOX 31488			Tampa	FL	33631-3488	
AT&T MOBILITY		PO BOX 6428			Carol Stream	IL	60197-6428	
AT&T MOBILITY		PO Box 6444			Carol Stream	IL	60197-6444	
AT&T MOBILITY		PO BOX 6463			Carol Stream	IL	60197-6463	
AT&T MOBILITY		PO Box 8229			Aurora	IL	60572-8229	
AT&T Mobility		208 South Akard Street			Dallas	TX	75202-0000	
AT&T MOBILITY		PO Box 650553			Dallas	TX	75265-0553	
AT&T MOBILITY		PO BOX 650574			Dallas	TX	75265-0574	
AT&T Performing Arts Center	Attn Development	700 N. Pearl Street, Suite N1800			Dallas	TX	75201	
Atlas IDF, LP	c/o Atlas IDF GP, LLC	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Atlia Medical, PC		5820 Oberlin Dr. Suite 205			San Diego	CA	92121	

004084

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Attorney General of South Carolina	Securities Division	1000 Assembly St Address on File	Rembert C. Dennis Office Bldg		Columbia	SC	29201	
Atul Kavthekar								
Audio Visual Innovations, Inc.		P.O. Box 62251			Baltimore	MD	21264-2251	
AURORA BOREALIS	ATTN GEORGE WHITE	101 BARCLAY ST 13W Address on File			New York	NY	10286	
AUSHRIF JAVEED								
Austin Brown		Address on File						
AUSTIN TRANTHAM		Address on File						
AUSTIN, TIMOTHY		Address on File						
Automotive News		DRAWER #7718 Subscriber Services Department 77940	PO BOX 79001		Detroit	MI	48279	
Automotive News					Detroit	MI	48277-0940	
Avalon Synergy		One Galleria Tower	13355 Noel Rd, Suite 1100		Dallas	TX	75240	
AvePoint, Inc		3 Second Street Suite 803			Jersey City	NJ	07311	
Avi Levine		Address on File						
AVIATION SERVICES ELITE		4502 CLAIRE CHENNAULT			Addison	TX	75001	
Aviation Services Group		14001 Dallas Pkwy			Dallas	TX	75240	
Aviation Week		PO Box 505			Hightstown	NJ	08520-9897	
AVIDITY PARTNERS		180 N STETSON	STE 1310		Chicago	IL	60601	
AVI-SPL		13859 Diplomat Drive	Suite 180		Dallas	TX	75234	
AVI-SPL		PO Box 844612			Boston	MA	02284-4612	
AVI-SPL		PO BOX 62251			Baltimore	MD	21264-2251	
Avitar Technologies, Inc.		65 Dan Rd			Canton	MA	02021	
Avtech	ATTN Accounts Receivable	PO Box 394			Newport	RI	02840-0004	
AWAIS SHAIKH		Address on File						
AWARE		2828 Hood Street	Residence 1705		Dallas	TX	75219	
Axicon Partners, LLC	ATTN Robert T. Scott	1325 Avenue of the Americas	27th floor		New York	NY	10019	
Axios Institute		PO Box 457			Edinburg	VA	22824	
Axis Global Systems		PO Box 831			North Bergen	NJ	07047	
A-Z Cleaning Services		1729 Crosby Rd.			Carrollton	TX	75006	
B&H Photo - Video, Inc.		420 Ninth Avenue			New York	NY	10001	
B3 Entertainment Productions, Inc.		1509 Schooner Bay Dr.			Wylie	TX	75098	
Badge of Honor Memorial Fund		Executive Office						
Bailey Kennedy, LLP		8984 Spanish Ridge Ave	3131 Maple Ave 7E		Dallas	TX	75201	
Bailey, Connor		Address on File			Las Vegas	NV	89148	
Baker & Daniels		111 E Wayne Ste 800			Fort Wayne	IN	46802	
Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Avenue			New York	NY	10018	
Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500		Dallas	TX	75201	
Baker Botts LLP		901 Louisiana Street			Houston	TX	77002	
Baker Botts LLP		PO BOX 201626			Houston	TX	77216	
Baker Botts LLP		PO Box 301251			Dallas	TX	75303-1251	
Baker McKenzie LLP		100 New Bridge Street			London			United Kingdom
Baker McKenzie LLP		2300 Trammell Crow Center	2001 Ross Ave		Dallas	TX	75201	
Baker McKenzie LLP		815 Connecticut Ave, NW			Washington	DC	20006-4078	

004085

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Baker Tilly Virchow Krause, LLP		1050 Crown Pointe Parkway, Ste 1650			Atlanta	GA	30338	
Baker Tilly Virchow Krause, LLP		205 N Michigan Ave Address on File			Chicago	IL	60601-5927	
Baker, Lauren		Address on File						
BAKER, SCOTT		Address on File						
Baker, Stephen		Address on File						
Balch & Bingham LLP		P.O. Box 306			Birmingham	AL	35201	
BALFOUR ASSOCIATES, INC	ATTN DAVID VANVALKENBURG	5350 PRESERVE DR 1735 Market Street	51st Floor		Greenwood Village Philadelphia	CO PA	80121 19103	United Kingdom
BALLS BROTHERS Bancroft Associates PLLC		313 CAMBRIDGE HEATH RD 500 New Jersey Avenue	BETHNAL GREEN Seventh Floor		London Washington		E2 9LQ 20001	
Bank Director		201 Summit Drive	Suite 250		Brentwood	TN	37027	
Bank Director		5110 Maryland Way Ste 250			Brentwood	TN	37027-9501	
BANK OF AMERICA		335 MADISON AVE			New York	NY	10017	
Bannon, Lucy		Address on File						
Baradach, Artsiom		Address on File						
BARANSI, SAMER		Address on File						
Barbera, Angela		Address on File						
Bamdollar Investment Advisory Services		2719 Letap Ct	Ste 101		Land O Lakes	FL	34638	
BARNES & ROBERTS, LLC		2701 Canton St.			Dallas	TX	75226	
BARNES & ROBERTS, LLC		2816 COMMERCE ST			Dallas	TX	75226	
Barnes and Noble College		2943 SMU Blvd			Dallas	TX	75205	
BARNES&THORNBURG LLP		11 South Meridian Street			Indianapolis	IN	46204	
Barri Pearson		Address on File						
Barrier Advisors		13455 Noel Rd, Ste 2200			Dallas	TX	75240	
Barrington Financial Group, LLC		77 Franklin Street	Suite 802		Boston	MA	02110	
Barrister Books, Com		615 Florida St.			Lawrence	KS	66044	
Barristers & Attorneys		PO Box HM 26			Hamilton		HM LX	BERMUDA
Barrons		200 Burnett Rd	PO Box 7031		Chicopee	MA	01021-7031	
BARTH GROSS ELECTRIC CO, INC		110 W 26th ST			New York	NY	10001	
BARTLIT BECK HERMAN PALENCHAR SCOTT		COURTHOUSE PLACE	Suite 300		Chicago	IL	60610	
Bass, Berry & Sims PLC		150 Third Ave South, Ste 2800			Nashville	TN	37201	
BATCHWORK MANAGEMENT LTD		HOME PARK ESTATE	STATION RD		KINGS LANGLEY		WD4 8DH	United Kingdom
BATEMAN, JACK		Address on File						
Bates Group, LLC		5005 S.W. Meadows Rd, Ste 300			Lake Oswego	OR	97035	
Bates White, LLC		Bates White, LLC	2001 K Street NW, North Bldg Suite 500		Washington	DC	20006	
Bates White, LLC		2001 K Street, NW	North Building, Suite 500		Washington	DC	20006	

004086

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BAUER, WILLIAM		Address on File						
Bayard, P.A.		222 Delaware Avenue, 9th Floor			Wilmington	DE	19801	
Baynard, Cameron		Address on File						
Bazooka Search Ltd		115 Coventry Rd			London		E2 6GG	United Kingdom
BB&T Securities, LLC		2619 N Oak Street, 3rd Floor			Myrtle Beach	SC	29577	
BBD, LLP		1835 Market Street	3rd Floor		Philadelphia	PA	19103	
BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206	
BCA Publications Ltd.		1002 Sherbooke St West Ste 1600			Montreal	QC	H3A 3L6	CANADA
BCA Research Inc		1002 Sherbrooke St. W	Suite 1600		Montreal	QC	H3A 3L6	CANADA
BDC Review, LLC		407 East Maple Street	Ste 305		Cumming	GA	30040	
BDO USA, LLP		700 North Pearl	Suite 2000		Dallas	TX	75201	
BDO USA, LLP		P.O. Box 31001-0860			Pasadena	CA	91110-0860	
BEALL-SARRIS, ASHLEY E.		Address on File						
BEARD, MATTHEW		Address on File						
Beauchamp, Thomas		Address on File						
Becky Bowler		Address on File						
Bedell Cristin		Address on File						
BEEF SLABS OF TEXAS LLC		2000 N HWY 157	STE 112		Mansfield	TX	76063	
Behind the Numbers LLC		8140 Walnut Hill Ln #300			Dallas	TX	75231	
BELINGER & DEWOLF, LLP		10000 N CENTRAL EXPWY	STE 900		Dallas	TX	75231	
Bell Nunnally and Martin, LP	Russell W. Mills	2323 Ross Avenue Suite 1900			Dallas	TX	75201	
Bell, Boyd & Lloyd		70 West Madison S, Ste 3300			Chicago	IL	60602	
Bella Flora of Dallas		Three First National Plaza			Dallas	TX	75207	
BEN ASARE		118 Oak Lawn Ave.						
Ben E. Keith		Address on File						
Ben Greenfield, Human		Address on File						
Wellness Sol. LLC		8515 N Argonne Rd			Spokane	WA	99217	
BEN VONDERHAAR		Address on File						
Benefit Data		2220 San Jacinto Blvd, Ste 345			Denton	TX	76205	
Benesch	LouAnne Molinaro	222 Delaware Avenue, Suite 801			Wilmington	DE	19801-1611	
BENJAMIN FINGER		Address on File						
Benjamin Sarly		Address on File						
Benson Hlavaty Architects		3141 Hood St Ste 420			Dallas	TX	75219	
Bent Tree Country Club, Inc.		5201 Westgrove Drive			Dallas	TX	75248	
Bent Tree Country Club, Inc.		PO Box 204795			Dallas	TX	75320-4795	
BERIHUN, ELIZABETH		Address on File						
Berkeley Research Group, LLC	Emily Kirksey	1800 M Street NW	Second Floor		Washington	DC	20036	
Berkeley Research Group, LLC	Valerie Riva	2200 Powell Street Suite 1200			Emeryville	CA	94608	

004087



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Berkeley Research Group, LLC	Valerie Riva	2200 Powell Street Suite 1200			Emeryville	CA	94608	
Berkeley Research Group, LLC		2200 Powell Street 701 N Green Valley Pkwy Ste 200	Suite 1200		Emeryville	CA	94608	
Berkeley Square Advisors LLC					Henderson	NV	89074	
Berkshire Capital Securities, LLC		535 Madison Avenue			New York	NY	10022	
Bernard DeMeo		Address on File						
Bernard Peperstraete		Address on File						
Berry Appleman & Leiden LLP		3355 W. Alabama Street	Suite 1050		Houston	TX	77098	
Berry Appleman & Leiden LLP		353 Sacramento Street	Suite 1300		San Francisco	CA	94111	
Berthel Fisher & Company	Attn Connie Allard	701 Tama Street	8090 N 85th Way, Ste 101		Marion	IA	52302	
Berthel Fisher & Company	Attn Dan Barnard	Berthel Fisher & Company 16100 Chesterfield Parkway West	Suite 150		Scottsdale	AZ	85258	
Berthel Fisher & Company		1500 Paxton Street			Chesterfield	MO	63017	
Best Companies Group		8700 Ambassador Row			Harrisburg	PA	17104	
Beyond		2544 West Commerce Street			Dallas	TX	75247	
Beyond the Box		Address on File			Dallas	TX	75212	
Bhavani Jaroff		Address on File						
BHIL Distributors, Inc.		325 John H. McConnell Blvd 1717 Main St	Suite 200		Columbus	OH	43215	
Bickel & Brewer		Address on File			Dallas	TX	75201	
Bifferato Gentilotti LLC		100 Biddle Avenue 450 E. John Carpenter Fwy, Ste 300	Springside Plaza Suite 100		Newark	DE	19702	
Big Brother Big Sister		Address on File			Irving	TX	75062	
Big Brothers Big Sisters of Mass Bay	Attn Erin DeMarco	75 Federal Street, 8th Floor 1424 Lincoln Blvd			Boston	MA	02110	
Big Honkin Ideas		2501 Oak Lawn	Ste 550, LB-42		Santa Monica	CA	90401	
Big Thought		Address on File			Dallas	TX	75219	
BILL CRISPIN		210 MacCorkle Ave SE			Chalston	WV	25314	
Bill J Crouch & Associates		Address on File						
BILL MITENBERGER		Address on File						
BILL WALLISCH		Address on File						
Bill Wilton		Address on File						
BILLINGHURST, MINDY		Address on File						
BIMAL KALVANI		Address on File						
Bingham McCutchen LLP		P.O. Box 3486			Boston	MA	02241-3486	
BioCentury Publications		PO Box 1246			San Carlos	CA	94070	
Bison Coolers, LLC		5113 Commercial Drive			North Richland Hills	TX	76180	
BISYS		PO Box 19468A			Newark	NJ	07195-0468	
BKM Total Office of Texas		9755 Clifford Drive #100			Dallas	TX	75220	
Black Box Network Services		PO Box 890699			Dallas	TX	75389-0699	
Black Mountain Systems, LLC		12520 High Bluff Dr	Ste 340		San Diego	CA	92130	
BLACK, WINSTON		Address on File						
Blackberry Wireless		12432 Collections Center Dr			Chicago	IL	60693	

004088



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BLACKBURN, MICHAEL		Address on File						
BLACKWELL SANDERS PEPER MARTIN LLP		PO BOX 795135			Saint Louis	MO	63179	
Blair Roeber		Address on File						
BLAKE DEXTER		Address on File						
Blake Morrell		Address on File						
Blank Rome LLP		Lockbox #8586	PO Box 8500		Philadelphia	PA	19178-8500	
Blast Creative		2703 Poly Drive			Billings	MT	59102	
Blast Creative		3036 Hunters Ridge Loop			Billings	MT	59102	
Block Garden & McNeill, LLP		Sterling Plaza	5949 Sherry Lane, Suite 900		Dallas	TX	75225	
BLOMBERG FINANCE L.P.		731 LEXINGTON AVE			New York	NY	10022	
Bloom Strategic Consulting, Inc.	Atn Accounts Receivable	431 Fayette Avenue			Mamaroneck	NY	10543	
Bloomberg		4514 Cole Ave.	Suite 600		Dallas	TX	75205	
Bloomberg Businessweek		PO Box 30244			Hartford	CT	06150-2044	
Bloomberg Finance LP		PO Box 37531			Boone	IA	50037-0531	
Bloomberg Finance LP		PO BOX 30244			Hartford	CT	06150	
Bloomberg Finance LP		731 Lexington Ave.			New York	NY	10022	
Bloomberg Finance LP		PO Box 416604			Boston	MA	02241-6604	
Blue Cross Blue Shield of Texas		1001 East Lookout Drive			Richardson	TX	75082	
Blue Cross Blue Shield of Texas		PO Box 731428			Dallas	TX	75373-1428	
Blue Ribbon Advantage		7020 Portwest Drive, Suite 150			Houston	TX	77024	
Blue Ribbon Advantage		P.O. Box 79487			Houston	TX	77279-9487	
Blue Ribbon Industries		408 Singleton Blvd			Dallas	TX	75212	
Blue Vault Partners, LLC		407 E Maple St	Suite 305		Cumming	GA	30040	
Blueprint for Prosperity	Atn Finance	500 North Akard St, Suite 2600			Dallas	TX	75201	
Blumberg/Excelsior		62 White St			New York	NY	10013	
BLUMER, JENNIFER		Address on File						
BMC Software, Inc.		2101 Citywest Blvd			Houston	TX	77042	
BMC Software, Inc.		PO Box 301165			Dallas	TX	75303-1165	
BMZ Discovery Services LLC		1400 Biscaya Drive			Miami Beach	FL	33154	
BNA		PO BOX 17009			Baltimore	MD	21297-1009	
BNY Mellon		525 Penn Place			Pittsburgh	PA	15219-0000	
Bob Grier		Address on File						
Bob Marx		Address on File						
Bochetto & Lentz, P.C.		1524 Locust Street			Philadelphia	PA	19102	
BOCK, MARIA		Address on File						
BODRON, MICHAEL		Address on File						
Boies, Schiller & Flexner LLP	Scott E. Gant, Esq.	Boies, Schiller & Flexner LLP	5301 Wisconsin Ave. NW		Washington	DC	20015	
Boies, Schiller & Flexner LLP		5301 Wisconsin Ave NW			Washington	DC	20015-2015	
BOK Financial Asset Management		The Lyric Centre	440 Louisiana, Suite 2500		Houston	TX	77002	

004089

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BOK Financial Asset Management		PO Box 1270			Tulsa	OK	74101-1270	
BOK Financial Securities, Inc.	Attn Leslie Swafford	1 Williams Center, 16th Fir			Tulsa	OK	74172	
Bonahoom & Associates		10850 Switzer Ave #101			Dallas	TX	75238	
Bonnie Murray		Address on File			New York	NY	10007	
Boom Global Media Inc		295 Greenwhich St. # 296			Tulsa	OK	74172	
BOSC, Inc.	Attn Chelle Davidson	One Williams Center, 9 NE						
BOSE, ROHAN		Address on File						
Boston Financial Data Services		PO Box 74008640	Lockbox 008640		Chicago	IL	60674-8640	
Boston Financial Data Services		330 W. 9th Street			Kansas City	MO	64105-1514	
Boston Properties, L.P.		800 Boylston Street	Suite 1900		Boston	MA	02199	
Boston Properties, L.P.		599 Lexington Ave			New York	NY	10022-6004	
Boundless Network		200 E. 6th Street	Suite 300		Austin	TX	78701	
Bow Line Media		1809 Thale Drive			Dallas	TX	75228	
Bowman Dahl, LLC		120 West 28th Street	#3C		New York	NY	10001	
Bowne		PO BOX 6081			Church Street			
Bowne		PO Box 951060			Station	NY	10277-2706	
BOX.com		900 Jefferson Ave			Dallas	TX	75247-1060	
BOYCE, PATRICK		Address on File			Redwood City	CA	94063-0000	
Boyce-Field, Mollie		Address on File						
Boys & Girls Clubs of Greater Fort Worth		Address on File						
	Attn Christi Langas	3218 East Belknap			Fort Worth	TX	76111	
BRACEWELL & GIULIANI LLP		PO BOX 848566			Dallas	TX	75284-8566	
Bracewell & Patterson		PO Box 848566			Dallas	TX	75284-8566	
Brad Beman		Address on File						
Brad Borud	Daniel P Winikka	Loewinson Flegle Deary	12377 Merit Drive, Suite 900		Dallas	TX	75251	
BRAD BORUD		Simon LLP						
BRAD BORUD		Address on File						
BRAD DAVEY		Address on File						
BRAD GUY		Address on File						
Brad Mendenhall		Address on File						
BRAD VOSS		Address on File						
Braden Bair		Address on File						
Bradfield Elementary	Attn Jackie Tilden, VP of Development	4300 Southern Avenue			Dallas	TX	75205	
Bradford K Borud		Address on File						
BRADLEY MACK		Address on File						
BRADY, CHARLA		Address on File						
Bragalone Conroy PC		Chase Tower	2200 Ross Avenue	Suite 4500W	Dallas	TX	75201-7924	
Branda Fanning		Address on File						
Brandywine Process Servers, Ltd.		PO Box 1360			Wilmington	DE	19899	
BRANER, PHILIP		Address on File						

004090

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BREITZ TX PROPERTIES LP		PO Box 842530			Dallas	TX	75284-2530	
Breault, Evan		Address on File						
Breault, Evan		Address on File						
Breazeale, Sachse & Wilson LLP		One American Place	Suite 2300		Baton Rouge	LA	70821-3197	
Breezy Higa		Address on File						
Brenda Samples, Tax Assessor		Kaufman County Tax Office	PO Box 339		Kaufman	TX	75142	
Brennan, Kieran		Address on File						
Brennan, Michael		Address on File						
Brent Gregoire		Address on File						
Brentwood CLO Ltd., et al.	Joseph E. Bain	Jones Walker LLP	811 Main St. Suite 2900		Houston	TX	77002	
Brentwood CLO Ltd., et al.	Schulte Roth & Zabel LLP	James T. Bentley	919 Third Avenue		New York	NY	10022	
Brentwood CLO, Ltd.	MaplesFS	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman		KY1-1104	Cayman Islands
Brentwood CLO, Ltd.		Maples Finance Limited, PO Box 1093GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Brentwood CLO, Ltd. Investors Bank & Trust Company	Brentwood CLO, Ltd. c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Brentwood CLO, Ltd. Investors Bank & Trust Company	Investors Bank & Trust Company	200 Clarendon Street	CDO Services - Brentwood CLO, Ltd		Boston	MA	02116	
Bressler, Amery & Ross, P.C.		325 Columbia Turnpike			Florham Park	NJ	07932	
Brett Benjamin		Address on File						
Brett H. McCloskey		Address on File						
Brett Hoge		Address on File						
Brett Pope		Address on File						
Bretton Advisors, Inc.		Address on File						
Brian Andrusin		Address on File						
Brian Broadbent		Address on File						
Brian Collins	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
BRIAN COX		Address on File			New York	NY	10004	
Brian D. Glueckstein	Sullivan Cromwell LLP	125 Broad Street						
Brian Fitzsimmons		Address on File						
Brian G Albert Esq.		Address on File						
Brian Goehl		Address on File						
Brian Hochhauser		Address on File						
Brian Home		Address on File						
BRIAN JONES		Address on File						
Brian Jones.		Address on File						
Brian Josephson		Address on File						
Brian Lauten, PC		Address on File						
Brian Li		Address on File						
BRIAN LOHRDING		Address on File						
Brian Malizia		Address on File						

004091

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Brian P. Shaw		Address on File						
BRIAN PRICE		Address on File						
BRIAN TILTON		Address on File						
Bridge Title Company, LLC		8150 N. Central Expwy	Ste 650		Dallas	TX	75205	
BrightHouse Financial		PO Box 371310			Pittsburgh	PA	15250-7310	
BrightHouse Life Insurance Company		PO Box 371487			Pittsburgh	PA	15250-7487	
Brighton House Associates, LLC		2 Park Central Drive	Suite 300		Southborough	MA	01772	
BRIGHTWORK	ATTN JOYCE WELSH	16 OLDE TAVERNE LANE			Amesbury	MA	01913	
Brian Enterprises, Inc.		1545 Prudential Dr.			Dallas	TX	75235-4111	
Britain, William		Address on File						
BRITAIN, WILLIAM L.		Address on File						
Brittain, Mark		Address on File						
BRITNEE WOOLDRIDGE		2201 WOLF ST	#6106		Dallas	TX	75201	
BRITTNEY CUNNINGHAM		Address on File						
BROADCASTING & CABLE		PO BOX 5655			Harlan	IA	51593-1155	
Broadbus, Paul		Address on File						
Broadridge Customer Communications		5516 Collection Ctr Dr			Chicago	IL	60693	
Broadridge Customer Communications		2600 Southwest Blvd.			Kansas City	MO	64108	
Broadridge ICS		PO Box 416423			Boston	MA	02241-6423	
Broadridge Investor Communication Soluti								
Broadridge Output Solutions, Inc.		One Park Ave			New York	NY	10016-0000	
BROADVIEW NETWORKS		PO Box 15788			Chicago	IL	60693	
Brodeur, Steven		PO Box 9242			Uniondale	NY	11555-9242	
BRODRICK NORMAN		Address on File						
Broker Dealer Financial Services Corp.		456 9th St	#8		Hoboken	NJ	07030	
Broker Educational Sales Training, Inc.		6775 Booneville Rd			WDM	IA	50266-8093	
Brook Lane Partners, LLC		7137 Congress Street			New Port Richey	FL	34653-6464	
Brook Lane Partners, LLC		330 East 75th Street	Suite 10H		New York	NY	10021	
Brookmont Capital Management, LLC		445 Park Avenue	10th Floor		New York	NY	10022	
Brookover, Steven		2000 McKinney Avenue	Suite 1230		Dallas	TX	75201	
Brosier & Buchanan Partners		Address on File						
Brown & Hofmeister LLP		320 W. 7th			Amarillo	TX	79101	
Brown & Sikes, Inc.		740 E Campbell	Suite 800		Richardson	TX	75081	
Brown Pruitt Peterson & Wambsgans, P.C.		325 N St Paul St Ste 1280			Dallas	TX	75201	
Brown Rudnick Berlack Israels LLP		201 Main St			Fort Worth	TX	76102	
Brown Rudnick LLP	Robert J. Stark	One Financial Center			Boston	MA	02111	
Brown, Austin		7 Times Square			New York	NY	10036	
Brown, Austin		Address on File						
Brown, Austin		Address on File						

004092

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
BROWN, BLAKE		Address on File						
BROWN, BRITTON		Address on File						
BROWN, LEE		Address on File						
Brown, Rachel		Address on File						
BROWNELL, JESSE R.		Address on File						
Brownstein Hyatt Farber Schreck LLP		100 City Parkway	suite 1600		Las Vegas	NV	89106	
Brownstein Hyatt Farber Schreck, LLP	Samuel A. Schwartz, Esq.	100 North City Parkway, Suite 1600			Las Vegas	NV	89106	
Bruce Beetz		Address on File						
BRUCE CHAPIN		Address on File						
BrucePac		811 N First St			Silverton	OR	97381	
Bruchou Fernandez Mandero & Lombardi		BFM y L S.R.L., Ing. Butty 275, PISO 12			Buenos Aires		C-1001AFA	Argentina
BRUMLEY, ANGELA		Address on File						
Brumley, Angela K.		Address on File						
Bryan Cave LLP		PO Box 503089			Saint Louis	MO	63150-3089	
BRYAN CLARK		Address on File						
Brynteson Reporting, Inc.		2404 Belle Haven Meadows Ct			Alexandria	VA	22306	
BT Video Inc		PO Box 540365			Dallas	TX	75354-0365	
Buchalter Nemer		1000 Wilshire Blvd	Suite 1500		Los Angeles	CA	90017	
BUCKLES BY JIM		PO BOX 1885			Mabank	TX	75147-1885	
Budget Blinds		4012 Daniel Way			Frisco	TX	75035	
Bulk Books		Address on File						
Buntz, Jennifer		Address on File						
BURKE HANSEN LLC		1601 N 7TH ST, STE 200			Phoenix	AZ	85006	
Burkey, John		Address on File						
Burns Transcription Service		11311 N Central Expwy Ste 216			Dallas	TX	75243	
Burns, Nathan		Address on File						
Bury Street Capital Ltd		Devonshire House	1 Devonshire Street		London		W1W 5DR	United Kingdom
BUSH, ALBERT		Address on File						
Business Essentials		PO BOX 37			Grapevine	TX	76099	
Business Essentials		PO Box 292696			Lewisville	TX	75029-2696	
Business Executives National Security		1030 15th Street NW	Suite 200 East		Washington	DC	20005	
Business Flooring Specialists		7341 Dogwood park			Fort Worth	TX	76118	
Business Intelligence Advisors		One Washington Mall One&th Flr			Boston	MA	02108	
Business Real Estate		PO Box 15216			Scottsdale	AZ	85267	
Business Technologies, Inc.		16060 Ventura Blvd Ste 105-505			Encino	CA	91436	
Business Week		PO Box 8419			Red Oak	IA	51591-1419	
Business Wire		Department 34182	PO Box 39000		San Francisco	CA	94139	
Business Wire		PO Box 45348			San Francisco	CA	94145-0348	
Butler Burgher Group		4300 Alexander Dr.	Suite 200		Alpharette	GA	30022	
Byron Wilson		Address on File						

004093

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
C.J. Martin		Address on File						
C2 Imaging		3180 Pullman Street			Costa Mesa	CA	92626	
C2 LEGAL OF DALLAS		2001 BRYAN ST	STE 3025		Dallas	TX	75201	
C5 Texas	Attn Rachel Jenkins	PO Box 191129			Dallas	TX	75219	
Cabot Lodge Securities LLC		200 Vesey St.			New York	NY	10281	
Cades Schutte LLP		1000 Bishop Street, 12th floor			Honolulu	HI	96813	
Cadwalader, Wickersham, & Taft LLP		General Post Office	PO Box 5929		New York	NY	10087-5929	
CALAPRS		575 Market Street	Suite 2125		San Francisco	CA	94105	
Caleb Dorfman		Address on File						
Caleb Moore		Address on File						
Caledonian Directors Limited		PO Box 1043	George Town		Grand Cayman		KY1-1002	Cayman Islands
Caledonian Directors Limited		PO Box 1043			George Town		KY1-1102	Cayman Islands
California Department of Insurance	Attn Name Reservation Unit	45 Fremont Street, 24th Floor			San Francisco	CA	94105	
California Dept. of Business Oversight		Securities Registration Division	1515 K Street, Suite 200		Sacramento	CA	95814	
California Public Employees Retirement System		One Embarcadero Center, 32nd Floor			Sacramento	CA	95814	
CALLAN, BENTLEY	c/o Louis J. Cisz, III	Nixon Peabody LLP			San Francisco	CA	94111	
Cambridge International Partners, Inc.		Address on File						
Cambridge Investment Research, Inc.	c/o Premier Wealth Management	780 Third Ave 25th Flr			New York	NY	10017	
Cambridge Investment Research, Inc.	Przewlocki James, Inc.	5004 Lenker Street, Suite 200			Mechanicsburg	PA	17050	
Cambridge Investment Research, Inc.		2030 E Speedway	Suite 220		Tucson	AZ	85719	
Cameron Baynard		1776 Pleasant Plain Rd			Fairfield	IA	52556	
CAMP CUTHRELL		fbo Jimmy J. Williams, Rep #GM6			Fairfield	IA	52556	
Campano & Associates		Address on File						
CAMPBELL, JIM		PO Box 370			Wilton	CT	06897-0370	
CAMPBELL, JIM		Address on File						
Canadian Imperial Bank of Commerce		Address on File						
Candidates on Demand Group, Inc.		425 Lexington Avenue			New York	NY	10017	
Canon Solutions America, Inc		433 Fifth Ave, 6th Flr			New York	NY	10016	
Canteen Vending Services		15004 Collections Center Dr			Chicago	IL	60693	
Cantor Fitzgerald & Co.	Attn McKenzie Campbell	PO Box 417632			Boston	MA	02241-7632	
CAPE RANKEN		110 East 59th Street			New York	NY	10022	
Cape Securities, Inc.		Address on File						
CAPITAL FOR KIDS	ATTN Susan Nichol	1600 Pennsylvania Ave.			McDonough	GA	30253	
		2807 Allen St. #816			Dallas	TX	75204	

004094

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Capital Hedge, LLC		145 W Washington Street, Suite 16			Norwell	MA	02061	
Capital Investment Group, Inc.		PO Box 32249			Raleigh	NC	27622	
Capital Link Forum, Inc.		230 Park Ave, Ste 1536			New York	NY	10169	
Capital Royalty LP	ATTN Mary Logan	1000 Main St	Suite 2500		Houston	TX	77002	
Capitalize for Kids		01-208-Adelaide Street West			Toronto	ON	M5H 1W7	CANADA
Capitol Service Inc		PO Box 1831			Austin	TX	78767	
CAPITOL SERVICES, INC		PO BOX 1831			Austin	TX	78767	
Caplin Photography		50 W 90th Street	#C6		New York	NY	10024	
Caprock Court Reporting, Inc.		1112 Texas Avenue, Suite 200			Lubbock	TX	79401	
Capstone Advisory Group		Park 80 West	Plaza I-Plaza Level		Saddle Brook	NJ	07663	
Capstone LLC		1400 Eye Street, NW Suite 1115			Washington	DC	20005	
Captain Hopes Kids		10480 Shady Trail	Suite 104		Dallas	TX	75220	
CAREER BLAZERS		PO BOX 414050			Boston	MA	02241-4050	
CAREER BLAZERS		GLOBAL EMPLOYMENT SOLUTIONS, INC	PO BOX 842595		Boston	MA	02284-2595	
Career Group Inc		PO Box 203654			Dallas	TX	75320-3654	
CAREERBUILDER, LLC		200 N. LaSalle St	Suite 1100		Chicago	IL	60601	
CAREERBUILDER, LLC		13047 COLLECTION CTR DR			Chicago	IL	60693-0130	
Carey Holdings, Inc.	Attention General Counsel	4530 Wisconsin Avenue, N.W., 5th Floor			Washington	DC	20016	
Carey International, Inc.	Attn Diane Ennist	7445 New Technology Way			Frederick	MD	21703	
Carey International, Inc.	Attn Thomas McKee, Jr	Greenberg Traurig, LLP	1750 Tysons Blvd., #1000		McLean	VA	22102	
Carey International, Inc.	Billing Department	PO Box 842350			Boston	MA	02284-2350	
Carey International, Inc.	Gary Kessler	4530 Wisconsin Ave. NW	Suite 500		Washington	DC	20016	Cayman Islands
Carey Olsen	attn Sam Dawson	Willow House Cricket Square			Grand Cayman		KY1-1001	
Carey Olsen		Address on File						
Carey Olsen (Guernsey) LLP		PO Box 98, Carey House, Les Banques			St Peter Port	Guernsey	GY1 4BZ	Channel Islands
CARL MOORE		Address on File						
Carl Steigenwald III		Address on File						
CARL WELLMAN		Address on File						
Carla Martin		Address on File						
Carla Siegal Interiors		31 Sturges Hwy			Westport	CT	06880	
CARLSON, STEPHEN		Address on File						
Carmona, Benjamin		Address on File						
CARNEGIE CONSULTING		44 CARNABY ST			London			United Kingdom
Carol Bavousett Mattick PC		919 Congress Ave Suite 919			Austin	TX	78701	
CAROLYN SANCHEZ		Address on File						
CARON, JOHN H		Address on File						
Carpenter Lipps & Leland LLP		280 Plaza, Suite 1300	280 North High Street		Columbus	OH	43215	
Carrington Coleman		Address on File						

004095

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CARROLL, JUSTIN		Address on File						
Carter Ledyard & Milburn LLP		Counsellors at Law 2 Wall St			New York	NY	10005	
CARTER, JEROME		Address on File						
CARTUS CORPORATION PTE LTD		4 SHENTON WAY	#09-01/04 SGX CENTRE 2		Singapore		068807	SINGAPORE
Carwin Advisors		2100 McKinney Ave. Suite 1510			Dallas	TX	75201	
Case Anywhere LLC		21860 Burbank Blvd.	Suite 125		Woodland Hills	CA	91367	
Casepoint, LLC		7900 Tysons One Place, 680			McLean	VA	22102	
Cashier - Texas Workforce Commission		PO Box 149037			Austin	TX	78714-9037	
CASPER COMPANY LLC		830 POST RD E			Westport	CT	06880	
CASTELLA, ANDRES		Address on File						
CASTELLA, ANDRES		Address on File						
Catalyst Financial Partners LLC		118 E 28th Street	Suite 314		New York	NY	10016	
Catapult Systems Inc.		1221 South MoPac Expressway	Ste 350		Austin	TX	78746	
Catherine M. Luvisa, trustee	Cooper Lee Luvisa Educational Trust	Address on File						
Catherine M. Luvisa, trustee		Address on File						
Catherine McCoy		Address on File						
Catherine P. Matthews		Address on File						
Cattle Barons Ball	Attn Underwriting Chairs	3838 Oak Lawn Avenue, Suite 700			Dallas	TX	75219	
Cattle Barons Ball		30 Highland Park Village Ste 216			Dallas	TX	75205	
CATTLE BUYERS WEEKLY		PO BOX 2533			Petaluma	CA	94953-2533	
Cawley, Gillespie & Associates, Inc.		306 West 7th Street, Ste 302			Fort Worth	TX	76102	
Cawley, Keith		Address on File						
CB RICHARD ELLIS		2700 POST OAK BLVD	STE 250		Houston	TX	77056	
CB Richard Ellis, Inc		2700 Post Oak Blvd. Suite 250			Houston	TX	77056	
CB Richard Ellis, Inc		Valuation & Advisory Services	2415 East Camelback Rd		Phoenix	AZ	85016-4290	
Cbeyond		210 Interstate North Pkwy SE Ste 300			Atlanta	GA	30339-2233	
Cbeyond		PO Box 848432			Dallas	TX	75284-8432	
CBIZ Valuation Group, Inc.	ATTN ACCOUNTS RECEIVABLE	PO BOX 849846			Dallas	TX	75284-9846	
CBIZ Valuation Group, Inc.		3030 LBJ Freeway, Ste 1650			Dallas	TX	75234	
CBIZ Valuation Group, Inc.		4851 LBJ Freeway	Suite 800		Dallas	TX	75244	
CBIZ Valuation Group, LLC	Attn Accounts Receivable	4851 LBJ Freeway #800			Dallas	TX	75284	
Cboe LiveVol, Inc.		400 South LaSalle Street			Chicago	IL	60605	
CBRE, Inc.		Location Code 2981	P.O. Box 406588		Atlanta	GA	30384-6588	
CCH		21250 HAWTHORNE BLVD			Torrance	CA	90503-5502	
CCH Incorporated		PO Box 4307			Carol Stream	IL	60197-4307	
CCH Prosystem FX		PO Box 5729			Carol Stream	IL	60197-5729	

004096



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CCH Prosystem FX		P.O. Box 2701			Torrance	CA	90509-2701	
CCS Medical		1505 LBJ Freeway	Suite 600		Farmers Branch	TX	75234	
CCW Recovery Solutions		4 Mount Ephraim Road	Tunbridge Wells		Kent		TN1 1EE	United Kingdom
CDW	Attn Ronelle Erickson	200 N. Milwaukee Ave			Vernon Hills	IL	60061	
CDW Direct		PO Box 75723			Chicago	IL	60675-5723	
Cecilio Gomez		Address on File						
Cedar Glade LP	Attn Robert K. Minkoff, President	600 Madison Ave, 17th Floor			New York	NY	10022	
Centaurus Financial, Inc.		2300 E. Katella Ave	Suite 200		Anaheim	CA	92806	
Center for Financial Professionals Ltd		The Maltings, Roydon Road			Stanstead Abbots	Herts	SG12 8HG	United Kingdom
Center Street Securities, Inc.	c/o CFP Events, Suite 68	2 International Plz Ste 301			Nashville	TN	37217-2088	
Centerpoint Advisors		301 Commerce St Ste 1750			Fort Worth	TX	76102	
Centerpoint Builders		5339 Alpha Rd Ste 250			Dallas	TX	75240	
CENTRAL REPRODUCTION COMPANY		PO BOX 131971			Dallas	TX	75313	
Centroid		1050 Wilshire Dr.	Ste #170		Troy	MI	48084	
Centroid		900 Wilshire Dr.	Ste. #273		Troy	MI	48084	
CenturyLink		100 CenturyLink Drive			Monroe	LA	71203-0000	
CenturyLink Communications, LLC		1801 California Street			Denver	CO	80202	
CERA	Accounts Receivable	Department 55 Cambridge Pkwy			Cambridge	MA	02142	
Certified Moving & Storage Company		286 Madison Avenue			New York	NY	10017	
Certified Process Servers, Inc.		PO Box 496508			Garland	TX	75049-6508	
Certified Staffing Solutions		66 Orange Street, 3rd FL			Providence	RI	02903	
Cetera Advisor Networks LLC	Attn STS	200 N. Sepulveda Blvd, Ste 1300			El Segundo	CA	90245	
Cetera Advisor Networks LLC	c/o Legacy Advisor, C. Tabaka	2450 Rimrock Rd, Ste 203			Madison	WI	53713	
Cetera Financial Group	c/o Due Diligence Dept	200 N. Sepulveda Blvd, Ste 1200			El Segundo	CA	90245	
Cezar AV, Inc.		393 Upland Avenue			Yonkers	NY	10703	
CFA Society Los Angeles		520 S. Grand Ave	Ste 370		Los Angeles	CA	90071	
CFALA		520 S. Grand Ave.	Ste 655		Los Angeles	CA	90071	
CFA-SW	ATTN Scott Woodward	UHY, LLP	1717 Main Street		Dallas	TX	75201	
CFO & CONTROLLER ALERT		370 TECHNOLOGY DR	PO BOX 3019		Malvern	PA	19355	
Chad Clark		Address on File						
CHAD SCHRAMEK		Address on File						
Chakheeva, Svetlana		Address on File						
CHAMBERS, TRACIE		Address on File						
CHAN, WING FUNG WILLY		Address on File						
CHANCERY ST JAMES PLC		5 ST JAMESs SQUARE			London		SW1Y 4SJ	United Kingdom
Chang, Frederic		Address on File						
Chang, Lewis		Address on File						

004097

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Chapline, Thomas		Address on File						
Charitable DAF Fund GP, LLC	Grant Scott	4140 Park Lake Avenue	Suite 600		Raleigh	NC	27612	
Charitable DAF Fund, L.P.	Grant Scott	4140 Park Lake Avenue	Suite 600		Raleigh	NC	27612	
Charles Byrne		Address on File						
Charles Geraci		Address on File						
CHARLES GREGOR		Address on File						
Charles Hoedebeck	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Charles River Associates		PO Box 845960			Boston	MA	02284-5960	
Charles Schwab & Co., Inc.		211 Main Street	MS SF-211MN-08-434		San Francisco	CA	94105	
Charley Krause		Address on File						
Charlie Maynard		Address on File						
Charlotte Investor IV LP	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
Charlotte Investor IV, L.P.	Attn Erica Weisgerber Debevoise and Plimpton LLP	919 Third Avenue			New York	NY	10022	
Charlotte Investor IV, L.P.	Charlotte Investor IV LP	c/o HarbourVest Partners, LLC	One Financial Center		Boston	MA	02111	
Charter Finan. Publishing Network, Inc.		PO Box 7550			Shrewsbury	NJ	07702-7550	
Chase Bank of Texas, N.A.		600 Travis Street	8th Floor	Global Trust Services	Houston	TX	77002	
CHASE COURIERS, INC		1220 Champaign Circle	#114		Carrollton	TX	75006	
CHASE COURIERS, INC		1002 N. Central Expressway #495			Richardson	TX	75080	
CHASE COURIERS, INC		1002 N CENTRAL EXPWY, #229			Richardson	TX	75080	
Chase Miller		Address on File						
Chatham Worth		Address on File						
CHAVARRIAGA, MAURICIO		Address on File						
CHEMICAL DATA		2900 N LOOP WEST	STE 830		Houston	TX	77092	
CHEMICAL MARKET ASSOCIATES, INC					Dallas	TX	75397-4416	
Chen, Bryan		PO BOX 974416						
Chen, Jonathan C.		Address on File						
Cherith Harrison		Address on File						
Chetan Aras		Address on File						
Chi Un Chun		Address on File						
Chick-fil-A		12120 Inwood Road			Dallas	TX	75244	
Chick-fil-A		1201 Elm Street	LL06		Dallas	TX	75270	
CHILDRENS SEEK CAMP		Cory Cheat	3624 Long Prairie Rd.		Flower Mound	TX	75022	
CHIRAG PANCHOLI		Address on File	Ste #101					
CHISM, CARTER		Address on File						
Chisum, Naomi		Address on File						
Choi, Jae Young		Address on File						
CHOI, YUN S.		Address on File						
CHOICE INVESTMENTS, INC		4800 BEE CAVE ROAD			Austin	TX	78746	
Chris Carrillo		Address on File						

004098

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CHRIS COLVIN		Address on File						
CHRIS CRAWSHAW		Address on File						
Chris Hakemack		Address on File						
Chris Hyley		Address on File						
Chris Jackson		Address on File						
Chris Lombardi		Address on File						
Chris Malone		Address on File						
Chris Miller		Address on File						
Chris Saehler		Address on File						
Chris Sullivan		Address on File						
Christian & Small LLP		505 N 20th Street, Suite 1800			Birmingham	AL	35203-2696	
Christian Carrillo		Address on File						
Christian MacCaron		Address on File						
Christina Dandar		Address on File						
Christina Seaman		Address on File						
Christine Hedrick		Address on File						
Christine Ragnauth		Address on File						
Christopher Courbier		Address on File						
CHRISTOPHER EGER		Address on File						
CHRISTOPHER NILSEN		Address on File						
CHRISTOPHER PITTMAN		Address on File						
Christopher Rice	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Christopher Rossi		Address on File						
Chronicle of Higher Education		PO Box 1955			Marion	OH	43306-8055	
Chronicle of Philanthropy	Attn Subscription Department	PO Box 1989			Marion	OH	43306-8089	
Chubb		2001 Bryan St.	Ste. 3600		Dallas	TX	75201-0000	
Chubb National Insurance Company	c/o Chubb	202A Halls Mill Road - 2E			Whitehouse Station	NJ	08889	
Chuck Hoar		Address on File						
Chuck McQueary		Address on File						
Church, Daniel		Address on File						
CIGNA HEALTHCARE		CGLIC-Chicago	5476 Collections Center Dr		Chicago	IL	60693-0547	
CIRCLE B		3536 MILLER PARK			Garland	TX	75042-7519	
Cisco		170 West Tasman Dr			San Jose	CA	95134-0000	
CISCO Capital		File No. 73226	PO Box 60000		San Francisco	CA	94160-3230	
Cisco Webex Events		170 West Tasman Dr			San Jose	CA	95134-0000	
Cision WebEx, LLC		16720 Collections Center Dr			Chicago	IL	60693	
Cision US Inc.		PO Box 842869			Boston	MA	02284-2869	
Cision US Inc.		1 Prudential Plaza, 7th floor	130 E Randolph Street		Chicago	IL	60601-0000	
CIT TECHNOLOGY	ATTN CUSTOMER SERVICE	PO BOX 550599			Jacksonville	FL	32255-0599	
Citibank, N.A.	Doug Warren	390 Greenwich Street	4th Floor		New York	NY	10013	
CITICORP VENDOR FINANCE		PO BOX 7247-0118			Philadelphia	PA	19170-0118	

004099

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Citigroup Financial Products Inc. Citigroup Global Markets Inc.	Citigroup Global Markets Inc.	390 Greenwich Street, 4th Floor	Managing Director	Global Structured Credit Products	New York	NY	10013	
Citizens of Georgia Power Citrix Online, LLC	Attn Stephen Kin, Bin #63031	7825 River Road 7414 Hollister Avenue			Waynesboro Goleta	GA CA	30830 93117	
City of Allen	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	76015	
City of Dallas		1500 Marilla Street			Dallas	TX	75201	
City of Dallas		City Hall 1AN			Dallas	TX	75277	
City of Dallas		City Hall, 2D South			Dallas	TX	75277	
City of Dallas		Security Alarms	P.O. Box 139076		Dallas	TX	75313-9076	
City of Garland	Linda D. Reece	c/o Perdue Brandon Fielder et al	Suite 310, LB 40		Garland	TX	75042	
City of Richardson	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair and Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	75207	
City of Surprise		16000 N. Civic Center Plaza	Stormwater Division		Surprise	AZ	85374-7470	
Civic Research Institute		4478 US Route 27 PO Box 585			Kingston	NJ	08528	
CJ Peng		Address on File						
CL McDade & Company		PO Box 702565			Dallas	TX	75370	
Claraphi Advisory Network		25301 Cabot Rd	Suite 203		Laguna Hills	CA	92653	
CLARITY IN NUMBERS, LLC		10 UPENA LN APT 304			KIHEI	HI	96753-5112	
Clark Hill Strasburger		Address on File						
Clark, James		Address on File						
Clark, Stetson		Address on File						
Classic Legal Document Services, Inc.		1717 Main Street, Suite 2280			Dallas	TX	75201	
Claudia C Pleitez		Address on File						
Clay Callan		Address on File						
Clayton Coleman		Address on File						
Cleanwater Analytics LLC		777 W Main St	Ste 900		Boise	ID	83702-0000	
Cleanwell Systems, INC.		441 Lounge Ave			Mountain View	CA	94043	
Cleary Gottlieb Steen & Hamilton LLP		One Liberty Plaza			New York	NY	10006-1470	
Clerk of the Municipal Courts		2014 Main Street			Dallas	TX	75201	
CLERK, SUPREME COURT		PO BOX 149335			Austin	TX	78714-9335	
ClickDimensions, LLC		5901 Peachtree Dunwoody Rd., Ste B500			Atlanta	GA	30328	
Client One Securities, LLC		11460 Tomahawk Creek Parkway	Suite 100		Leawood	KS	66211	
Clientwise LLC		487 East Main Street	Suite 303		Mount Kisco	NY	10549	
Clifford Chance		Address on File						
Clifford Chance		PO Box 7247-6805			Philadelphia	PA	19170-6805	
Clint Swisher		Address on File						
CLO Holdco, Ltd.	c/o Grant Scott, Esq	Myers Bigel Sibley & Sajovec, P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	Grant Scott, Director	Myers Bigel P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CLO Holdco, Ltd.	Grant Scott, Director	Myers Bigel P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	Grant Scott, Esq.	Myers Bigel Sibley & Sajovec, P.A.	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.	John J Kane	Kane Russell Coleman Logan PC	901 Main Street, Suite 5200		Dallas	TX	75202	Cayman Islands
CLO Holdco, Ltd.		190 Elgin Avenue	George Town	Grand Cayman	George Town	KY	19005	United Kingdom
CM Murray LLP		37th Floor	One Canada Square, Canary Wharf		London	TX	E14 5AA	
CMGRP, Inc.		1717 Main St, Ste 1600			Dallas	TX	75201	
CMGRP, Inc.		PO Box 74008263			Chicago	IL	60674-8263	
CMS BondEdge		PO Box 98616			Chicago	IL	60693	
CNBC LLC	c/o Legal Dept, Attn Janet Williams	900 Sylvan Avenue			Englewood Cliffs	NJ	07632	
Coastal Equities Inc.		1201 N. Orange Street	9th Floor		Wilmington	DE	19801	
Coates Analytics		PO Box 371685			Pittsburgh	PA	15251-7685	
COBURN, JASON M		Address on File						
COBURN, JASON M		Address on File						
Coch, Trevor		Address on File						
Cockle Printing Co		2311 Douglas St			Omaha	NE	68102	
COCVAC		BOX 399			Clark Mills	NY	13321	
Cohen & Company, Ltd		PO BOX 94787			Cleveland	OH	44101-4787	
Cohen, Jeffrey		Address on File						
Coheso, Inc.		7083 Commerce Cir Ste 1			Pleasanton	CA	94588-8017	
Colbert, Kenneth T.		Address on File						
ColdFusion Ice		4901 Saint Lawrence Road			Fort Worth	TX	76103	
Cole Schotz	Court Plaza North	25 Main Street	P.O. Box 800		Hackensack	NJ	07602-0800	
Cole Schotz	Michael D. Warner, Esq.	Cole Schotz Meisel Forman & Leonard	301 Commerce Street, Suite 1700		Fort Worth	TX	76102	
Coleman Research Group, Inc.	Attn Legal	1 Glenwood Ave			Raleigh	NC	27603	
Coleman Research Group, Inc.		100 Park Avenue Suite 1600			New York	NY	10017	
Coleman Research Group, Inc.		120 West 45th St	25th Floor		New York	NY	10036	
Coleman, Clayton		Address on File						
Collas Crill	attn Stephen Leontsinis	Floor 2, Willow House	Cricket Square PO Box 709		Grand Cayman		KY1-1107	Cayman Islands
Collas Crill		Floor 2, Willow House, Cricket Square, PO Box 709			Grand Cayman		KY1-1107	Cayman Islands
COLLAS CRILL LLP, ADVOCATES CLIENT ACCOUNT		Gategny Court, PO Box 140, Gategny Esplanade			St Peter Port	Guernsey	GY1 4EW	Channel Islands
Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	1700 Redbud Blvd., Suite 300			McKinney	TX	75069	
Collin County Tax Assessor/Collector		P.O. Box 8046			McKinney	TX	75070	
Collin County Tax Assessor/Collector		P.O. Box 8046			McKinney	TX	75070	

004101

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Collins Building Services, Inc		Court Square Place, 24-01 44th Rd	15th Fl		Long Island City	NY	11101	
Collins Legal Video Service		1700 Pacific Ave	Suite 2410		Dallas	TX	75201	
Collins Realtime Reporting		1700 Pacific Ave	Suite 2410		Dallas	TX	75201	
COLLINS, BRIAN		Address on File						
Colin McDermott		Address on File						
Colonial Surety Company		123 Tice Boulevard, Suite 250			Woodcliff Lake	NJ	07677	
Colorado Department of Revenue		Colorado Department of Revenue			Denver	CO	80261	
Colorado State Treasurer		Colorado DEPT of Regulatory Agencies	1560 Broadway, Suite 900		Denver	CO	80202-5150	
ColorMark, L.C.		1840 Hutton Dr	Bldg 208		Carrollton	TX	75006	
COLVIN, CHRISTOPHER		Address on File						
COLVIN, MICHAEL		Address on File						
Commissioner of Revenue Services		DEPARTMENT OF REVENUE SERVICES	PO BOX 2936		Hartford	CT	06104-2936	
Commissioner of Securities, State of LA		Office of Financial Institutions	8660 United Plaza Boulevard, 2nd Floor		Baton Rouge	LA	70809	
COMMISSIONER OF TAXATION AND FINANCE		NYS ASSESSMENT RECEIVABLES	PO BOX 4127		Binghamton	NY	13902-4127	
Commodity Futures Trading Commission		Three Lafayette Centre	1155 21st Street, NW		Washington	DC	20581	
COMMONWEALTH OF MASSACHUSETTS		Securities Division	1 Ashburton Place, Room 1701		Boston	MA	02108	
COMMONWEALTH OF MASSACHUSETTS		COMMONWEALTH OF REVENUE	PO BOX 7065		Boston	MA	02204-7065	
Communities Foundation of Texas, Inc.		Caruth Haven Lane			Dallas	TX	75225-8146	
Communities in Schools of North Texas		PO Box 295543			Lewisville	TX	75029-5543	
Community Beer Company		1530 Inspiration Drive	Suite 200		Dallas	TX	75207	
Community Partners of Dallas		1215 Skiles Street			Dallas	TX	75204	
Commvault Backup		1 Commvault Way			Tinton Falls	NJ	07724-0000	
COMPASS BANK OPERATING		PO BOX 630020			Dallas	TX	75263-9720	
Compass Lexecon		PO Box 630391			Baltimore	MD	21263-0391	
Compass Lexecon		1244 Dryden Pl			Evanston	IL	60201-3399	
Compass Lexecon LLC		PO Box 418005			Boston	MA	02241-8005	
COMPETITIVE LOGISTICS LLC		53 PERIMETER CENTER E	STE 201		Atlanta	GA	30346	
Complete Coherence Ltd		Newton House, Suite B	Newton Lane		Romsey, Hants		SO51 8LE	United Kingdom
Complete Fitness Outfitters		PO Box 1237			Atoka	OK	74252	
Complete Legal, Ltd		1201 Elm St.	Suite 2560		Dallas	TX	75270	
Compliance Science, Inc.		875 Avenue of the Americas	12th Floor		New York	NY	10001	
Compliance Search Group		1001 Avenue of the Americas	Suite 2401		New York	NY	10018	
Compliance Search Group		450 Seventh Ave	Suite 1409		New York	NY	10123	

004102

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Comptroller of Maryland		Revenue Administration Division	110 Carroll Street		Annapolis	MD	21411-0001	
Comptroller of Public Accounts		PO Box 149348			Austin	TX	78714	
Computforms Data Products, Inc.		PO Box 101536			Fort Worth	TX	76185-1536	
Compulink Technologies, Inc.		214 West 29 Street	Suite 201		New York	NY	10001	
Computershare		250 Royall St #1011			Canton	MA	02021	
Computershare		14257 Collection Ctr Dr			Chicago	IL	60693	
Computershare		16750 Collection Ctr Dr			Chicago	IL	60693	
Computershare Trust								
Company, N.A.		PO BOX 43078			Providence	RI	02940-3078	
Comsys Services, LLC		PO Box 60260			Charlotte	NC	28260	
Concord Marketing Solutions		2000 Bloomingdale Road			Glendale Heights	IL	60139	
Concorde Holdings, Inc.		1120 East Long Lake Rd	Suite 207		Troy	MI	48085	
Concorde Investment Services		1120 East Long Lake Road	Ste 207		Troy	MI	48085	
Concur Technologies, Inc.		62157 Collections Center Drive			Chicago	IL	60693	
Concur Technologies, Inc.		18400 NE Union Hill Road			Redmond	WA	98052	
Conference Plus, Inc		8153 Solutions Center			Chicago	IL	60677-8001	
Conference Room AV		13601 W McMillan Rd	Suite 102-277		Boise	ID	83713	
Conga		P.O. Box 7839			Broomfield	CO	80021	
ConnectAndSell, Inc		856 Rand St.			San Mateo	CA	94401	
Connected Software		PO Box 29			West Newbury	MA	01985	
Connecticut Department of Banking		Securities & Business Invest Division	260 Constitution Plaza		Hartford	CT	06103	
CONNER, PATRICK		Address on File						
Connex Systems, Inc.		2033 Chenault Drive, Suite 150			Carrollton	TX	75006	
CONNIE MILTENBERGER		127 KENDALL BLUFF COURT			Chesterfield	MO	63017	
Connolly Bove Lodge & Hutz LLP		1007 North Orange St			Wilmington	DE	19899	
Connolly Gallagher LLP		1201 North Market Street	20th Floor		Wilmington	DE	19801	
Connolly, James		Address on File						
Connor White		Address on File						
Conseco Life Insurance Company		PO Box 71214			Charlotte	NC	28272-1214	
CONSOLIDATED GENERAL LIFE INSURANCE CO		4245 N CENTRAL EXPWY	STE 500		Dallas	TX	75205	
Context Summits LLC		401 City Avenue	Suite 815		Bala Cynwyd	PA	19004	
Continental Court Reporters, Inc.		2777 Allen Parkway, Suite 600			Houston	TX	77019-2166	
Continental Office Group, LLC		PO Box 132			Wylie	TX	75098	
Contrarian Funds, LLC		500 Ross St 154-0455			Pittsburgh	PA	15262	
Contrarian Funds, LLC		500 Ross St 154-0455			Pittsburgh	PA	15262	

004103



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Contrarian Funds, LLC	Attn Alpa Jimenez	411 West Putnam Ave., Suite 425			Greenwich	CT	06830	
ConvergeOne, Inc.	Selina Held	10900 Nesbitt Avenue South			Bloomington	MN	55437	
ConvergeOne, Inc.		NW 5806	PO Box 1450		Minneapolis	MN	55485-5806	
Conway, Jacob		Address on File						
CONYERS DILL & PEARMAN		CLARENDON HOUSE 2	CHURCH STREET		Hamilton		0HM11	BERMUJDA United Kingdom
Cooke Young Keidan	Philip Young	21 Lombard St			London		EC3V 9AH	United Kingdom
Cooke, Brad		Address on File						
COOLTECH AIR								
CONDITIONING LTD								
COOPER LEVENSON APRIL		530 LONDON ROAD	Stanwell		Ashford		TW15 3AE	United Kingdom
NIEDELMAN		1125 ATLANTIC AVE			Atlantic City	NJ	08401	
Copy Sense		121 E. 8th	Ste 100B		Austin	TX	78701	
Copy Solutions		2001 Bryan St	Suite 1935		Dallas	TX	75201	
CopyPLEX		400 Tri-State Bldg 432 Walnut St			Cincinnati	OH	45202	
Copyright Clearance Center		222 Rosewood Dr			Danvers	MA	01923	
Copyright Clearance Center		PO Box 843006			Boston	MA	02284-3006	
CORAL EQUITY PARTNERS		28 Innisbrook Ave			Las Vegas	NV	89113	
CORCORAN, KIMBERLY		Address on File						
CORE Staffing Services, Inc.		463 Fashion Ave Rm 1800			New York	NY	10018-7760	
Corinne Durand		Address on File						
CORNELIUS, WILLIAM		Address on File						
Comer Bakery		CB Catering 91 PO Box 844288			Dallas	TX	75284-4288	
Comerstone Healthcare Group Holding Inc	David Smith	3030 Ross Avenue	Suite 5400		Dallas	TX	75201	
Comerstone Healthcare Group Holding, In		2200 Ross Ave	Ste. 5400		Dallas	TX	75201-0000	
Comerstone Healthcare Group Holding, Inc.	Attn Michael Brohm	13455 Noel Road, Suite 1320			Dallas	TX	75240	
Comerstone Macro LLC		1330 Avenue of the Americas Fl 5			New York	NY	10019-5493	
Comerstone Restructuring LLC		1125 Maxwell Ln	Suite 1010		Hoboken	NJ	07030	
ComerStone Staffing		PO Box 909			Grapevine	TX	76099	
CORPORATE COFFEE SYSTEMS		745 SUMMA AVE			Westbury	NY	11590	
CORPORATE EXPRESS INC		PO BOX 71217			Chicago	IL	71217	
Corporate Expressions		11 Blackberry Ln.			Norwalk	CT	06850	
Corporate Golf		604 West Morgan St Ste 202			Durham	NC	27701	
Corporate Green		PO Box 820725			Dallas	TX	75382	
Corporate Interiors Inc.		PO Box 709			Frisco	TX	75034-0709	
Corporate Montage		9950 Westpark Dr Ste 602			Houston	TX	77063-5196	
Corporate Search Partners		6116 N Central Expwy Ste 406			Dallas	TX	75206	
Corporate Source Ltd		2651 N Harwood Ste 260			Dallas	TX	75201	

004104



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Corporate Source Ltd		1505 Oak Lawn Ave	Suite 300		Dallas	TX	75207	
Corporate Source Ltd		Lockbox 671236			Dallas	TX	75267-1236	
Corporate Strategies by SkillPath		6900 Squibb Rd			Mission	KS	66202	
Corporate Strategies by SkillPath		PO Box 803839			Kansas City	MO	64180-3839	
Corporate Transportation Group		335 Bond St			Brooklyn	NY	11231	
Corporation Service Company		PO BOX 13397			Philadelphia	PA	19101-3397	
Cory McCallum		Address on File			Edgewater	NJ	07020	
COSMOPOLITAN GLASS		307 DAIBES CT			Baltimore	MD	21279-1123	
CoStar Realty Information, Inc.		PO Box 791123						
Cotton, Austin		Address on File						
Coughlin, William		Address on File						
Coughlin, William A.		Address on File						
Counsel Press LLC		PO Box 1053			New York	NY	10018-9998	
CounselWorks LLC		477 Madison Avenue			New York	NY	10022	
COURIERS INC		225 MILLWELL DR	Suite 740		Maryland Heights	MO	63043	
Cournoyer, Timothy		Address on File						
Courthouse Digital Video		8848 Twin Pines Ln			Frisco	TX	75036-1427	
Courtlandt Securities Corporation		PO Box 11929			Newport Beach	CA	92658	
Courtroom Intelligence, Inc.		620 N Grant	Suite 512		Odessa	TX	79761	
Courtroom Intelligence, Inc.		1219 West University Blvd			Odessa	TX	79764	
Covenant Review LLC		708 Third Ave	6th Floor		New York	NY	10017	
Covenant Review LLC		230 Park Ave, Suite 812			New York	NY	10169	
COVERT INVESTIGATIVE SERVICES		PO BOX 67			Lewisville	TX	75057	
COVITZ, HUNTER		Address on File						
Cowen and Company, LLC		Finance Group - 21st Floor	599 Lexington Avenue		New York	NY	10022	
Cowie, Jason		Address on File						
COX, BRIAN		Address on File						
COZEN O CONNER ATTORNEYS		W1385	PO BOX 7777		Philadelphia	PA	19175-0775	
CP EATON PARTNERS, LLC		131 ROWAYTON AVE			Rowayton	CT	06853	
CPCM, LLC	Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Avenue		New York	NY	10018	
CPCM, LLC	Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500	Dallas	TX	75201	
CPCM, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street,		Dallas	TX	75201	
CPCM, LLC		6505 W. Park Blvd, Ste. 306	Suite 1610	PMB# 352	Plano	TX	75093	
Craig and Macauley Professional Corp.		600 Atlantic Ave			Boston	MA	02210	
Crain Communications Inc.		16309 Collection Center Dr.			Chicago	IL	60693	
Crain Communications Inc.		1155 Gratiot Ave			Detroit	MI	48207-2732	
Cranellis		10047 Park Meadows Dr			Lone Tree	CO	80124	
Crawford Wishnew & Lang	Michael J Lang	1700 Pacific Avenue Suite 2390			Dallas	TX	75201	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CRE ADVISORS, LLC		PO BOX 2302			Addison	TX	75001	
Creative Meetings & Incentives		2405 Mill Plain Rd			Fairfield	CT	06824	
CREATIVE PRINTING		311 N STEMMONS	STE 400		Dallas	TX	75207	
CREDIT SUISSE	ATTN JUDY HARNETT	11 MADISON AVE, 11TH FLR			New York	NY	10010	
CREDIT SUISSE		700 College Road East			Princeton	NJ	08540	
CREDIT SUISSE		11 MADISON AVE, 26TH FLR	AARON OVEDIA		New York	NY	10010	United Kingdom
Creditflux		63 Clerkenwell Rd			London		EC 1M- 5NP	
Crescent Asset Managment		1440 Broadway	17th flr		New York	NY	10018	
Crescent Partners, LLC		1440 Broadway	17th floor		New York	NY	10018	
Crescent Research		PO Box 64-3622			Vero Beach	FL	32964	
Crescent TC Investors LP		200 Crescent Ct	Suite 250		Dallas	TX	75201	
Crescent TC Investors, L.P.	c/o Michael S. Held	2323 Ross Avenue, Suite 600			Dallas	TX	75201	
Crescent TC Investors, L.P.	Dale Todd, President	277 Park Ave., 36th Floor			New York	NY	10017	
Crescent TC Investors, L.P.	Hien Le	5847 San Felipe St., Suite 150			Houston	TX	77057	
Crescent TC Investors, L.P.	Hien Le	5847 San Felipe St., Suite 150			Houston	TX	77057	
Crescent TC Investors, L.P.	Jackson Walker LLP	Michael S. Held	2323 Ross Ave., Suite	600	Dallas	TX	75201	
Crescent TC Investors, L.P.	Michael S. Held	2323 Ross Ave., Suite 300			Dallas	TX	75201	
Crescent TC Investors, L.P.		Post Office Box 841772			Dallas	TX	75284	
Crescent TC Investors, L.P.		Post Office Box 841772			Dallas	TX	75284	
CREST, DAVID		Address on File						
Cris Rodriguez		Address on File						
Crisostomo, Norm		Address on File						
Critical Electric Systems Group, LLC		704 Central Pkwy East			Plano	TX	75074	
CROSS 3 LLC		7324 ELDRED AVE, NE	#1200A		Rockford	MI	49341	
Crosson Dannis, Inc.		8150 N. Central Expressway, Suite 950			Dallas	TX	75206	
Crossroads Audio, Inc.		2623 Myrtle Springs Avenue			Dallas	TX	75220	
Crowe & Dunlevy, P.C.	Vickie L. Driver	2525 McKinnon Street, Suite 425			Dallas	TX	75201	
Crowe Dunlevy		Address on File						
Crowell & Moring		1001 Pennsylvania Ave NW			Washington	DC	20004-2595	
CROWELL, LEONARD		Address on File						
Crown Capital Securities, L.P.		725 Town & Country Rd	Suite 530		Orange	CA	92868	
CRT CAPITAL GROUP, LLC		262 HARBOR DR			Stamford	CT	06902	
CSC		PO Box 13397			Philadelphia	PA	19101-3397	
CSI e-Discovery Services, LLC		4950 N. OConnor Rd.	Suite 152		Irving	TX	75062	
CSI Global Deposition Services	Accounting Dept-972-719-5000	4950 N. OConnor Rd., 1 st Fl			Irving	TX	75062-2778	

004106

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
CSI Litigation Psychology, LLC		4950 North OConnor Rd.	Corporate Plaza 1, First Floor		Irving	TX	75062	
CSS Medical Inc.	Steve Saft	14255 49th Street North	Suite 301		Cleanwater	FL	33762	
CT Corp		PO Box 4349			Carol Stream	IL	60197-4349	
CT Corporation		1999 Bryan Street	Ste 900		Dallas	TX	75201-0000	
CT Corporation System	ATTN Michael E. Jones	350 N. St. Paul Street, Ste. 2900			Dallas	TX	75201	
CT Corporation System	C/O STEPHANIE WATTS-DARTY	DALLAS CORPORATE TEAM 2	350 North St. Paul St.		Dallas	TX	75201	
CT Corporation System		PO Box 4349			Carol Stream	IL	60197-4349	
CT Lien Solutions		PO Box 301133			Dallas	TX	75303	
CT Lien Solutions		Lockbox 200824			Houston	TX	77216	
CTRL+V Inc.		251 Union St.			Lawrence	NY	11559	
Culhane Meadows PLLC		PO Box 49716			Atlanta	GA	30359	
Culinaire International	Attn Catering Dept	2943 SMU Blvd			Dallas	TX	75205	
CULLEN ESTATE TRUST		601 JEFFERSON ST STE 4000			Houston	TX	77002-7913	
CUNNINGHAM, BRITNEY		Address on File			Princeton	NJ	08540	
CurAlea Associates LLC		12 Roszel Road	Suite B102		Princeton	NJ	08540	
Cushman & Wakefield of Arizona, Inc.		2555 East Camelback Road, Ste 400			Phoenix	AZ	85016	
CUSIP		55 Water Street	43rd Floor		New York	NY	10041	
CUSIP Global Services		33356 Collection Center Dr			Chicago	IL	60693-0333	
CUSIP Service Bureau		2542 Collection Center Drive			Chicago	IL	60693	
CUSIP Service Bureau		Standard and Poores	2542 Collection Center Drive		Chicago	IL	60693	
CUSIP Service Bureau		PO Box 19140A			Newark	NJ	07195-0140	
CUSTOM BOOK BINDERY, INC.		9 SHERIDAN AVE			Clifton	NJ	07011	
Custom Headsets of Dallas		5949 W Hwy/ 175			Kaufman	TX	75142	
CVE Technologies Group Inc.		1414 S. Gustin Rd.			Salt Lake City	UT	84104	
CVE technology		3000 E Plano Pkwy			Plano	TX	75074-0000	
CW PARTNERS LLC		2811 MCKINNEY AVE	STE 214		Dallas	TX	75204	
Cylance		400 Spectrum Center Dr.	Suite 900		Irvine	CA	92618-0000	
CYNTHIA VALLES		Address on File						
CYRUS SPURLINO		7214 N MOBLEY RD			Odessa	FL	33556-2303	
REVOCABLE TRUST								
Cystic Fibrosis Foundation	NE Texas/Fort Worth Chapter	1600 Airport Fwy Ste 501			Bedford	TX	76022-6882	
Cystic Fibrosis Foundation		7506 E Independence Blvd #120			Bedford	TX	76022-6882	
Cystic Fibrosis Foundation					Charlotte	NC	28227	
Cystic Fibrosis Foundation		Northeast Texas Chapter	3102 Maple Ave, Ste 120		Dallas	TX	75201	
CZG Dynamics Associates		14 Penn Plaza, Suite 1712			New York	NY	10122	
D Magazine		750 North St. Paul Street	Suite 2100		Dallas	TX	75201	
D Magazine		4311 Oak Lawn Ave Ste 100			Dallas	TX	75219-9701	
D&S Enterprises		10703 Sweetwater Drive			Frisco	TX	75035	
D. Alan Bowlby		PO Box 1067			Addison	TX	75001	

004107

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
D. Allan Bowiby & Associates, Inc		PO BOX 1067			Addison	TX	75001	
D.F. King & Co, Inc.		48 Wall Street			New York	NY	10005	
D.H. Hill Securities, LLLP		1543 Green Oak Place			Kingwood	TX	77339	
DAETSCH, MOLLY		Address on File	Ste 100					
DALE BEHM		Address on File						
Date Frey		Address on File						
Dallas A&M Club	Attn Mike Henderson	4303 Glenwick			Dallas	TX	75205	
Dallas After/School Network		3900 Willow St Ste 110			Dallas	TX	75226-1247	
Dallas Area Habitat for Humanity		House Party	PO Box 700924		Dallas	TX	75370	
Dallas Art & Design		3617 Fairmount St Ste 101			Dallas	TX	75219	
Dallas Bar Association		2101 Ross Ave			Dallas	TX	75201	
Dallas Basketball Ltd.		1333 N Stemmons Fwy			Dallas	TX	75207-3722	
Dallas Business Journal		PO Box 840190	Ste 105		Dallas	TX	75284-0190	
Dallas CASA		2757 Swiss Avenue			Dallas	TX	75204	
Dallas Challenge		7777 Forest Lane	Suite C-410		Dallas	TX	75203	
DALLAS CHAPTER TEI	ATTN Sharon Langlotz	Cash America International, Inc	1600 West 7th St		Ft. Worth	TX	76102-6803	
DALLAS CHAPTER TEI		901 MAIN ST	69TH FLR, BANK AMERICA PLAZA		Dallas	TX	75202	
DALLAS CHAPTER TEI		PO BOX 961101	BNSF RAILWAY COMPANY, SCOTT RYNEARSON		Fort Worth	TX	76161-1101	
Dallas Childrens Advocacy Center	Attn Stepheni Jordan	5351 Samuell Blvd			Dallas	TX	75228	
Dallas Childrens Theater	Attn Michael Gonzales	5938 Skillman			Dallas	TX	75231	
Dallas Committee on Foreign Relations		4925 Greenville Avenue			Dallas	TX	75206-4092	
Dallas Contemporary, MTV	Attn Hannah Fagadau	161 Glass Street	Suite 1025		Dallas	TX	75207	
Dallas County	Attn Elizabeth Weller	2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Dallas County	Elizabeth Weller	c/o Laurie A. Spindler	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000	Dallas	TX	75207	
Dallas County Republican Party		10100 N Central Expwy	Ste 175		Dallas	TX	75231	
Dallas County Tax Assessor	John R. Ames, CTA	1201 Elm Street	Suite 2600		Dallas	TX	75270	
Dallas County Tax Assessor	John R. Ames, CTA	PO Box 139066			Dallas	TX	75313-9066	
Dallas County Tax Office		PO Box 139033			Dallas	TX	75313-9033	
Dallas Courier Service, Inc.		PO Box 833583			Richardson	TX	75083	
DALLAS DUCKS UNLIMITED		400 TURTLE CREEK CENTER BLVD	3811 TURTLE CREEK	SCOTT WEBER	Dallas	TX	75219	
Dallas Employment Services		6125 Luther Ln # 299			Dallas	TX	75225-6202	
Dallas Gigs LLC	Attn Eddie Parker	PO Box 225423			Dallas	TX	75222	
Dallas Glass & Door Company, Ltd		PO Box 440			Fate	TX	75132	
Dallas Hispanic Firefighters Association		703 McKinney Ave	Suite 201		Dallas	TX	75202	
DALLAS HR		4100 SPRING VALLEY RD	STE 300		Dallas	TX	75244	
Dallas Jewish Community Foundation		One Hillcrest Green	12700 Hillcrest Rd, Suite 201		Dallas	TX	75230	

004108

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Dallas Junior Chamber of Commerce Found.		PO Box 130721			Dallas	TX	75313	
Dallas Kid to Do	Attn Megan Harrison	650 South R.L. Thornton Freeway			Dallas	TX	75203-3013	
Dallas Landscape Lighting		2026 Midlake Rd			Dallas	TX	75205	
Dallas Museum of Art		1717 North Harwood			Dallas	TX	75201	
DALLAS PETROLEUM CLUB		2200 ROSS AVE	LB 171		Dallas	TX	75201-2799	
DALLAS POLICE AND FIRE		THE VICTOR LAZADA MEMORIAL FUND	7474 FERGUSON RD		Dallas	TX	75228	
Dallas Police Department	Alarm Permit Compliance Unit	PO Box 840186			Dallas	TX	75284-0186	
Dallas Producers Club	c/o J. Patrick Collins	PMB 414	3824 Cedar Springs Rd		Dallas	TX	75219-4136	
Dallas Regional Chamber	Attn Finance	500 North Akard St, Suite 2600			Dallas	TX	75201	
Dallas Security Systems, Inc.		PO Box 550939			Dallas	TX	75355-0939	
Dallas Stars		2601 Avenue of the Stars			Frisco	TX	75034-9089	
Dallas Summer Musicals, Inc.		909 1st Ave			Dallas	TX	75210-1042	
Dallas T-Shirt Company		2626 Manana Dr			Dallas	TX	75220	
Dallas Urban Debate Alliance		PO Box 670564	Suite A		Dallas	TX	75367	
Dallas Wildcat Committee	Attn Barbara Johnston	2200 Ross Ave, Suite 4150E			Dallas	TX	75201	
Dallas Womens Foundation		8150 North Central Expwy Suite #110			Dallas	TX	75206	
Dallas Youth Council		PO Box 793604			Dallas	TX	75379	
Dallas Zoological Society		650 South RL Thornton Fwy			Dallas	TX	75203-3013	
Damage Recovery		PO Box 801770			Kansas City	MO	64180	
DAMC	ATTN CARL BAGGETT	NORCOM CAPITAL	15770 N DALLAS PKWY		Dallas	TX	75248	
DAMERIS, THEODORE		Address on File						
DAMEWARE DEVELOPMENT		241 MORNINGSIDE DR			Mandeville	LA	70448	
Dan Drabinski		Address on File						
Dan Subach		Address on File						
Dan Winikka	c/o Loewinsohn Flegle Deary Simon	12377 Merit Drive			Dallas	TX	75251	
Dana Driensky		Address on File						
DANAHY, BRIAN J.		Address on File						
DANDAR, CHRISTINA		Address on File						
Daniel J Edelman, Inc		JP Morgan Chase Bank, NA	21992 Network Place		Chicago	IL	60673	
Daniel Kaplan Associates LLC		55 Madison Ave, 4th Flr			Morristown	NJ	07960	
Daniel Moisis		Address on File						
Daniel N. Shaviro		Address on File						
Daniel P Winikka	Loewinsohn Flegle Deary Simon LLP	12377 Merit Drive, Suite 900			Dallas	TX	75251	
Daniel Ranson		Address on File						
Daniel Riedler		Address on File						
Daniel Sexton		Address on File						

004109

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Daniel Sharvit		Address on File						
Daniel Sheehan & Associates, PLLC	Daniel J Sheehan, Jr	8150 N. Central Expressway Suite 100			Dallas	TX	75206	
Daniela Garrett		Address on File						
Daniels & Erickson, PC		12221 Merit Dr.	Suite 760		Dallas	TX	75251	
Dansby White		Address on File						
Darby Dunn Communications		461 Manor Lane			Pelham	NY	10803	
Daria M Chavez		Address on File						
Daryls By Design		1801 N Griffin Street			Dallas	TX	75202	
DATAWARE SOFTWARE GROUP INC		445 PARK AVE	10TH FLR		New York	NY	10022	
Datamax		PO Box 20527			Saint Louis	MO	63139	
DataPlus Consulting Incorporated		750 North St Paul St. Suite 1225			Dallas	TX	75201	
DataPlus Consulting Incorporated		PO Box 190634			Dallas	TX	75219	
DataPlus Consulting, Incorporated		750 North St Paul	Suite 1225		Dallas	TX	75201	United Kingdom
Datapoint Management DAUGHERTY, PATRICK		210 Empire House	1 Empire Way		Wembley		HA9 0EW	
DAUM, KURT		Address on File						
Dave Barnett		Address on File						
DAVE WALLS		Address on File						
DAVID BLANKS		Address on File						
DAVID BLANKS		Address on File						
David Boguslawski		Address on File						
David C. Smith		Address on File						
DAVID CALLAHAN		Address on File						
David Childs Tax Assessor-Collector		PO Box 620088			Dallas	TX	75262-0088	
David Childs Tax Assessor-Collector		PO BOX 139066	DALLAS COUNTY TAX ASSESSOR-COLLECTOR		Dallas	TX	75313-9066	
David Culley		Address on File						
David Feldman Worldwide, Inc		PO Box 2392			New York	NY	10116-2392	
David Fraiberg		Address on File						
DAVID FULLERTON		Address on File						
David Geneson		Address on File						
David Hill		Address on File						
David Hu		Address on File						
David Huff Photography LLC		22022 N 119th Drive			Sun City	AZ	85373	
DAVID LANCELOT		Address on File						
DAVID LEE		Address on File						
DAVID LEHUQUET		Address on File						
David M. Cooper		Address on File						
DAVID MARTIN		Address on File						
David Ourlicht		Address on File						
DAVID POWERS		Address on File						

004110

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
DAVID R HOLBROOKE ROTH IRA		120 BULKLEY AVE APT 405 Address on File			Sausalito	CA	94965-2149	
DAVID SALYER		Address on File						
DAVID SMITH		Address on File						
David Spiegel		Address on File						
David Tomek PLLC		325 N St Paul Street	Suite 3300		Dallas	TX	75201	
David W. Langford, CSR, CRR, RDR	Official Court Reporter	101st Judicial District Court Address on File	George L. Allen Courts Building		Dallas	TX	75202-4631	
David Walls		Address on File						
David Weisbach		Address on File						
DAVIES WARD PHILLIPS & VINEBERG LLP		44TH FLR	1 FIRST CANADIAN PLACE		TORONTO	ON	M5X 1B1	CANADA
Davis Deadman	Jason P. Kathman	2701 Dallas Parkway, Suite 590			Plano	TX	75093	
Davis Deadman		Address on File						
DAVIS FORESTRY		PO BOX 24633			Little Rock	AR	72221	
Davis Polk & Wardwell	Attn Andrew Dean	450 Lexington Ave			New York	NY	10017	
Davis R. Deadman		Address on File						
Davis Wright Tremaine LLP		2600 Century Square 1501 Fourth Ave			Seattle	WA	98101-1688	
DAVIS, MARY M.		Address on File						
DAVIS, MARY MARTHA		Address on File						
Dawn O'Rourke		Address on File						
Day Pitney LLP		PO Box 416234			Boston	MA	02241-6234	CZECH REPUBLIC
DDC Financial Group s.r.o.		Bohusovicka 230-12	190 00 Prague		Praha 9			
DEADMAN, DAVIS		Address on File						
DealFlow Media, Inc		PO Box 122			Syosset	NY	11791	
Deana K. Adams	Official Court Reporter	600 Commerce, 630 C	6th Floor, East Tower		Dallas	TX	75202	
Deanne Engle		Address on File						
Debevoise & Plimpton		919 Third Ave			New York	NY	10022	
Debevoise & Plimpton LLC	M. Natasha Labovitz, Erica S. Weisgerber, Daniel E. Stroik	919 Third Avenue			New York	NY	10022	
Debevoise & Plimpton LLP	c/o Accounting Dept. 28th Floor	909 Third Ave			New York	NY	10022	
Debevoise and Plimpton LLP	Attn Christopher K. Tahbaz, Esq.	919 Third Avenue			New York	NY	10022	
Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue			New York	NY	10018	
Debt Domain		295 Madison Ave	Ste 24		New York	NY	10017-0000	
Debtomain (USA) Inc.		295 Madison Ave	Suite 924		New York	NY	10017	
DECHERT LLP		PO BOX 7247-6643			Philadelphia	PA	19170-6643	United Kingdom
Dechert UK		160 Queen Victoria Street			London	England	EC4V 4QQ	
DEDYO, STEPHEN J.		Address on File						
DeGolyer & MacNaughton		5001 Spring Valley Rd	Suite 800 east		Dallas	TX	75244	
Del Vecchio Reporting Services, LLC		117 Randi Drive			Madison	CT	06443	
DELAROSA, STEVEN		Address on File						



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
DELAWARE DIVISION OF CORPORATIONS		401 FEDERAL ST			Dover	DE	19901	
Delaware Secretary of State	Division of Corporations	401 Federal St, Suite 4	STE 4		Dover	DE	19901	
Delaware Secretary of State	DIVISION OF CORPORATIONS	PO BOX 11728			Newark	NJ	07101-4728	
Delaware Secretary of State	Division of Corporations	PO Box 5509			Binghamton	NY	13902-5509	
DELAWARE SECRETARY OF STATE # 51-6000279	Division of Corporations	PO Box 74072			Baltimore	MD	22174-4072	
DELAWARE SECRETARY OF STATE # 51-6000279		1209 Orange St			Wilmington	DE	19801	
DELGADO, MAURICIO	State of Delaware Division of Corp	Address on File	PO Box 5509		Binghamton	NY	13902-5509	
Dell Business Credit	Payment Processing Center	Dept. 50-0049055190 PO BOX 689020			Carol Stream	IL	60197-5275	
Dell Commercial Credit		Payment Processing Center	4307 Collection Center Dr.		Des Moines	IA	50368-9020	
Dell Financial Services					Chicago	IL	60693	
Dell Financial Services L.L.C.	DFS-Bankruptcy	PO Box 81577			Austin	TX	78708	
Dell Marketing LP	c/o Dell USA LP	PO Box 676021			Dallas	TX	75267-6021	
DELOITTE & TOUCHE	ATTN KILEY RODEN	10 WESTPORT RD			Wilton	CT	06897	
Deloitte Financial Advisory Services LLP		4022 Sells Drive			Hermitage	TN	37076	
Deloitte Financial Advisory Services LLP		2200 Ross Ave			Dallas	TX	75201	
Deloitte Financial Advisory Services LLP		PO Box 2062			Carol Stream	IL	60132-2062	
Deloitte Tax LLP		4022 Sells Drive			Hermitage	TN	37076	
Deloitte Tax LLP		PO BOX 2079			Carol Stream	IL	60132-2079	
Deloitte Tax LLP		PO Box 844736			Dallas	TX	75284-4736	
Delphi Legal Technologies		350 N. Saint Paul Suite 275			Dallas	TX	75201	
Delphi Legal Technologies		PO Box 133026			Dallas	TX	75313-3026	
Delta Dallas Staffing, LP		Tollway Plaza II	15950 N. Dallas Pkwy, Ste 500		Dallas	TX	75248	
Deluxe Business Forms		PO Box 742572			Cincinnati	OH	45274-2572	
Denison Glass & Mirror		4231 S State Highway 91			Denison	TX	75020-8115	
Dennis Sugino		Address on File						
DENNIS WINTER IRA		Address on File						
Denton County		PO Box 90223			Denton	TX	76202	
Denton County Tax Assessor		PO Box 90223			Denton	TX	76202	
Denton US LLP		Dept. 894579			Los Angeles	CA	90189-4579	
Dentons US LLP	Attn Lauren Macksoud, Esq. and Patrick Maxcy, Esq.	1221 Avenue of the Americas			New York	NY	10020	
Dentons US LLP	Casey Doherty	1221 McKinney Street, Suite 1900			Houston	TX	77010-2006	
Denver Daughtry		Address on File						
Department of Business Oversight		1515 K St #200			Sacramento	CA	95814	

004112



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Department of Corporations (CA)		Securities Regulations Div.	320 W 4th St, Ste 750		Los Angeles	CA	90013-1105	
Department of Finance, State of Idaho		Securities Bureau	800 Park Boulevard, Suite 200		Boise	ID	83712	
Department of State	Division of Corporations	99 Washington Ave.			Albany	NY	12231-0001	
DEPARTMENT OF TAX AND REVENUE	WV STATE TAX DEPT	PO BOX 2745	INTERNAL AUDITING DIVISION		Charleston	WV	25330-2745	
Department of Taxation and finance		Dept of Labor-Unemp Insurance Div	PO Box 15012		Albany	NY	12212	
DEPARTMENT OF THE TREASURY	INTERNAL REVENUE SERVICE	ACS SUPPORT	PO BOX 57		Bensalem	PA	19020-8514	
DEPARTMENT OF THE TREASURY	IRS	STOP 5107 NWSAT	4050 ALPHA RD		Farmers Branch	TX	75244-4201	
DEPARTMENT OF THE TREASURY		Internal Revenue Service			Cincinnati	OH	45999-0009	
Department of the Treasury		4050 Alpha Road	Suite 517, MC 8000NDAL		Dallas	TX	75201-7849	
Department of the Treasury - Internal Revenue Service		1100 Commerce St	M/S MC5027DAL		Dallas	TX	75242	
Department of the Treasury - Internal Revenue Service		P.O. Box 7346			Philadelphia	PA	19101-7346	
Dept. of Licensing & Regulatory Affairs	Corp. Securities & Comm Licensing Bureau	525 W. Allegan Street - Audit & Exam Div			Lansing	MI	48909	
DERRICK PITTS		Address on File						
Desai, Neil		Address on File						
Dessaint, Louis C.		Address on File						
DEWITT, AUDREY		Address on File						
DFPG Investments, Inc.		9017 S. Riverside Dr.	Ste 210		Sandy	UT	84070	
DFW Ice Cream		10198 Western Hills Dr.			Frisco	TX	75034	
DFW MULTIMEDIA INC		1330 RIVER BEND DR	SUITE 850		Dallas	TX	75247	
DFW Private Equity Forum	Attn Amy Thompson	2323 Victory Avenue	Suite 2000		Dallas	TX	75219	
DFW VIDEO		DFW Multimedia, Inc.	13300 River Bend Drive, Ste. 850		Dallas	TX	75247	
DGHS Holdings, LLC		5949 Sherry Lane	Suite 750		Dallas	TX	75225	
Dhamodharan Srinivasan		583 Jeremy Drive			Bourbonnais	IL	60606	
Dharmidharka, Kerry		Address on File						
DHL EXPRESS		PO BOX 4723			Houston	TX	77210-4723	
DHR INTERNATIONAL, INC		10 South Riverside Plaza	Suite 2220		Chicago	IL	60606	
Dice Holdings, Inc.		4939 COLLECTIONS CENTER DR.			Chicago	IL	60693	
DICE INC		DR.			Chicago	IL	60693	
Dickman Davenport, Inc.		3131 Turtle Creek Blvd	Suite 320		Dallas	TX	75219	
DIECKHAUS, SCOTT		Address on File						
DIECKHAUS, SCOTT		Address on File						
DIFC Global		11-12 St. James Square			London			United Kingdom
DIFFA/Dallas		2050 Stemmons Fwy	Mail Unit 262		Dallas	TX	75207	
Diffenderfer, Claude A.		Address on File						
Digital Copy LLC		500 N Akard St, Suite 250			Dallas	TX	75201	
Digital Legal LLC		1001 Jefferson Plaza	Suite 100		Wilmington	DE	19801	

004113

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Digital Marketing and Print Solutions		3305 Wiley Post			Carrollton	TX	75006	
Digital Mountain		5050 El Camino Real	Suite 205		Los Altos	CA	94022	
Digital Telefonos		PO Box 852184			Richardson	TX	75085-2184	
Digital Verdict, Inc.		750 N. St. Paul Street	Suite 1225		Dallas	TX	75201	
Digital Works		6606 LBJ Fwy	Suite 240		Dallas	TX	75240	
DiningIn LLC		50 Milk St Ste 110	Ste 400		Boston	MA	02109-5004	
DiningIn Out in Dallas		3030 Olive Street	PH 102		Dallas	TX	75219	
Dinoto Inc.		535 Dean Street			Brooklyn	NY	11217	
DiOrto, Matthew		Address on File						
Direct Corporate Resources, Inc.		Freedom Center 10203						
		Kotzebue Ste 114			San Antonio	TX	78217	
Director of Compliance		Jefferies LLC	520 Madison Avenue, 16th Floor		New York	NY	10022	
Directors Desk LLC	Re Prime Brokerage Services	Lockbox 50200	PO Box 8500		Philadelphia	PA	19178-0200	
DirectTV		208 South Akard Street			Dallas	TX	75202-0000	
Directv, LLC		PO Box 60036			Los Angeles	CA	90060-0036	
DISCOVERY BENEFITS		3216 13TH AVE S			Fargo	ND	58103	
DISCOVERY BENEFITS		PO BOX 869	COBRA DEPT		Fargo	ND	58107	
DISCOVERY BENEFITS		PO BOX 9528			Fargo	ND	58107-0869	
DISCOVERY BENEFITS		PO BOX 2079			Omaha	NE	68108-2079	
Discovery Benefits Inc		4321 20th Ave. S.			Fargo	ND	58103-0000	
Discovery Data		12 Christopher Way, Ste 202			Eatontown	NJ	07724	
Displays Unlimited, Inc.		626 106th Street			Arlington	TX	76011	
District Director	Attn Insolvency	Internal Revenue Service	31 Hopkins Plaza, Room 1150		Baltimore	MD	21201	
Diversus Investment Advisers (Asia) Ltd		410 Oxford Street			Bondi Junction	NSW	02022	AUSTRALIA
DIVYASH PATEL		Address on File						
Dixon Hughes Goodman LLP		4350 Congress Street	Suite 900		Charlotte	NC	28209	
Dixon Hughes Goodman LLP		PO Box 602828			Charlotte	NC	28260-2828	
DKW Law Group LLC		600 Grant St, 58th Flr			Pittsburgh	PA	15219	
DLA Piper LLP (US)	Marc D. Katz, Esq.	DLA Piper LLP (US)	1900 N Pearl St, Suite 2200		Dallas	TX	75201	
DLA Piper LLP (US)		1900 N Pearl St, Suite 2200			Dallas	TX	75201	
DLA Piper LLP US		6225 Smith Avenue			Baltimore	MD	21209	
DOAR Communications, Inc.		170 Earle Ave			Lynbrook	NY	11563	
Document Technologies, Inc.		PO Box 933435			Atlanta	GA	31193-3435	
Don Bryant		Address on File						
Don Drive Interiors		8408 Chancellor Row			Dallas	TX	75247	
Don Netzer Photography		2510 Southwell Rd.	#107		Dallas	TX	75229	
Don Netzer Photography		2510 Southwest Rd. # 107			Dallas	TX	75229	
DONALD OSBORNE		Address on File						
Donald Salvino		Address on File						
DONALDSON, MICHEAL		Address on File						
Donaldson, Steven		Address on File						
DONDERO, JAMES		Address on File						
Donggeng Gong		Address on File						
Donnelley Financial Solutions		PO Box 842282			Boston	MA	02284-2282	

004114

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Donnelley Financial, LLC		35 W Wacker Drive			Chicago	IL	60601	
Donnelley Financial, LLC		20 Commerce Way, Ste 800	Lockbox #842282		Woburn	MA	01801-1057	
Donnelley Financial, LLC		PO Box 842282			Boston	MA	02284-2282	
Donnelley Financial, LLC		PO Box 531832			Atlanta	GA	30353-1832	
DORENBaum, ANDREI		Address on File						
DOUG MEYER		Address on File						
DOUGHERTY, RAYMOND		Address on File						
DOUGHERTY, RAYMOND		Address on File						
Douglas Wade Carvell		Address on File						
Dow Jones & Company, Inc.	ATTN PAUL CHAMPIGNY	8251 PRESIDENTS DR	BARRON/CUSTOMER SERVICE		Orlando	FL	32809	
Dow Jones & Company, Inc.		84 Second Ave.			Chicopee	MA	01020	
Dow Jones & Company, Inc.		Subscriptions Dept.	200 Burnett Rd		Chicopee	MA	01020	
Dow Jones & Company, Inc.		1211 Avenue of the Americas			New York	NY	10036	
Dow Jones & Company, Inc.		BOX 4137			New York	NY	10261-4137	
Dow Jones & Company, Inc.		WALL ST JRNL OR						
Dow Jones Reuters Business Interactive		BARRONS	PO Box 4137		New York	NY	10261-4137	
DOWNEN, MARTIN		PO Box 7247-0237			Philadelphia	PA	19170-0237	
Dozal, Ana		Address on File						
Dozal, Ana		Address on File						
DRABINSKI, DANIEL J.		Address on File						
Dravis, Samantha		Address on File						
Drew Dedelow		Address on File						
Drew Thomas		Address on File						
DREW, RICHARD		Address on File						
Drilling Info, Inc.		PO Box 679093			Dallas	TX	75267-9093	
DrillingInfo		PO Box 5545			Austin	TX	78763	
Drinker Biddle & Reath LLP		One Logan Square, Ste 2000			Philadelphia	PA	19103-6996	
DRINNON, KASEY		Address on File						
DRONOV, ALEXEY		Address on File						
Dropoff, Inc.		Dept 3696	PO Box 123696		Dallas	TX	75312-3696	
DSFOP		PO Box 36023			Dallas	TX	75235-1023	
DSHS		Mail Code 2003	PO Box 149347		Austin	TX	78714-9347	
DST Asset Manager Solutions		330 W. 9th	Ste 219230		Kansas City	MO	64105	
DST RESEARCH ANALYTICS & CONSULTING, LLC		DST TECHNOLOGIES, INC	5523 Collections Center Drive		Chicago	IL	60693	
DST Systems, Inc.		2454 Collections Center Dr			Chicago	IL	60693-0024	
DST Technologies, Inc.		2454 Collections Center Drive			Chicago	IL	60693-0024	
DTCC ITP LLC		PO Box 27590			New York	NY	10087-7590	
Duane Morris LLP	ATTN Payment Processing	30 South 17th St			Philadelphia	PA	19103-4196	
DUBOSE FUNERAL HOME		703 SOUTH ROCKWALL ST			Terrell	TX	75160	
Ducera Partners LLC		499 Park Ave, 16th Floor			New York	NY	10022	
Duff & Phelps, LLC	c/o David Landman	Benesch, Friedlander, Coplan & Aronoff	200 Public Square, Suite 2300		Cleveland	OH	44114-2378	
Duff & Phelps, LLC		2397 Paysphere Circle			Chicago	IL	60674	

004115

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Duff & Phelps, LLC		DUFF & PHELPS, LLC	12595 Collection Center Drive		Chicago	IL	60693	
Duff & Phelps, LLP	Benesch	LouAnne Molinaro	222 Delaware Avenue, Suite 801		Wilmington	DE	19801-1611	
Duff & Phelps, LLP	David A. Landman	200 Public Square, Ste. 2300			Cleveland	OH	44114	
Duff & Phelps, LLP	Richard G. Hardy, Esq.	1660 West 2nd Street, Suite 1100			Cleveland	OH	44113	
Duffy, James B.		Address on File						
Duffy, William		Address on File						
Dun & Bradstreet	Dun & Bradstreet Inc.	PO Box 75434			Chicago	IL	60675-5434	
Dun & Bradstreet	The Rowland Law Firm	PO Box 3108			Crofton	MD	21114	
Dun & Bradstreet	The Rowland Law Firm	Ronald L. Rowland, Authorized Agent	2453 Vineyard Lane		Crofton	MD	21114	
DUNN, CHRISTOPHER		Address on File						
Dunn, John		Address on File						
DUO Security		170 West Tasman Dr			San Jose	CA	95134	
Dustin Schneider		Address on File						
DUSTIN WORLEY		Address on File						
DuWest Realty		3319 Darmouth Ave.			Dallas	TX	75205	
DuWest Realty		4403 N Central Expy			Dallas	TX	75205	
DuWest Realty		4514 Cole Avenue	Suite 1100		Dallas	TX	75205	
Dykema Gossett, PLLC		400 Renaissance Center			Detroit	MI	48243-1668	
Dynamex		Greeley Square Station	PO Box 20284		New York	NY	10001	
Dynamex		PO BOX 20284 GREELEY SQ STATION			New York	NY	10001	
Dynamex		PO Box 842304			Dallas	TX	75284-2304	
E Gallery Studios		1330 Motor Circle			Dallas	TX	75207	
eA Data Automation Services, LLC		5000 Olde Towne Parkway	Suite 100		Marietta	GA	30068	
EA Electric		2941 Trade Center Drive	#200		Carrollton	TX	75007-4647	
EAB HealthWorks LLC		400 West End Ave	Suite 8A		New York	NY	10024	
Eagle Software		124 Indiana Ave			Salina	KS	67401	
Earl F. Hale, Jr.		Address on File						
EarthColor Houston Inc.		PO Box 840578			Dallas	TX	75284-0578	
Earthstream Global Inc.		800 Town & Country Blvd	Suite 300		Houston	TX	77024	
EASLEY & MARQUIS, PLLC		5000 LEGACY DR	STE 400		Plano	TX	75024	
Eastern Point Trust Company	Attn Accounts Receivable	PO Box 3322			Warrenton	VA	20188-3322	
Eastern Point Trust Company, Inc.	George S. Robinson, IV	4685 Millennium Drive			Belcamp	MD	21017	
Eastland CLO Ltd.		190 Elgin Avenue	George Town		Grand Cayman			Cayman Islands
Eastland CLO, Ltd.	c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman		KY 1-9005	Cayman Islands
Eastland CLO, Ltd.	Eastland CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town, Grand Cayman		KY1-1108	Cayman Islands

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Eastland CLO, Ltd. and Investors Bank and Trust Company	Eastland CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1234	Queensgate House	The Directors-Eastland CLO, Ltd.	George Town, Grand Cayman		KY11-1108	Cayman Islands
Eastland CLO, Ltd. and Investors Bank and Trust Company	Investors Bank and Trust Company Attn CDO Services Group Ref Eastland CLO	200 Clarendon St 3637 Temecula Creek Trail	Mail Code EUC 108		Boston McKinney	MA TX	02116 75070	
EASY 2 HIRE LLC		5550 S. Ft. Apache Rd 6850 Manhattan Blvd.	Suite 101 Suite 300		Las Vegas Fort Worth	NV TX	89148-7667 76120	
Eckelkamp Retirement Planning		PO Box 110849 Address on File			Carrollton	TX	75011-0849	
Eclipse Entertainment, LLC		701 Central Plaza	18 Harbour Road	Wan Chai	HONG KONG			HONG KONG
EcoSystems Environmental, Inc.		18th Flr Ferrum Tower 66 Address on File			Seoul		100210	South Korea
Ed Trampolsky		3900 Essex 50 Washington St 9th Flr	Suite 900		Houston Norwalk	TX CT	77027 06854	
Edelman Pub Relations Worldwide (HK) Ltd		11200 Rockville Pike, Ste. 310 88747 Expedite Way			Rockville Chicago	MD IL	20852 60695-1700	
Edelman Pub Relations Worldwide Korea Ltd		5950 Berkshire Ln 807 West Lynn Ste 218	Suite 200		Dallas Austin	TX TX	75225 78703	
Edgar, Hugh B.		Address on File						
EDGAR filings, Ltd		5100 Wooddale Ave 2711 N. Haskell Ave.	Suite 2070, LB 18		Edina Dallas	MN TX	55424 75201	
Edgar Online		Address on File						
Edgar Online		Address on File						
Edge Realty Partners		Address on File						
Edgewater Financial LLC	c/o Michael D Breen	Address on File						
Edje Fox		1 Throndal Circle	8th Floor		Darien New York Chicago	CT NY IL	06820 10018 60693	
Edina Country Club		Address on File						
Education is Freedom		Address on File						
Edward A Barber		Address on File						
Edward Lin		Address on File						
Edward McRedmond		Address on File						
Effort Group, LLC		Address on File						
efinancialcareers		Address on File						
efinancialcareers		Address on File						
Eftekhari, Cyrus		Address on File						
EGON ZEHNDER INTERNATIONAL		350 PARK AVE			New York	NY	10022	
Egret Management, Inc.		10515 Egret Lane			Dallas	TX	75230	
EIDSON, ALLISON		Address on File						
EIMEN, CATHERINE		Address on File						
EIMER STAHL KLEVORN & SOLBERG LLP		224 SOUTH MICHIGAN AVE 225 Park Avenue South, 7th Floor	STE 1100		Chicago	IL	60604	
EIMN, LLC		Address on File						
EL CONQUISTADOR GOLF RESORT CASINO	Attn Accounting Department	1000 EL CONQUISTADOR AVE			New York	NY	10003	
Elatia Abate		Address on File			Fajardo	PR	00738	
Eleanor Munson, PhD		Address on File						
Electra Cruises, Inc.		3439 Via Oporto			Newport Beach	CA	92663	
Elektronik Devices Company		1712 Poinciana Ln			Plano	TX	75075	

004117

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ELGIN CAPITAL		130 JERMYN ST			London		SW1Y 4UR	United Kingdom
Eliason, Hayley		Address on File						
Eliot Weisberg	The Investors Center, Inc.	70 East Main St, POB 1447			Avon	CT	06001	
Elisa Dreier Reporting		950 Third Avenue 5th Floor			New York	NY	10022	
Elisa Dreier Reporting Corp.		780 Third Ave, 7th Flr			New York	NY	10017	
ELISABETH LEIDERMAN		Address on File						
Elite Casino Events		P.O. Box 6755			Fort Worth	TX	76115	
Elite Copy Solutions, Inc.		403 N Stemmons Freeway Ste 100			Dallas	TX	75207	
Elite Deposition Technologies		400 N. St Paul St, 13th Floor, Ste 1340			Dallas	TX	75201	
Elite Document Technology-Dallas		400 N. Saint Paul St.	Suite 1300		Dallas	TX	75201	
Elite Document Technology-Dallas		403 North Stemmons Freeway Suite 100			Dallas	TX	75207	
Elite Scheduling Services, LLC		8442 S. Union Lake Dr. SE			Alexandria	MN	56308	
Elkins McSherry		225 Liberty St	24th floor		New York	NY	10281-0000	
ELKINS/MCSHERRY, LLC	ATTN FINANCE	2 WFC	225 LIBERTY ST, 24TH FLR		New York	NY	10281	
ELKINS/MCSHERRY, LLC		1290 Avenue of the Americas	22nd Floor		New York	NY	10104	
Ellen W. Slights, Esq.	United States Attorney s Office	District of Delaware	1007 N. Orange Street, Suite 700		Wilmington	DE	19801	
Ellington, Scott	c/o Frances A Smith	Ross & Smith PC	Plaza of the Americas 1610		Dallas	TX	75201	
Ellington, Scott		Address on File						
EMC Integrated Systems Group		121 Central Ave	Suite 200		Grapevine	TX	76051	
Emerald City Management		4688 Reunion Dr.			Plano	TX	75024	
Emerging Portfolio Fund Research, Inc.		PO Box 417184			Boston	MA	02241-7184	
Emerson Network Power		PO BOX 70474			Chicago	IL	60673-0001	
Emert, Craig		Address on File						
EMI Environmental Group		14850 Montfort Dr Ste 205			Dallas	TX	75254	
Emma Cruttenden		Address on File						
EMMANUEL, ARTHUR		Address on File						
Emmet, Marvin & Martin, LLP		120 Broadway	32nd Floor		New York	NY	10271	
Employer Compliance Service		611 Pennsylvania Ave SE #4000			Washington	DC	20003-4303	
Employment Security Division		500 East Third Street			Carson City	NV	89713-0030	
EMSI-Examination Mgmt Services, Inc		Health Service Division	PO Box 910465		Dallas	TX	75391-0465	
ENA Capital, LLC	Attn Steve Ellman and Bob Kauffman	Ellman Management Group, Inc.	4040 E. Camelback Road, Suite 250		Phoenix	AZ	85018	
Encore Discovery Solutions		Dept 2651	PO Box 122651		Dallas	TX	75312-2651	
Encore Live, LLC		600 E Exchange Ave			Fort Worth	TX	76164-8246	
Encore Productions		2012 Greenbriar Lane			Plano	TX	75074	

004118

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
EnerCom, Inc.		800 18th Street	Suite 200		Denver	CO	80202	
Energy Search Associates, LLC		7709 San Jacinto Place	Ste 206		Plano	TX	75024	
EnergyNet Services, Inc.		7201 W. Interstate 40	Suite 319		Amarillo	TX	79106	
ENGSTROM, DONNA		Address on File						
EnMark Services, Inc.		1700 Pacific Avenue	Suite 2660		Dallas	TX	75201	
ENOCH, KEVIN		Address on File						
Entwistle & Cappucci LLP		280 Park Ave	26th Floor West		New York	NY	10017	
Envestmet Tamarac		701 5th Ave, Ste 1400			Seattle	WA	98104	
Envoy Data Corporation		1310 W. Boxwood Ave			Gilbert	AZ	85233	
EPFR Global		PO Box 417184			Boston	MA	02241-7184	
Epiq eDiscovery Solutions		Dept 2651	PO Box 122651		Dallas	TX	75312-2651	
Episcopal School of Dallas	Karla Wigley	ESD Development Office	4100 Merrell Rd.		Dallas	TX	75229	
Episcopal School of Dallas		4100 Merrell Rd			Dallas	TX	75229	
Epocal		2060 Waikley Rd.			Ottawa	ON	K1G 3P5	CANADA
Equest		PO Box 2109			Wylie	TX	75098	
Equest		PO Box 171779			Dallas	TX	75217	
Equity Search Partners		200 Crescent Court, Ste 1300			Dallas	TX	75201	
Equivalent Data		4809 Westway Park Blvd.	Payment Center		Houston	TX	77041	
eRevival LLC		141 Lanza Ave	Bldg 5		Garfield	NJ	07026	
Eric Girard		Address on File						
ERIC KEPHART		Address on File						
ERIC MARK		Address on File						
Eric Pearson		Address on File						
Eric Reynolds		Address on File						
Eric Thayer		Address on File						
Erick Rawlings		Address on File						
Erin Sheehan		Address on File						
Ernst & Young		200 Plaza Drive			Secaucus	NJ	07094	
ERS		101 S Coit Rd Bldg 36, Ste 297			Richardson	TX	75080	
Erskine Chambers - Andrew Blake		33 Chancery Lane			London		WC2A 1EN	United Kingdom
Erskine Chambers - Michael Todd		33 Chancery Lane			London		WC2A 1EN	United Kingdom
Escudero, Gaston		Address on File						
ESD	ATTN SARA CAMPBELL	EPISCOPAL SCHOOL OF DALLAS	4100 MERRELL RD		Dallas	TX	75229	
Esquire Deposition Services, LLC		PO Box 827829			Philadelphia	PA	19182-7829	
Esquire Deposition Solutions, LLC		PO Box 846099			Dallas	TX	75284	
Esquire Litigation Solutions, LLC		PO Box 785751			Philadelphia	PA	19178-5756	
Estevez, Jaime		Address on File						
Estudio ROVIRA		Address on File						
ETCI		1850 North Greenville Ave #158			Richardson	TX	75081	
ETrade Financial	Attn AR/Mutual Funds	PO Box 3512			Arlington	VA	22203	

004119



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
EUROMONEY		PO Box 4009			Chesterfield	MO	63006-4009	
INSTITUTIONAL INVESTOR		1826 Hollars Place			Middleburg	FL	32068	
EuroUSA Shipping Inc.		4643 S. Ulster, Suite 800			Denver	CO	80237	
Evans & McFarland, LLC		Address on File						
Evans, Christian								
EventWork Photography, LLC		1712 Midcrest Dr			Plano	TX	75075	
Evercore Restructuring LLC		55 East 52 St			New York	NY	10055	
eVestment		5000 Ole Towne Parkway	Suite 100		Marietta	GA	30068	
Evosque Data Center		250 Vesey Street 15th Floor			New York	NY	10281-0000	
EWIRE Inc		One Lincoln Centre	Suite 1060		Dallas	TX	75240	
EWING, LEAH		Address on File						
Exagere LLC		227 Dauphine			New Orleans	LA	70112	
Exclaimer Ltd.		445 Park Avenue	9th Floor		New York	NY	10022	
EXECUTIVE BEVERAGE								
SERVICE		PO BOX 850783			Richardson	TX	75081	
EXECUTIVE BEVERAGE								
SERVICE		5032 DICKENS LN			CARROLLTON	TX	75010-4915	
Executive Charge, Inc.		1440 39th St			Brooklyn	NY	11218	
Executive Liquidation		100 Redneck Avenue			Moonachie	NJ	07074	United Kingdom
Executive Office Group Limited								
Executive Scheduling Associates, Inc.		23 Berkeley Square			London		W1J 6HE	
Experience, Inc		215 Lake Blvd. Ste 367			Redding	CA	96003	
Expertis Finance US, LLC		2 Faneuil Hall Marketplace	3 rd Floor		Boston	MA	02109	
EXPERT PAY		PO Box 905378			Charlotte	NC	28290-5378	
Exterior Consulting Innovations, Inc.		PO BOX 659791			San Antonio	TX	78265-9791	
F5		1406 S Clark Rd			Duncanville	TX	75137-2811	
Fabriclean, Inc.		801 5th Ave			Seattle	WA	98104-0000	
Factiva		11-39 50th Ave			Long Island City	NY	11101	
Factiva		PO BOX 30994			New York	NY	10261	
Factory Builder Stores		DJRBI, LLC	PO Box 7247-0237		Philadelphia	PA	19170-0237	
FACTSET RESEARCH SYSTEMS, INC.		512 E Dallas Rd	Ste 500		Grapevine	TX	76051	
FACTSET RESEARCH SYSTEMS, INC.	Attn Finance	301 Merritt 7, 3rd Floor			Norwalk	CT	06851	
Fafinski Mark & Johnson, P.A.		PO BOX 414756			Boston	MA	02241-4756	
Fair Harbor Capital, LLC	As Assignee of Action Shred of Texas	775 Prairie Center Drive, Suite 400			Eden Prairie	MN	55344	
Fair Harbor Capital, LLC	As Assignee of CVE Technologies Group Inc.	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	As Assignee of Daniel Sheehan & Associates, PLLC	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	As Assignee of Daniel Sheehan & Associates, PLLC	Ansonia Finance Station	PO Box 237037		New York	NY	10023	



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Fair Harbor Capital, LLC	As Assignee of Vengroff Williams Inc as Authorized Agent of American Arbitration Association	Ansonia Finance Station	PO Box 237037		New York	NY	10023	
Fair Harbor Capital, LLC	Frederick Glass	130 West 57th Street, 5th Floor			New York	NY	10019	
Fair Market Life Settlements Corporation		435 Ford Rd	Suite 120		St. Louis Park	MN	55426	
FAIRMONT DALLAS		1717 N AKARD ST	COLLIZ BAKER, GROUP BILLING COORDINATOR		Dallas	TX	75201	
Faith Petersen		Address on File						
Falcon E&P Opportunities GP, LLC	c/o PetroCap LLC	Marc Manzo	2602 McKinney Avenue	Suite 400	Dallas	TX	75204	
Family Compass		4210 Junius Street			Dallas	TX	75246	
Family Office Association		500 West Putnam Ave.	Suite 400		Greenwich	CT	06830	
Fanning & Associates		PO Box 37			Denton	TX	76202	
Fanning & Associates		226 Sanders Rd			Denton	TX	76210	
FARIA, RICHARD		Address on File						
Farouk Z Lalji		Address on File						
FASKEN MARTINEAU		STE 4200 TORONTO	BOX 20 TORONTO-		TORONTO	ON	M5K 1N6	CANADA
DUMOULIN		DOMINION BANK TOWER	DOMINION CENTRE					
FASTFRAME		3001 Knox Street	#105		Dallas	TX	75205	
FASTFRAME		11107 Sesame Street			Dallas	TX	75238	
Fat Ox		7715 E Montebello Avenue			Scottsdale	AZ	85250	
Faucades, Inc.		8888 Governors Row			Dallas	TX	75247	
Feast of Sain Arnold		8 Fourth Street			Colorado Springs	CO	80906	
Federal Insurance Company	Federal Insurance Company	202A Halls Mill Road - 2E			Whitehouse			
Federal Insurance Company	c/o Chubb	202A Halls Mill Road - 2E			Station	NJ	08889	
c/o Chubb		4103 COLLECTION CENTER			Whitehouse	NJ	08889	
FedEx		DR			Chicago	IL	60693	
FedEx		Dept CH PO Box 10306			Palatine	IL	60055-0306	
FedEx		PO Box 94515			Palatine1	IL	60094-4515	
FedEx		PO Box 660481			Dallas	TX	75266-0481	
FEDORYSHYN, ERIC		Address on File						
FEHLIG, STACEY		Address on File						
Felhaber Larson Fenlon & Vogt		220 Southy 6th Street	Ste 2200		Minneapolis	MN	55402-4504	United Kingdom
Felicity Toube QC		3-4 South Square	Grays Inn		London		WC1R 5HP	
Ferguson, Misty		Address on File						
FERRELL, JOHN		Address on File						
Fetzer Architectural Woodwork		6223 West Double Eagle Circle			West Valley City	UT	84118	
Fidelity Information Services		PO Box 911653			Dallas	TX	75391-1653	
Fidelity Information Services Inc		PO Box 18012			Ashburn	VA	20146	

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Fidelity Information Services Inc		Payment Processing Center	PO Box 4535		Carol Stream	IL	60197-4535	
Fidelity Investments Institutional		Operations Company, Inc.	PO Box 73307		Chicago	IL	60673-7307	
Fidelity National Information Services		Payment Processing Center	PO Box 18012		Ashburn	VA	20146	
FIGARI & DAVENPORT LLP		901 MAIN ST	3400 BANK OF AMERICA PLAZA		Dallas	TX	75202-3796	
FINANCIAL ACCOUNTING STANDARDS BOARD		PO BOX 630420			Baltimore	MD	21263-0420	
FINANCIAL AGENT		FEDERAL TAX DEPOSIT PROCESSING	PO BOX 970030		Saint Louis	MO	63197	
Financial Data Services, Inc.	Cash Management	4800 Deer Lake East Dr, 2nd Flr			Jackson	FL	32246-6484	
Financial Fineprint, Inc		1619 3rd Ave Apt 7K			New York	NY	10128-3036	
FINANCIAL GRAPHIC SERVICE, INC.		2910 S 18th AVE			Broadview	IL	60155-4727	
Financial Graphic Services		PO Box 85090			Chicago	IL	60680-0851	
Financial Industry Regulatory Authority		15200 Omega Drive, Suite 210			Rockville	MD	20850	
Financial Investment News		41 Union Square West	Suite 1021		New York	NY	10003	
Financial Investment News		267 Fifth Avenue	Suite 1010		New York	NY	10016	
Financial Media Group, LLC		9635 Maroon Circle	Ste 150		Englewood	CO	80112	
Financial Planning Association		1290 N Broadway # 1625			Denver	CO	80203-2122	
Financial Planning Association of Iowa		914 NE 53rd Court			Ankeny	IA	50021	
Financial Research Associates	Attn Erin Ramsey	18705 NE Cedar Drive			Battle Ground	WA	98604	
Financial Research Associates, LLC	ATTN Teri Lewis	18705 NE Cedar Drive			Battle Ground	WA	98604	
Financial Research Associates, LLC	Attn Teri Lewis	18705 NE Cedar Drive			Battle Ground	WA	98604	
Financial Risk Management		200 Washington Street	Suite 201		Santa Cruz	CA	95060	
Financial Services Institute		888 Seventh Ave			New York	NY	10019	
Financial Services Institute		607 14th St, NW	Suite 750		Washington	DC	20005	
Financial Times		PO Box 116730			Atlanta	GA	30368-6730	
Financial Tracking		PO Box 1627			Newburgh	NY	12551-9976	
Financial Tracking Technologies LLC		1111 East Putnam Ave	Ste 304		Riverside	CT	06878-0000	
Financial Tracking Technologies LLC		2 Soundview Dr, Ste 100			Greenwich	CT	06830	
Financial Tracking Technologies LLC		1111 E Putnam Ave.	Suite 304		Riverside	CT	06878	
Financial West Group	Attn Nicole White	4510 E. Thousand Oaks Blvd.			Westlake Village	CA	91362	
Fink, Jason		Address on File						
FINRA		1735 K Street, NW			Washington	DC	20006	
Fire Works Media Productions		2440 Pebblebrook Ct.			Grand Prairie	TX	75050	
First Allied Securities	Attn Commission Accounting	655 W. Broadway, 11th Flr			San Diego	CA	92101	

004122

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
First American Title Insurance Company		8311 W. Sunset Road 14000 Quail Springs Pkwy, Ste 200	Suite 100		Las Vegas	NV	89113	
First Financial Network, Inc.					Oklahoma City	OK	73134	
First Foundation Advisers		18101 Von Karman Avenue	Suite 750		Irvine	CA	92612	
First Foundation Inc.		18101 Van Karman Avenue	Ste 700		Irvine	CA	92612	
First Page Management LLC dba StatusLabs		151 South 1st	Ste 100		Austin	TX	78704-0000	
First Presbyterian Church		One West Putnam Ave			Greenwich	CT	06830	
First Southwest		325 North St. Paul St	Suite 800		Dallas	TX	75201	
First Trust Highland Floating Rate Fund		330 Bay St Ste 1300			Toronto	ON	M5H2S8	CANADA
FIS Brokerage & Securities Services LLC		62446 Collections Center Drive			Chicago	IL	60693-0624	
FIS Investment Systems LLC		601 Riverside Ave			Jacksonville	FL	32204	
Fischer Porter & Thomas, PC		440 Sylvan Avenue, Suite 130			Englewood Cliffs	NJ	07632-2700	
FISH & RICHARDSON P.C.		PO BOX 3295			Boston	MA	02110	
FITCH, STEPHANIE		Address on File						
FITEH ZEGEYE		Address on File						
FITZSIMMONS, BRIAN		Address on File						
Five Blocks, Inc.		5967 West 3rd Street	Suite 307		Los Angeles	CA	90036	
FJF INTERNATIONAL		858 TOWER VIEW CIRCLE			New Hope	PA	18938	
Flagship Cruises & Events		PO Box 120751			San Diego	CA	92112	
Flaherty, Sensabaught, & Bonasso, PLLC		200 Capital St	PO Box 3843		Charleston	WV	25338-3843	
Fleming Zulack Williamson Zauderer LLP		One Liberty Plaza	35th Floor		New York	NY	10006-1404	
Flexential		11900 East Cornell Avenue	Building B, 3rd Floor		Aurora	CO	80014-0000	
Flexential Colorado Corp.		8809 Lenox Point Drive	Suite G		Charlotte	NC	28273	
Flexential Colorado Corp.		PO Box 732368			Dallas	TX	75373-2368	
Flink, Robert		Address on File						
Florence & Associates Consulting		1475 Richardson Dr.	Suite 270		Richardson	TX	75080	
Florida Department of Banking & Finance	Division of Securities	200 East Gaines Street			Tallahassee	FL	32399-6502	
FLORIDA DEPARTMENT OF REVENUE		5050 W TENNESSEE ST			Tallahassee	FL	32399-0135	
Floissant Geological, LLC		5214 Vanderbilt Ave.			Dallas	TX	75206	
Flossie ORiley Photography		701 Woodcrest Dr			Hurst	TX	76053-4921	
Foley Gardere	Holly O'Neil, Esq.	Foley & Lardner LLP	2021 McKinney Avenue		Dallas	TX	75201	
FOLEY GARDERE		2021 MCKINNEY AVENUE	SUITE 1600		Dallas	TX	75201	
Foley Gardere, Foley Lardner LLP	Attn Holland N. O Neil	2021 McKinney Avenue, Ste. 1600			Dallas	TX	75201	
Folks & Associates		PO Box 851168			Mesquite	TX	75185-1168	
Forbes		PO BOX 5468			Harlan	IA	51593-0968	
Forbes		PO Box 5474			Harlan	IA	51593-0974	
Fordham, Michael		Address on File						

004123

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Forensic Risk Alliance		Third Floor, Audrey House	Ely Place		London		EC IN- 6SN	United Kingdom
Foreside Consulting Services, LLC		3 Canal Plaza	Suite 100		Portland	ME	04101	
Foreside Consulting Services, LLC		PO Box 7556			Portland	ME	04112-7556	
Foreside Financial Services, LLC		3 Canal Plaza	Suite 100		Portland	ME	04101	
Forest Resource Consultants, Inc		964 Georgia Ave Ste 100			Macon	GA	31201-6766	
Forest2Market, Inc.	ATTN Accounts Receivable	10030 Park Cedar Drive	Suite 201		Charlotte	NC	28210-8902	
Forney & Terrell Alarm Systems, LLC		P.O. Box 341			Terrell	TX	75160	
Forns, Alison		Address on File						
Forrest A. Garb & Associates, Inc.		5310 Harvest Hill, Ste 130			Dallas	TX	75230	
Forshey & Prostok, L.L.P. - IOLTA		777 Main St, Ste 1290			Fort Worth	TX	76102	
FORSIGHT Resources, LLC		8761 Dorchester Rd	Suite 102		North Charleston	SC	29420	
Fort Worth Stock Show Syndicate		PO Box 17005			Fort Worth	TX	76102	
Fort Worth Wildcatters		777 Main Street #800			Fort Worth	TX	76102	
Fortune		PO Box 60400			Tampa	FL	33660-0400	
Fortune		PO BOX 61460			Tampa	FL	33661-1460	
FORTUNE Personnel Consultants of Troy		560 Kirts Blvd	Suite 102		Troy	MI	48084	
Foundation for BrainHealth Advances	Center for BrainHealth	2200 West Mockingbird Lane			Dallas	TX	75235	
Four Seasons Landscaping, LLC		139 Turtle Creek Blvd.			Dallas	TX	75207-6807	
Four Seasons Landscaping, LLC		PO Box 793429			Dallas	TX	75379-0000	
FOWLER HATLEY		Address on File						
Fox Rothschild LLP	Attn Accounts Receivable-60	2000 Market St, 20th Floor			Philadelphia	PA	19103-3222	
FOX, SEAN		Address on File						
FPA Connecticut State Conference		95 West St			Rocky Hill	CT	06067	
FPA of Middle Tennessee	Patricia Fisher, Chapter Exec	PO Box 150608			Nashville	TN	37215	
FPA South Florida		8930 State Rd. 84, Ste 316			Davie	FL	33324	
FPANJ		551 Valley Rd #365			Upper Montclair	NJ	07043	
FPC	FORTUNE Personnel Consultants of Troy	560 Kirts Blvd.	Suite 102		Troy	MI	48084	
FPC OF SAVANNAH, INC.		PO BOX 8846			Savannah	GA	31412	
FPG CT Owner LP		PO Box 5297	Lockbox 305297		New York	NY	10008-5297	
FPG Galleria Two Owner, LP		PO Box 3085			Hicksville	NY	11802-3085	
FRAGOMEN, DEL REY, BERNSEN & LOEWY LLP		99 WOOD AVE SOUTH	10TH FLR		ISELIN	NJ	08830	
Frances Wildhaber		Address on File						

004124

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Franchise Tax Board	Bankruptcy Section MS A340	PO Box 2952			Sacramento	CA	95812-2952	
FRANCHISE TAX BOARD		PO BOX 942857			Sacramento	CA	94257-0511	
FRANCIS X GRAY & CO		122 W 26TH ST	STE 1101		New York	NY	10001	
Frank Cunningham		Address on File						
Frank Russell Company		NW 6327	PO Box 1450		Minneapolis	MN	55485-6327	
Frank Waterhouse	c/o David Neier	Winston Strawn LLP	200 Park Avenue		New York	NY	10166	
Frank Waterhouse	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue		New York	NY	10018	
Frank Waterhouse	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Frank Waterhouse	Ross & Smith, PC	Plaza of the Americas	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
Frank Waterhouse		Address on File						
Frank Foodservice Solutions		3149 Paysphere Circle			Chicago	IL	60674-0031	
Frederick C. Moss		Address on File						
FreedomPark LP		7501 Esters Blvd	Ste. 130		Irving	TX	75063	
FreeMotion Fitness		PO Box 99661			Chicago	IL	60690	
FRICK, TINA		Address on File						
FridsonVision		54 W 21st ST	STE 1007		New York	NY	10010	
FridsonVision		1 Penn Plaza Ste 3600			New York	NY	10119	
Fried Frank Harris Shriver & Jacobson		One New York Plaza			New York	NY	10004-1980	
Fried, Frank, Harris, Shriver & Jacobson		One New York Plaza			New York	NY	10004-1980	
Friedman Kaplan Seiler & Adelman LLP		1633 BROADWAY			New York	NY	10019-6708	
Friedreichs Ataxia Research Alliance		533 W. Uwachlan Avenue			Downington	PA	19335	
Friends of the Dallas Fire Dept.	c/o Ray Cheery	Dallas Security Systems PO Box 550939			Dallas	TX	75355-0939	
Friends of the Dallas Police		3232 McKinney Ave	#855		Dallas	TX	75204	
Friends of the IDF		29 E MADISON ST			Chicago	IL	60602	
FRITZ, ERIC		Address on File						
Frizell, Madeline		Address on File						
Frizell, Madeline		Address on File						
Front Sight Focus	Attn Tamara Watt	PO Box 12292			Raleigh	NC	27605	
Frontier State Bank	Attn Mr Steve Elliott	5100 South I-35 Service Road			Oklahoma City	OK	73129	
Frontline Source Group, Inc.		901 Main Street	Suite 4010		Dallas	TX	75202	
FSC Securities Corporation	Attn Reimbursement Processing	Lockbox 101092	3585 Atlanta Ave		Hapeville	GA	30354	
FSC Securities Corporation	Attn Shelly Kooliker	3737 Woodland Ave, Ste 500			West Des Moines	IA	50266	
FT Interactive Data		32 CROSBY DR			Bedford	MA	01730	
FT Interactive Data		PO Box 98616			Chicago	IL	60693	
FT Interactive Data Corporation		22 Crosby Drive			Bedford	MA	01730-0000	
FTI CONSULTING		2001 Ross Ave	Suite 400		Dallas	TX	75201	
FTI CONSULTING		PO BOX 630391			Baltimore	MD	21263-0391	

004125

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
FTI Consulting, Inc.		Three Times Square	10th floor		NewYork	NY	10036-0000	
Fuentes, Brian		Address on File						
Fulbright & Jaworski		2200 Ross Ave Ste 2800			Dallas	TX	75201-2784	
Fulbright & Jaworski		FULBRIGHT TOWER	1301 MCKINNEY	SUITE 5100	Houston	TX	77010-3095	
Fullmer, Kevin		Address on File						
Fullmer, Kevin		Address on File						
Fun Time Faces TX		417 Parkhurst Drive			Dallas	TX	75218	
FUNDFIRE	Money-Media, Inc.	1430 Broadway, 12th Flr	Suite 1208		New York	NY	10018	
FURNITURE FOR BUSINESS		14 CARLSON COURT			London			United Kingdom
Furniture Solutions Now Ltd.		1505 Oak Lawn Ave	Suite 300		Dallas	TX	SW15 2NQ 75207	
FUSE Research Network, LLC		200 Highland Avenue	Suite 403		Needham	MA	02494	
Fusion GPS		2122 P Street NW	Suite 202		Washington	DC	20037	
G.L. Seaman & Company		4201 International Parkway			Carrollton	TX	75007	
G.Neil Corporation		PO Box 451179			Sunrise	FL	33345-1179	
Gabriel Moss QC		3-4 South Square, Grays Inn			London		WC1R 5HP	United Kingdom
GAGE, CASEY S		Address on File						
Gail Davis & Associates, Inc.		3500 Oak Lawn	Suite 740		Dallas	TX	75219	
Gail Spurgeon		Address on File						
Gallop, Johnson & Neuman, L.C.		101 S Hanley Ste 1600			Saint Louis	MO	63105	
Game On!		502 South 2nd Avenue			Dallas	TX	75226	
Gaming Today		PO Box 93116			Las Vegas	NV	89193	
Garcia & Associates Security		Two Penn Plaza Ste 1500			New York	NY	10121	
GARCIA, ERICKA		Address on File						
GARDERE WYNNE SEWELL LLP		1000 LOUISIANA	STE 3400		Houston	TX	77002-5011	
Gardner Haas PLLC		2501 N. Harwood Street	Suite 1250		Dallas	TX	75201	
Gardner, William		Address on File						
Garland Independent School District	Linda D. Reece	c/o Perdue Brandon Fielder et al	1919 S. Shiloh Road, Suite 310, LB 40		Garland	TX	75042	
Garman Turner Gordon	William M. Noall	Address on File						
Garman Turner Gordon		7251 Amigo St Ste 210			Las Vegas	NV	89119-4302	
Gartner Inc		PO BOX 911319			Dallas	TX	75391-1319	
Gary Cao		Address on File						
Gary Durham Consulting, LLC		200 Crescent Court	Suite 1414		Dallas	TX	75201	
Gary Fitzsimmons, District Clerk		600 COMMERCE ST	STE 716		Dallas	TX	75202-4606	
Gary L. Gardner		Address on File						
Gary Sinse Foundation		PO Box 368			Woodland Hls	CA	91365-0368	
Gary V McGowan		Address on File						
GARZA, LAUREN		Address on File						
Gateway Financial Advisors, Inc.		4101 Dublin Blvd.	Suite F., PMB 57		Dublin	CA	94568	
GATHINGS, SALLY		Address on File						
GATZKI, KENT		Address on File						

004126

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
GAUNTT, AMANDA		Address on File						
Gaurav Singhal		Address on File						
Gautier, Chris		Address on File						
Gazelle Court Reporting Services, LLC		2807 Allen Street, No 727			Dallas	TX	75204	
GDHCC		4622 MAPLE AVE	STE 207		Dallas	TX	75219	
Geeks Who Drink LLC		9450 SW Gemini Dr # 84921			Beaverton	OR	97008-7105	
General American Life Insurance		PO Box 790201			Saint Louis	MO	63179-0196	
General Information Services	ATTN Sara Leslie	12770 Coit Rd, Ste 300			Dallas	TX	75251	
General Information Services		PO Box 538450			Atlanta	GA	30353-8450	
Geomap Company		PO Box 671077			Dallas	TX	75267-1077	
George Bates		Address on File						
George Catering		PO Box 140537			Dallas	TX	75214	
GEORGE FEIGER IRA		Address on File						
George Mathew		Address on File						
George W. Bush Foundation		2943 SMU Blvd	Leslie Cravens, Catering		Dallas	TX	75205	
George W. Bush Foundation		PO Box 600610			Dallas	TX	75360	
George W. Bush Presidential		Library and Museum	2943 SMU Boulevard		Dallas	TX	75205	
George W. Bush Presidential Center		2943 SMU Boulevard			Dallas	TX	75205	
GEORGIA DEPARTMENT OF REVENUE		TAXPAYER SERVICES DIVISION	PO BOX 105499		Atlanta	GA	30348-5499	
GEORGIA DEPARTMENT OF REVENUE		Processing Center	PO Box 740239		Atlanta	GA	30374-0239	
GEORGIA DEPARTMENT OF REVENUE		PROCESSING CENTER	PO BOX 740320		Atlanta	GA	30374-0320	
Georgia Secretary of State		2 Martin Luther King Jr. Drive	Suite 820 West Tower		Atlanta	GA	30334	
Geraghty, Dougherty and Edwards		1531 Hendry St, PO Box 1605			Fl. Myers	FL	33902	
Gerry Gartenberg Productions, Inc.		3 New York Avenue			White Plains	NY	10606	
Gerson Lehrman Group		850 Third Ave	9th Floor		New York	NY	10022	
Gerson Lehrman Group		BOX 200589			Pittsburgh	PA	15251-0589	
Getty Images US Inc.		PO Box 84434			Seattle	WA	98124-5734	
GHV Settlement Fund	C/O Richard Haskell	920 N Stone Ave			Lagrange Park	IL	60526	
Gianna Cerullo		Address on File						
GIBB, ALLISON		Address on File						
Gibbs & Bruns LLP		1100 Louisiana Street	Suite 5300		Houston	TX	77002	
GIBBSPRODUCTIONS		2429 Connecticut Lane			Dallas	TX	75214	
Gibson, Dunn & Crutcher LLP		333 South Grand Ave			Los Angeles	CA	90071	
Gifford Fong Associates		3658 Mt. Diablo Boulevard	Suite 200		Lafayette	CA	94549-4751	
Gigantic Color		PO Box 740209, Dept# 7052			Atlanta	GA	30374	
Gilbert Bromley		Address on File						
Gilbert Martinez Jr.		Address on File						
GILCHRIST, CLINT		Address on File						
GILL, NICOLE		Address on File						
GILLES, ERIN		Address on File						

004127



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Gillian C. Sartini		Address on File						
Gillian Sartini		Address on File						
GILLUM, KATIE		Address on File						
Gils Elegant Catering		1001 MacArthur Blvd			Grand Prairie	TX	75050	
GIMBEL, JESSICA D.		Address on File						
Girard Securities, Inc.		5405 Morehouse Dr Ste 135			San Diego	CA	92121-4767	
GIRARD, ERIC		Address on File						
Girard, Kovarik & Associates		101 N. Clematis St, Ste 200			West Palm Beach	FL	33401	
GLASGOW, SAMUEL		Address on File						
Glassdoor		1 Harbor Drive	Suite 300		Sausalito	CA	94965	
Glassdoor		Dept 3436	PO Box 123436		Dallas	TX	75312-3436	
Glast, Phillips, & Murray		2200 One Galleria Tower	13355 Noel Rd, LB 48		Dallas	TX	75240-1518	
GLC Advisors & Co., LLC		451 Jackson Street	2nd Floor		San Francisco	CA	94111	
Gleneagles CLO, Ltd	The Directors	PO Box 1093 GT	Queensgate House, South Church Street		Grand Cayman		KY11-11-8	Cayman Islands
Gleneagles CLO, Ltd.		PO Box 1093 GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Gleneagles CLO, Ltd.								
JPMorgan Chase Bank, National Association	JPMorgan Chase Bank, National Association	600 Travis 50th Floor	Worldwide Securities Service	Gleneagles CLO, Ltd. Telecopy	Houston	TX	77002	
GLENN KIM		Address on File						
Glenn Morrison		Address on File						
Global Alpha Forum, LLC		30 Old Kings Hwy South			Darien	CT	06820	
Global Experience Specialists, Inc.		Bank of America, PO Box 96174			Chicago	IL	60693	
GLOBAL FINANCIAL SERVICES		PO BOX 856460			Louisville	KY	40285-6460	
Global Recruiters of Mid-Cities		PO Box 2165			Bedford Park	IL	60499-2165	
Global Shares Inc.		111 Town Square Place	Suite 1401		Jersey City	NJ	07310	
Global Shares Ireland Ltd		Unit 2, Building D,	West Cork Technology					
GlobalMacro Partners, LLC		1755 S. Naperville Rd	Park Clonkality Co.		Cork		P85 EY90	IRELAND
GLOBE STORAGE & MOVING CO. INC			Ste 100		Wheaton	IL	60189	
Glocap Search LLC		36 BLEECKER ST			New York	NY	10012	
Gloss Luxury Event Rentals		156 W 56th St.	4th Floor		New York	NY	10019	
GM SNYDER AND ASSOCIATES		6525 Briarhaven Drive			Dallas	TX	75240	
GoDaddy		300 Ozark Trail Drive	Suite 104		Saint Louis	MO	63011	
Godfrey		14455 N. Hayden Rd.	Ste. 219		Scottsdale	AZ	85260	
Godier, Lindsey		1000 Louisiana	Suite 5100		Houston	TX	77002-5096	
Goetz, Matthew		Address on File						
Goetz, Matthew X.		Address on File						
Goetz, Matthew X.		Address on File						
Goglia PLLC		4519 Melissa Lane			Dallas	TX	75229	
Gold Crown Valet Parking, Inc.		901 Waterfall Way	Suite 107		Richardson	TX	75080	
GOLD LION		8043 Abramshire Ave			Dallas	TX	75231	

004128



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Gold Medal Strategies, Inc.		319 1st Street West			Tierra Verde	FL	33715	
Gold Star Distributors, Inc.		PO Box 831150			Richardson	TX	75083-1150	
Golds Gym International	Attn Corporate Billing	125 E John Carpenter Frwy	Suite 1300		Irving	TX	75062	
Golds Gym International		4001 Maple Avenue	Suite 200		Dallas	TX	75219	
Golds Texas Holdings Group, Inc		4001 Maples Avenue Ste 200			Dallas	TX	75219-0000	
Goldsmith Associates, PLLC		6540 Highgate Lane			Dallas	TX	75214	
GOLDSMITH, JASON		Address on File						
GOLDSMITH, SARAH B.		Address on File						
Golf Balls Galore, Inc.		2181 J and C Blvd			Naples	FL	34109	
GONZAGA, GABRIELLA		Address on File						
GONZALEZ, EVAN		Address on File						
GOOD FULTON & FARRELL		2808 FAIRMOUNT ST	STE 300		Dallas	TX	75201	
Goodwin and Marshall, Inc.		2405 Mustang Drive			Grapevine	TX	76051	
GOODWIN PROCTER LLP		EXCHANGE PLACE	53 STATE STREET		Boston	MA	02109	
Gordon, Fournaris & Marmarella, P.A.		1925 Lovering Avenue			Wilmington	DE	19806	
Gosserand, Boyd		Address on File						
Gotham Promotions		67 Sullivan St			New York	NY	10012	
GourmEATS - Kevin Ashade		1407 Main St.	Apt 1703		Dallas	TX	75202	
Governance Re Ltd.		Wellesley House North	2nd Floor, 90 Pitts Bay Road		Pembroke		HM 08	Bermuda
Governance Re Ltd.		Wellesley House North,2nd Floor	90 Pitts Bay Road		Pembroke		HM 08	Bermuda
Governance RE Ltd.		Clarendon House	2 Church St		Hamilton		HM 11	Bermuda
GP Industries, Inc.		3230 Riverside Ave #110-A			Paso Robles	CA	93446	
GPI Lee Parkway, LP		3333 Lee Parkway			Dallas	TX	75219	
Grace Chang		Address on File						
Grafton Hospitality		340 South US Highway 1 Ste 306			Jupiter	FL	33477	
Graham, Jacquelyn		Address on File						
Grand Street Settlement		80 Pitt Street			New York	NY	10002	
Grant Thornton LLP		33570 Treasury Center			Chicago	IL	60694-3500	
Grant, Jennifer		Address on File						
Grants Interest Rate Observer		233 Broadway Fl 24			New York	NY	10279-2502	
Grapevine Consultants		3003 Double Creek Drive			Grapevine	TX	76051	
Grasshopper Lawn & Patio, LLC		1002 Ashby Dr			Allen	TX	75002	
GRATEKE, RYAN		Address on File						
Graubard Miller		Address on File						
Graves, Vanessa		Address on File						
Gray Reed & McGraw LLP	Jason S. Brookner	1601 Elm Street, Suite 4600			Dallas	TX	75201	
Gray Reed & McGraw LLP	Mark Gargiulo - CFO	1300 Post Oak Blvd., Suite 2000			Houston	TX	77056	
GRAY, MATTHEW		Address on File						
Grayson CLO Corp., et al		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Grayson CLO Ltd.	c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Grayson CLO Ltd.	Grayson CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Grayson CLO, Ltd.	Investors Bank and Trust Company c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town, Grand Cayman			Cayman Islands
Grayson CLO, Ltd. Investors Bank & Trust Company	Elizabeth Weller	P.O. Box 1234 Linebarger Goggan Blair & Sampson, LLP	Queensgate House South Church Street 2777 N. Stemmons Freeway, Suite 1000	The Directors - Grayson CLO, Ltd.	George Town, Grand Cayman	KY	1-1108	Cayman Islands
Grayson County		3525 Melanie Ln			Dallas	TX	75207	
Great American Photo Booths		3879 Maple Avenue			Plano	TX	75023	
Great Investors Best Ideas Foundation			Ste 350		Dallas	TX	75219	
Great Northern Insurance Company, Chubb National Insurance Company and Federal Insurance Company	c/o Chubb	202A Halls Mill Road - 2E 2417 3rd Ave Fl 3			Whitehouse Station Bronx	NJ NY	08889 10451-6339	
Great Performances		200 W Jackson #1000			Chicago	IL	60606	
Great Point Capital LLC		8201 Preston Road	Suite 305		Dallas	TX	75225	
Great Southern Bank		9530 Skillman Street			Dallas	TX	75243	
Great Value Storage		401 Congress Ave, 33rd Flr			Austin	TX	78701	
Great Value Storage		437 Fifth Avenue			New York	NY	10016	
Greater Talent Network, Inc.		Address on File						
Green, Allison		Address on File						
GREEN, JASON		2200 Ross Avenue	Suite 5200		Dallas	TX	75201	
Greenberg Traurig		1000 LOUISIANA ST	STE 1800		Houston	TX	77002	
Greenberg Traurig		Boundary Hall, Cricket Square			Grand Cayman		KY11-11-8	Cayman Islands
Greenbriar CLO, Ltd.	c/o Maples Finance Limited	PO Box 1093GT	South Church Street	George Town	Grand Cayman			Cayman Islands
Greenbriar CLO, Ltd.		P.O. Box 1093GT, Queensgate House		George Town	Grand Cayman			Cayman Islands
Greenbriar CLO, Ltd. and State Street Bank and Trust Company	Greenbriar CLO, Ltd. c/o Maples Finance Limited	P.O.Box 1093GT	Boundary Hall Cricket Square		George Town, Grand Cayman	KY	1-9902	Cayman Islands
Greenbriar CLO, Ltd. and State Street Bank and Trust Company	Company Attn CDO Services Group	200 Clarendon St	Mail Code EUC 108		Boston	MA	02116	
Greenway - 4641 Production, L.P.	c/o Robert Lynn Management	4851 LBJ Freeway	Suite 1000		Dallas	TX	75244	
Greenway - 4641 Production, L.P.	c/o Trinity Interests, Inc.	12750 Merit Dr Ste 1300			Dallas	TX	75251	
Greenway - 4641 Production, L.P.		2808 Fairmount Street	Ste 100		Dallas	TX	75201	
Greenway - 4641 Production, L.P.		5924 ROYAL LANE	STE 250		Dallas	TX	75230	
GREENWICH STRATEGIC ADVISORS LLC		42 CARY ROAD			Riverside	CT	06878	
Greenwood Office Outfitters		2951 Suffolk Drive	Suite 640		Fort Worth	TX	76133-1149	
Greg Campbell		Address on File						

004130

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Greg Jackson		Address on File						
Greg Lussen		Address on File						
GREGG IMAMOTO		Address on File						
Gregory C. Bussey		Address on File						
Gregory Chang		Address on File						
Gregory ECA Communications		27 West Athens Avenue			Ardmore	PA	19003	
Gregory Polsen		Address on File						
Gregory Webster		Address on File						
GREGORY, MICHAEL		Address on File						
GREGORY, MICHAEL		Address on File						
Greig Sagers		Address on File						
Greylane Partners, LLC		P.O. Box 733976			Dallas	TX	75373-3976	
Greyline Solutions		PO Box 733976			Dallas	TX	75373-3976	
Greyline Solutions LLC		1 Sansome Street, Ste 1895			San Francisco	CA	94104-4432	
GRIFFITH, CANDICE		Address on File						
GRIFFITH, CANDICE C.		Address on File						
GRIFFITH, MATTHEW		Address on File						
GRO Designs, LLC		3500 Commerce St. #100			Dallas	TX	75226	
GROFF, SCOTT		Address on File						
Groom Law Group		1701 Pennsylvania Ave NW	Ste 1200		Washington	DC	20006	
GROS EXECUTIVE RECRUITERS, INC		1616 WESTGATE CIRCLE			Brentwood	TN	37027-8019	
Group Services Inc		Condominium San Alberto,						
GROVES, SHAWN		Suite 721	605 Conado Ave		San Juan	PR	00907	
Gruber Hurst Johansen Hall Shank LLP		Address on File						
GRUBHUB for Work		PO Box 600041			Dallas	TX	75360-0041	
GrubHub Holdings Inc.		PO Box 748570			Los Angeles	CA	90074-8570	
Grubhub Holdings Inc.		111 W. Washington Street	Ste 2100		Chicago	IL	60602-0000	
GSB Digital		5050 Capitol Ave Apt 252	Suite 5500		Dallas	TX	75206-7724	
GT Dallas Properties LLC		30-30 47th Avenue			Long Island City	NY	11101	
G-TEXAS MANAGEMENT, INC.		PO Box 3085			Hicksville	NY	11802-3085	
Guardian Performance Solutions LLC		ATTN BARBARA BOURMAN			Dallas	TX	75215	
Guggenheim Strategic Opportunities Fund		836 57th Street	Suite 408		Sacramento	CA	95819	
Guidepoint Global		330 Madison Ave, 11th Floor			New York	NY	10017	
Guidepost Solutions, LLC		675 Avenue of The Americas			New York	NY	10010-5117	
Guild Associates		Fl 2	11th Floor		New York	NY	10017	
Gulati, Sanjay		415 Madison Ave			Lyme	CT	06371-3021	
GUNNERSON, ERIK		153 Mitchell Hill Rd						
GUSTAVO PRILICK		Address on File						
Guy J. Renzi & Associates		Address on File						
H.I.S. BridgeBuilders		2277 State Hwy 33,			Trenton	NJ	08690	
		Suite 410			Dallas	TX	75208	
		Golden Crest Corporate Center						
		2705 West Commerce St						

004131

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Haas Petroleum Engineering Svcs. Inc.		750 N Saint Paul St Ste 1750			Dallas	TX	75201-3288	
Hagar Restaurant Service LLC		1229 West Main St.			Oklahoma City	OK	73106	
Hain Capital Investors Master Fund, Ltd		301 Route 17, 7th Floor			Rutherford	NJ	07070	
Hakemack, Christopher		Address on File						
Hal Whalen		Address on File						
Hale, Sarah		Address on File						
HALL, PHIL		Address on File						
Halloran & Sage LLP		225 Asylum Street	One Goodwin Square		Hartford	CT	06103	
HALPIN, CHRISTOPHER		Address on File						
Haltom, Steven		Address on File						
Hamilton	PRICKETT, JONES & ELLIOTT, P.A.	Marcus E. Montejo	Kevin H. Davenport	1310 King Street	Wilmington	DE	19801	
Hamilton Communications		PO Box 555			Westbrook	CT	06498	
HAMILTON, TODD		Address on File						
Hand Securities Inc.		820 Gessner Rd	Suite 1250		Houston	TX	77024	
Hansen, Jessica		Address on File						
Hanson, Adam		Address on File						
HARBOR GROUP LTD		70 E SUNRISE HWY	#411		Valley Streram	NY	11581	
Harbor Yacht Clubs, LLC		1880 Harbor Island Drive			San Diego	CA	92101	
HarbourVest 2017 Global AIF L.P.								
HarbourVest 2017 Global AIF L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HARBOURVEST 2017 GLOBAL AIF L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HarbourVest 2017 Global Fund L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		Boston	MA	02111	
HARBOURVEST 2017 GLOBAL FUND L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HarbourVest Dover Street IX Investment L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Dover Street IX Investment L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HarbourVest Dover Street IX Investment, LP		One Financial Center			Boston	MA	02111	
HarbourVest Partners L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	
HarbourVest Partners L.P. on behalf of funds and accounts under management	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Skew Base AIF L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HarbourVest Skew Base AIF L.P.	c/o HarbourVest Partners, LLC	One Financial Center			Boston	MA	02111	

004132

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HARBOURVEST SKEW BASE AIF L.P.		One Financial Centre, 44th Floor			Boston	MA	02111	
Harder LLP		132 S. RODEO DRIVE	FOURTH FLOOR		BEVERLY HILLS	CA	90212	
HARIKRISHNAN NAIR		8734 SHADY SHORE DR			Frisco	TX	75034	
Harlem Lacrosse		PO Box 708			New York	NY	10030	
Harper & Peterson, P.L.L.C		3040 Woodbury Drive			Woodbury	MIN	55129	
Harris Hilburn & Sherer		1111 Rosalie			Houston	TX	77004	
HARRIS, WILTSHIRE & GRANNIS LLP		1200 EIGHTEENTH ST., NW			Washington	DC	20036	
HARRISON, MATTHEW		Address on File						
Harsha Patwardhan		Address on File						
Hart Energy Publishing, L.P.		4545 Post Oak Pl Ste 210			Houston	TX	77027	
Hart Energy Publishing, L.P.		1616 S. Voss Rd	Suite 1000		Houston	TX	77057	
Hart Energy, LP		1616 S. Voss Street	Suite 1000		Houston	TX	77057	
Hartford CFA Society		PO Box 266			Granby	CT	06035	
Hartford Life Insurance Company		777 Main Street			Hartford	CT	06115	
Hartline Dacus Barger Dreyer LLP		6688 N. Central Expwy. #1000			Dallas	TX	75206	
Hartman Wanzor LLP	Kenneth Cantrell	6050 Southwest Blvd Suite 150			Fort Worth	TX	76109	
Hartman Wanzor LLP		6050 Southwest Blvd	Suite 200		Fort Worth	TX	76109	
Harvard Club of Dallas		5706 E Mockingbird Ln Ste 115			Dallas	TX	75206-5461	
Harvard Club of New York City		35 West 44th Street			New York	NY	10036	
Harvest Exchange Corp		PMB 245	516 N Ogden Ave		Chicago	IL	60642-6421	
Haselroth, Matthew		Address on File						
HASENAUER, MICHAEL		Address on File						
HASENAUER, MICHAEL		Address on File						
Haven Search Group, LLC		3303 Lee Parkway	Suite 400		Dallas	TX	75219	
Hawaii State Tax Collector		PO Box 1530			Honolulu	HI	96806-1530	
HAWK Network Defense, Inc.		5057 Keller Springs Road	Suite 300		Addison	TX	75001	
Hayes, Christopher		Address on File						
Hayley Eliason	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
HAYMARKET MEDIA LIMITED		23/T, The Centrum, 60 Wyndham St	Central		HONG KONG			HONG KONG
Haynes and Boone, LLP	ATTN Cari Peretzman	901 Main St # 3100	Suite 700		Dallas	TX	75202	
Haynes and Boone, LLP		2323 Victory Ave			Dallas	TX	75219	
Haynes and Boone, LLP		PO Box 841399			Dallas	TX	75284-1399	
Hazen, Anthony		Address on File						
HCM Market Letter, LLC		Harch Capital Management, LLC	621 NW 53rd Street, Suite 400		Boca Raton	FL	33487	
HCRE Partner, LLC	Wick Phillips Gould & Martin, LLP	Jason M. Rudd. Lauren K. Drawhorn	3131 McKinney Avenue, Suite 500		Dallas	TX	75204	
HEAD, ALAN		Address on File						
Health Strategy Consulting		46 Kilvert St			Warwick	RI	02886	

004133

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Health Texas Provider Network		PO Box 844128			Dallas	TX	75284	
Heat Software USA Inc		PO Box #204375			Dallas	TX	75320-4375	
HEATHER BROWN		Address on File						
HEATHERINGTON, MELINDA		Address on File						
HEBERT, ERIC		Address on File						
Hedge Connection, Inc.		141 Parkway Rd	Suite 15		Bronxville	NY	10708	
Hedge Fund Alert		5 Marine View Plaza #400			Hoboken	NJ	07030-5795	
Hedge Fund Research, Inc.		10 South Riverside Plaza	Suite 700		Chicago	IL	60606	
Hedgebay Securities, LLC		62 Post Road West			Westport	CT	06880	
HEDGEFUND INTELLIGENCE LTD		NESTOR HOUSE, PLAYHOUSE YARD	ACCOUNT DEPT		London		EC4V 5EX	United Kingdom
Hedgeye Risk Management, LLC	Legal Department	1 High Ridge Park 3rd Floor			Stamford	CT	06905-0000	
HEIN ONKENHOUT		Address on File						
HEISS, BRADFORD		Address on File						
Helder Melendez		Address on File						
Helen Kim	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Helicopters for Heroes	c/o Jeff Davis	9219 Viscount Row			Dallas	TX	75247	
HELLER EHRMAN LLP		FILE NO 73536	PO BOX 60000		San Francisco	CA	94160-3536	
Helping Our Heroes Foundation		6505 W. Park Blvd	Ste 306-165		Plano	TX	75093	
Helwig, Kevin		Address on File						
HENDERSHOT, PAUL		Address on File						
HENDRIX, KRISTIN		Address on File						
Henjum Goucher		Address on File						
Henjum Goucher		Address on File						
HENNIGAN, BENNETT & DORMAN LLP		865 S FIGUEROA ST			Los Angeles	CA	90017	
Henry Chang		Address on File						
Herbert A. Rosenthal, Chartered		1020-19th St, NW, #400			Washington	DC	20036-6101	
HEROES FOR CHILDREN	ATTN LARISSA LINTON & JENNY SCOTT	3411 PRESTON RD, STE C-13-227			Frisco	TX	75034	
HERREN, CASEY		Address on File						
HERRICK, KATHRYN D.		Address on File						
Hersey, William		Address on File						
Hess, Zachary		Address on File						
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800	Wilmington	DE	19801	
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Harwood Street, Suite 500	Dallas	TX	75201	
Hewetts Island CLO 1-R, Ltd.	c/o Acis Capital Management	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
HFF SECURITIES LP		10100 SANTA MONICA BLVD	STE 1400		Los Angeles	CA	90067	

004134

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HFP GP, LLC	Attn Highland Capital Management, L.P. as sole member	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
HG Deposition and Litigation Services		2777 N. Stemmons Freeway, Ste 1025			Dallas	TX	75207	
Higdon Barrett		Address on File			New York	NY	10169	
HIGDON PARTNERS		230 PARK AVE			Dallas	TX	75243	
High Bandwidth		10107 Candlebrook Drive						
High Profile, Inc.		4851 LBJ Freeway, Suite 500			Dallas	TX	75244	
High Road Touring		Jackson Haring	751 Bridgeway, 3rd Flr		Sausalito	CA	94965	
High Tower	Attn GIS	505 5th Ave, 14th Flr			New York	NY	10017	
High Tower	Attn Klaris Tamazian	200 W. Madison, Ste 2500			Chicago	IL	60606	
Highland Builders, Inc.		2342 Fabens Road	Ste 100		Dallas	TX	75229	
Highland Capital Insurance Solutions GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Capital Loan Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Capital Loan GP, LLC	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	Attn Davor Rukavina, Esq. and Julian P. Vasek, Esq.	Munsch Hardt Kopf & Harr, P.C.	3800 Ross Tower	500 N. Akard Street	Dallas	TX	75202-2790	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	A. Lee Hogewood, III	4350 Lassiter at North Hills Ave., Suite 300		Raleigh	NC	27609	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	Attn Artoush Varshosaz	1717 Main Street, Suite 2800		Dallas	TX	75201	
Highland Capital Management Fund, L.P. and NexPoint Advisers, L.P.	K&L Gates LLP	Attn Stephen G. Topetzes	1601 K Street, NW		Washington	DC	20006-1600	
Highland Capital Management Services, Inc.		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Capital Multi-Strategy Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland CDO and Structured Products Fund, Ltd. Citigroup Financial Products Inc. JPMorgan Chase Bank	Citigroup Financial Products Inc.	390 Greenwich Street	Doug Warren		New York	NY	10013	
Highland CDO and Structured Products Fund, Ltd. Citigroup Financial Products Inc. JPMorgan Chase Bank	JPMorgan Chase Bank	600 Travis Street	50th Floor	ITS-Greg Sheehan	Houston	TX	77002	
Highland CDO Opportunity Fund GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Highland CDO Opportunity Fund, Ltd. IXIS Financial Products Inc. JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	600 Travis Street	50th Floor	WSS-Greg Sheehan	Houston	TX	77002	
Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette First Floor, Dorey Court, Admiral Park	500 West 2nd St., Suite 1800		Austin	TX	78701-4684	Chanel Islands
Highland CLO Funding, Ltd Highland CLO Management Ltd.		PO Box 309	St Peter Port Ugland House		Guernsey Grand Cayman		GY1 6HJ KY1-1104	Cayman Islands Cayman Islands
Highland Credit Opportunitites	Japanese Feeder Sub-Trust	c/o Intertrust (Cayman) Limited	190 Elgin Avenue	George Town	Grand Cayman		KY1-9005	Cayman Islands
Highland Credit Opportunitites Highland Credit Opportunitites CDO GP, LLC	Japanese Unit Trust	c/o Intertrust (Cayman) Limited	190 Elgin Avenue 13455 Noel Road, Suite 1300	George Town	Grand Cayman		KY1-9005	Cayman Islands
Highland Credit Opportunitites CDO, Ltd.	c/o Walkers SPV Limited	Two Galleria Tower Walker House 87 Mary Street	George Town		Dallas Grand Cayman	TX	75240 KY1-9002	Cayman Islands
Highland Crusader Offshore Partners, L.P., et al. Highland Dallas Foundation Inc.	Michael A. Rosenthal, Gibson, Dunn and Crutcher LLP c/o CT Corporation, Registered Agent	200 Park Avenue 1209 Orange St			New York Wilmington	NY DE	10166 19801	
Highland Dynamic Income Fund GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Employee Retention Assets, LLC	Attn James Dondero	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Fund Holdings, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland GP Holdings LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Legacy Limited	c/o Maples & Calder/ Graham Lockington	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Legacy Limited	c/o Queensgate SPV Services Limited	PO Box 1093GT / Suzanne St. Thomas	Compass Center, 2nd Flr, Crewe Road	George Town	Grand Cayman			Cayman Islands
Highland Loan Fund, Ltd. et al		PO Box 309	Ugland House South Church Street	Grand Cayman	Cayman Island		KY1-1104	Cayman Islands
Highland Loan Funding V, Ltd.	c/o Maples & Calder/ F.O.E.	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Loan Funding V, Ltd. Highland Loan Master Fund, L.P.	c/o QSPV Limited c/o Maples Corporate Services Limited	PO Box 1093 GT, Queensgate House PO Box 309	South Church Street	George Town	Grand Cayman			Cayman Islands Cayman Islands
Highland Multi-Strategy Credit Fund GP, L.P.		Two Galleria Tower	Ugland House 13455 Noel Road, Suite 1300		Grand Cayman Dallas		KY1-1104 75240	Cayman Islands
Highland Multi-Strategy Credit Fund GP, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Multi-Strategy Credit Fund, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	

004136



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Highland Multi-Strategy Fund GP, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Multi-Strategy Master Fund, L.P.	c/o MQ Services Ltd.	Victoria House	31 Victoria Street		Hamilton		0HM10	Bermuda
Highland Multi-Strategy Master Fund, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Park CDO I, Ltd.	Moody's Investors Service, Inc.	99 Church Street			New York	NY	10041	
Highland Park CDO I, Ltd.	Standard & Poors Ratings Services	55 Water Street, 41 st Floor	Commercial Mortgage Surveillance Group	CDO Surveillance	New York	NY	10041	
Highland Park CDO I, Ltd. The Bank of New York Trust Company, National Association	Highland Park CDO I, Ltd. c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House, South Church Street	George Town, The Directors	George Town			Cayman Islands
Highland Park CDO I, Ltd. The Bank of New York Trust Company, National Association	The Bank of New York Trust Company, National Association	601 Travis House	16th Fl		Houston	TX	77002	Cayman Islands
Highland Park CDO I, Ltd. Opportunities GP, LLC	c/o Maples Finance Limited	Two Galleria Tower	South Church Street	George Town	Grand Cayman			Cayman Islands
Highland Prometheus Feeder Fund I, L.P.	c/o Maples Corporate Services Limited	PO Box 309	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Prometheus Feeder Fund II, L.P.	c/o Maples Corporate Services Limited	PO Box 309	Ugland House		Grand Cayman		KY1-1104	Cayman Islands
Highland Prometheus Mast Fund, L.P.	c/o Maples Corporate Services Limited	PO Box 309	Ugland House		Grand Cayman		KY1-1104	Cayman Islands
Highland Restoration Capital Partners GP, LLC	c/o The Corporation Trust Company	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Restoration Capital Partners Master, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	Cayman Islands
Highland Restoration Capital Partners Offshore, L.P.	c/o Intertrust Cayman Company	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Highland Restoration Capital Partners, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Select Equity Fund GP	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
Highland Select Equity Fund GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Highland Select Equity Master Fund, GP	c/o MQ Services Ltd. c/o The Corporation Trust Company	Victoria House	31 Victoria Street		Hamilton		0HM10	Bermuda
Highland SunBridge GP, LLC	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
HighTower Advisors	HighTower Advisors Attn GIS	505 5th Ave, 14th Floor			New York	NY	10017	
HighTower Advisors	HighTower Advisors	200 West Madison	Suite 2500		Chicago	IL	60606	
HighTower Advisors/The Sarian Group	HighTower Advisors/The Sarian Group	656 East Swedesford Road	Suite 360		Wayne	PA	19087	
HighTower Holding LLC	HighTower Holding LLC	200 W. Madison	Ste 2500		Chicago	IL	60606	
Hilary Adams		Address on File						

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HILGENBRINK, ANDREW		Address on File						
Hilgenbrink, Andrew		Address on File						
HILL, OWEN		Address on File						
Hill, Robert		Address on File						
Hilcrest Athletic Association	HHS Athletics c/o Andy Todd	9924 Hillcrest Rd			Dallas	TX	75230-5309	
Hillis, Blair		Address on File						
Hines REIT 2200 Ross Avenue LP		PO Box 841147			Dallas	TX	75284-1147	
Hines REIT 2200 Ross Avenue LP		PO Box 841197			Dallas	TX	75284-1197	
Hitchcock, Daniel		Address on File						
HM Life Insurance Company		PO Box 382229			Pittsburgh	PA	15250-8229	
Hoedebeck, Charlie		Address on File						
Hoermann, Richard		Address on File						
Hoge & Gameros, LLP		4311 Oak Lawn Ave Ste 600			Dallas	TX	75219	
Holland & Knight, LLP		PO Box 864084			Orlando	FL	32886-4084	
Hollister, Michael J.		Address on File						
Holloway, Travis		Address on File						
Holly Church Communications		3730 Pinebrook Cir Apt 606			Bradenton	FL	34209-8073	
Holmes Detective Bureau, Inc.		1270 Avenue of the Americas	Suite 1906		New York	NY	10020	
Holt, Eric		Address on File						
Home Health Service		2400 Dallas Parkway	STE 440		Plano	TX	75093	
Home Health Services		3333 Earheart Drive	Suite 210		Carrollton	TX	75006	
HOME, BRIAN		Address on File						
HONEYCUTT, JOHN BROOKS		Address on File						
HONEYCUTT, JOHN BROOKS		Address on File						
HONIS, JOHN		Address on File						
HONIS, JOHN		Address on File						
Honyaku Center Inc.		3-13-12 Mita			Minato-ku	Tokyo	109-0073	JAPAN
HOOPER HULL LLP		PO BOX 44989			Indianapolis	IN	46244-0989	
Hopes Door Inc.		860 F Ave	Suite 100		Plano	TX	75074	
HOPSON, STUART		Address on File						
Hotel Crescent Court		400 Crescent Court			Dallas	TX	75201	
Hotel Zaza		2332 Leonard Street			Dallas	TX	75201	
Houlihan Lokey	Attn Accounts Receivable	10250 Constellation Blvd, 5th Floor						
HOUSE OF BLUES	ATTN BARBARA BOUMAN	2200 N LAMAR ST			Los Angeles	CA	90067-6802	
Housing Crisis Center		Megan Singleton, Development Manager	4210 Junius Street		Dallas	TX	75246	
How Handy Is That		21650 Oxnard Street	Suite 1530		Woodland Hills	CA	91367	
Howard B. Wiener		Address on File						
HOWARD DRANSFIELD IRA		Address on File						
Howle, Ian		Address on File						
hrQ-Dallas, LLC		2859 Umatilla St			Denver	CO	80211	
HSIEH, ADA		Address on File						

004138

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
HTH Worldwide Insurance Services	c/o Travel Accounting	One Radnor Corporate Center Address on File	933 1st Ave		King of Prussia	PA	19406-1342	
HUBBLE, JONATHAN		75 Remittance Drive, Suite 6465			Chicago	IL	60675-6465	
HUDSON GLOBAL RESOURCES								
Hudson Reporting & Video, Inc	A DEPOSITION CENTER	2124 Oak Tree Rd			New Jersey	NJ	08820	
HUGHES & HUBBARD		One Battery Park Plaza			New York	NY	10006	
Hughes & Luce LLP		1717 Main St Ste 2800			Dallas	TX	75201	
Hughes, Alex		Address on File						
HUKILL, NATHAN		Address on File						
HULL, CYNTHIA		Address on File						
Hummingbird		PO Box 8500-3885			Philadelphia	PA	19178-3885	
Hundi Reporting, L.L.C.		703 McKinney Ave, Ste 405			Dallas	TX	75202	
Hunt, Brandon		Address on File						
HUNT, HEATHER		Address on File						
Hunter Covitz	c/o David Neier, Winston Strawn LLP	6612 Sondra Dr.			Dallas	TX	75214	
Hunter Covitz		Address on File						
HUNTER COVITZ		Address on File						
Hunter Donaldson		Address on File						
Hunter Mountain Investment Trust		Address on File						
	c/o Rand Advisors LLC	John Honis	87 Railroad Place Site 403		Saratoga Springs	NY	12866	
Hunter Mountain Trust		Rochelle McCullough LLP	325 N Saint Paul St Ste 4500		Dallas	TX	75201-3827	
Hunter Mountain Trust		John Honis, Trustee for Hunter Mountain Trust	87 Railroad Place, Suite 403		Saratoga Springs	NE	12866	
Hunting & Fishing for ALS Research		2525 Fairmont St			Dallas	TX	75201	
HUNTINGTON, JOHN		Address on File						
Hunton & Williams LLP		RIVERFRONT PLAZA, EAST TOWER			Richmond	VA	23219	
Hunton & Williams LLP		PO BOX 840686	951 EAST BYRD ST		Dallas	TX	75284-0686	
Hunton Andrews Kurth LLP	Alexander G. McGeoch	1445 Ross Avenue Suite 3700			Dallas	TX	75202	
Hunton Andrews Kurth, LLP		1445 Ross Avenue	Suite 3700		Dallas	TX	75202-2799	
Hurley, Leslie		Address on File						
HURLEY, MICHIEL		Address on File						
Huron Consulting Group		4795 Paysphere Circle			Chicago	IL	60674	
Hutcherson Law		10000 N. Central Expressway			Dallas	TX	75231	
Hutchison & Steffen, PLLC		10080 W Alta Drive	Ste 200		Las Vegas	NV	89145	
HV International VIII								
HV International VIII	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue		New York	NY	10022	
HV International VIII		One Financial Center			Boston	MA	02111	
HV INTERNATIONAL VIII	c/o HarbourVest	One Financial Centre, 44th Floor			Boston	MA	02111	
SECONDARY L.P.								
Hyatt Regency Lost Pines Resort and Spa		575 Hyatt Lost Pines Road			Lost Pines	TX	78612	

004139

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Hyatt Regency Scottsdale Resort & Spa		7500 E Doubletree Ranch Road			Scottsdale	AZ	85258	
I & A INTERNATIONAL		1717 MAIN ST	SUITE 4800		Dallas	TX	75201	
i Entertainment		2409 Avenue J	Suite D		Arlington	TX	76006	
I.M.S. Relocation		2005 McDaniel Drive	Ste 150		Carrollton	TX	75006	
IA Watch		PO Box 9407			Gaithersburg	MD	20897-9824	
IA Watch		100 Winners Circle, Ste 300	PO Box 5094		Brentwood	TN	37024-5094	
IAN FARRAND		Address on File						
IBM Websphere		1 New Orchard Road			Armonk	NY	10504-0000	
ICAA		1050 17th St, NW Ste 725			Washington	DC	20036-5503	
Ice Bro Promos		1007 East Levee			Dallas	TX	75207	
Ice Data Indices, LLC		PO Box 74008873			Chicago	IL	60693-8873	
ICE Data Pricing & Reference Data, LLC		PO Box 98616			Chicago	IL	60693	
ICE Systems, Inc.		PO Box 11126			Hauppauge	NY	11788-0934	
ICI Mutual Insurance Brokers, Inc.		1401 H Street NW	Suite 1000		Washington	DC	20005	
IDAHO STATE TAX COMMISSION	REVENUE OPERATIONS DIVISION	IDAHO STATE TAX COMMISSION	PO BOX 36		Boise	ID	83722-0410	
IDAHO STATE TAX COMMISSION		PO Box 83784			Boise	ID	83707-3784	
IDCSERVCO Business Services	Attn: Accounts Receivable	PO Box 1925			Culver City	CA	90232-1925	
iDiscover, LLC		2049 Century Park East, Ste 4370			Los Angeles	CA	90067	
IFG Project Resourcing		1560 Sawgrass Corporate Pkwy 4th Flr			Sunrise	FL	33323	
IFP Securities, LLC		3030 N Rocky Point Dr W	Suite 700		Tampa	FL	33607	
IHS Global Inc.		PO Box 847193			Dallas	TX	75284-7193	
IHS Markit	Michelle Searles	15 Inverness Way East			Englewood	CO	80112	
II Magazines	Absolute Return & Alpha	225 Park Ave - South			New York	NY	10003	
II Magazines		PO Box 4009	Subscriptions		Chesterfield	MO	63006-4009	
II News		PO Box 5018			Brentwood	TN	37024-9552	
IJC Partners LLC		20 East 46th St	Suite 901		New York	NY	10017	
Ikon Office Solutions		DALLAS DISTRICT-DAT	PO BOX 676466		Dallas	TX	75267	
Ikon Office Solutions		Northeast District-NYG	PO BOX 827164		Philadelphia	PA	19182-7164	
Ikon Office Solutions		LDS Southeast District -FTL	PO Box 532545		Atlanta	GA	30353-2545	
Ikon Office Solutions		LDS DALLAS DISTRICT -DAL	PO BOX 676466		Dallas	TX	75267-6466	
Ikon Office Solutions		National Accounts	PO Box 676466		Dallas	TX	75267-6466	
ILLINOIS DEPARTMENT OF REVENUE		PO BOX 19009			SPRINGFIELD	IL	62794-9009	
ILLINOIS DEPARTMENT OF REVENUE		PO Box 19045			Springfield	IL	62794-9045	
Illinois Secretary of State		Department of Business Services			Springfield	IL	62756	
Illinois Securities Department		Securities Division	421 E. Capital Ave., 2nd Fl.		Springfield	IL	62701	
Illumant LLC		431 Florence Street	Suite 210		Palo Alto	CA	94301	

004140

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ImageMAKER Development, Inc		Suite 102-416, 6th St			New Westminster	BC	V3L 3B2	CANADA
ImageMAKER Development Inc		Ste 102,416 - 6th Street PO Box 613310			New Westminster	BC	V3L3B2	Canada
ImageNet		2633 McKinney Ave Address on File	Ste 130-377		Dallas	TX	75261-3310	
IMAMOTO, GREGG					Dallas	TX	75204	
IMCA	Attn Lara Davies	5619 DTC Pkwy, Suite 500 Address on File			Greenwood Village	CO	80111	
Imran Hussain		210 W PENNSYLVANIA AVE STE 700			TOWSON	MD	21204-4532	
IMRE		9137 Loma Vista Dr			Dallas	TX	75243	
In Time Communications INCORPORATING SERVICES, LTD		3500 S DUPONT HWY			Dover	DE	19901	
Independence Capital Co., Inc.		5579 Pearl Road	Suite 100		Parma	OH	44129	
Independent Financial Group LLC		12671 High Bluff Drive	Suite 200		San Diego	CA	92130	
Independent Petroleum Assoc. of America		1201 15th St, NW	Ste 300		Washington	DC	20005	
Independent Petroleum Assoc. of America		PO Box 79584			Baltimore	MD	21279-0584	
IndexUniverse LLC		201 Mission Street	Suite 720		San Francisco	CA	94105	
IndexUniverse LLC		353 Sacramento Street	Suite 1520		San Francisco	CA	94111	
INDIANA DEPARTMENT OF REVENUE		PO BOX 1028			Indianapolis	IN	46206-1028	
Indiana Securities Division		Securities Division	302 West Washington Street, Room E-111		Indianapolis	IN	46204	
Infinity Litigation		3141 Hood St, #103			Dallas	TX	75219	
Informa Investment Solutions		PO Box 416014			Boston	MA	02241-6014	
Informa Investment Solutions		4 Westchester Park Drive			White Plain	NY	10604-0000	
Informa UK Ltd.		PO Box 32794			Hartford	CT	06150-2794	
Information Management Network		225 Park Avenue South, 7th Fl			New York	NY	10003	
INFOTECH		92 CORPORATE PARK	STE C703		Irvine	CA	92606	
INNES, JOHN		Address on File						
Innovative Legal Solutions, Inc.		440 Louisiana, Suite 1100			Houston	TX	77002	
INSIDE CMS		PO BOX 7167	BEN FRANKLIN STATION		Washington	DC	20044-7167	
INSIDE HEALTH POLICY.COM		PO BOX 7167	BEN FRANKLIN STATION		Washington	DC	20044-7167	
Insider Score		254 Witherspoon St			Princeton	NJ	08542	
InsiderScore, LLC		254 Witherspoon Street			Princeton	NJ	08542	
InsiderScore, LLC		100 Thanet Circle	Suite 300		Princeton	NJ	08540-0000	
Insight		PO Box 78825			Phoenix	AZ	78825	
Insight Direct USA, Inc.		PO Box 731069			Dallas	TX	75373	
Insight Investments		611 Anton Blvd	Suite 700		Costa Mesa	CA	92626	
Instant Technologies		54 Ross Road			Durham	NH	03824	

004141

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Institute for International Research		PO BOX 3685			Boston	MA	02241-3685	
Institute for Portfolio Alternatives		PO Box 480			Ellicott City	MD	21041-0480	
Institute for Private Investors		17 State Street	5th Floor		New York	NY	10004	
Institutional Investor News	Attn Andrew Levin	225 Park Ave South, 8th Flr			New York	NY	10003	
Institutional Investor News	ATTN Jeff Schilling	225 Park Ave. South	7th Floor		New York	NY	10003	
Institutional Investor News	Attn Mutual Fund Industry Awards	PO Box 1575			New York	NY	10008	
Institutional Investor News		PO BOX 5034			Brentwood	TN	37024	
Institutional Investor News		PO Box 417611			Boston	MA	02241-7611	
Institutional Investor News		PO BOX 1575			New York	NY	10008-1575	
Institutional Investor News		PO Box 4009			Chesterfield	MO	63003-4009	
Institutional Investor Newsletters		PO BOX 5016			Brentwood	TN	37024-9549	
Institutional Investor Newsletters		PO Box 5018			Brentwood	TN	37024-9552	
Institutional Investor Newsletters		PO BOX 5030			Brentwood	TN	37024-9555	
Institutional Investor, LLC		PO Box 417611			Boston	MA	02241-7611	
Institutional Recovery Solutions, Inc.		626 RXR Plaza			Uniondale	NY	11556	
Insurance Commissioner of Iowa		Securities Bureau	601 Locust Street, 4th Floor		Des Moines	IA	50309-3738	
INSYNC ELECTRONIC MEDIA DESIGN, LLC		33 FELWAY DR			Coram	NY	11727	
Integra FEC LLC		1801 Lavaca Street, Suite 101			Austin	TX	78701	
Integrated Financial Associates, Inc.		265 E. Warm Springs Road, Suite 1-7			Las Vegas	NV	89119	
Integrated Financial Associates, Inc.	Carlyon Cica Chtd	3111 S. Rainbow Blvd., Suite 209			Las Vegas	NV	89146	
Integrated Solutions		425 Gotham Pkwy			Carlstadt	NJ	07072	
Interactive Data Pricing & Reference		PO BOX 98616			Chicago	IL	60693	
Interactive Data Pricing and Reference D		32 Crosby Drive			Bedford	MA	01730-0000	
InterDyn BMI		3001 Broadway St NE, #320			Minneapolis	MN	55413	
Interfor		575 Madison Avenue, Suite 1006			New York	NY	10022	
Internal Revenue Service	Attn Insolvency	1352 Marrows Road, 2nd Floor			Newark	DE	19711-5445	
Internal Revenue Service	Attn Linda Yao	4050 Alpha Road	MC 4505 NDAL		Farmers Branch	TX	75244	
Internal Revenue Service	Faye Copple, Bankruptcy Specialist	1100 Commerce St	M/S MC5027DAL		Dallas	TX	75242	
Internal Revenue Service		P.O. BOX 21126			Philadelphia	PA	19114	
Internal Revenue Service		STOP 5107 NWSAT	4050 ALPHA RD		Farmers Branch	TX	75244-4201	
Internal Revenue Service		Ogden			Ogden	UT	84201-0039	
International Assets Advisory, LLC		390 North Orange Ave	Ste 750		Orlando	FL	32801	

004142

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
International Bar Association		10th Flr 1 Stephen St			London		W1T 1AT	United Kingdom
International Foundation		18700 W. Bluemound Rd	PO Box 69		Brookfield	WI	53008-0069	
Intertrust		190 Elgin Ave	George Town		Grand Cayman		KY1-9000	Cayman Islands
Intex Solutions, Inc.	Accounts Receivable	110 A St			Needham	MA	02494-2807	
Intralinks		P.O. Box 10259			New York	NY	10259	
Intralinks Inc.		150 East 42nd St	8th floor		New York	NY	10017-0000	
Intuit		PO Box 30860			Los Angeles	CA	90030-0860	
Inventus		P.O. Box 130114			Dallas	TX	75313	
INVESHARE, Inc.		PO Box 568			Alpharetta	GA	30009-0568	
Investigative Management Group		825 Third Avenue	18th Floor		New York	NY	10022	
Investment Company Institute		PO Box 759456			Baltimore	MD	21275	
Investment Company Institute		Dept. 3077			Washington	DC	20061-3077	
Investment Management Advisors, LLC		3131 Maple Ave., Suite 7E			Dallas	TX	75201	
Investment Management Institute		123 Mason St			Greenwich	CT	06830	
Investment Management Institute		165 W. Putnam Avenue	2nd Floor		Greenwich	CT	06830	
Investment Planners, Inc.		PO Box 170			Decatur	IL	62525-0170	
Investment Professionals Conference	Attn Rachel Christensen	470 Tanner Building			Provo	UT	84602	
Investment Program Association		PO Box 480			Ellicott City	MD	21042-0480	
InvestmentWires, Inc.		14 Wall Street	20th Floor		New York	NY	10005	
Investor Force, Inc.		Lockbox # 415926			Boston	MA	02241-5926	
Investors Bank & Trust Company		200 Clarendon Street	Mail Code EUC 108		Boston	MA	02116	
Investors Business Daily		12655 Beatrice St.			Los Angeles	CA	90066	
IPC Information Systems, Inc.		PO Box 26644			New York	NY	10087	
IPC Network Services, Inc.	Harborside Financial Center	1500 Plaza 10	15th Floor		Jersey City	NJ	07311	
Ipitomi Limited		3rd Floor	125 Wood Street		London		EC2V 7AN	United Kingdom
Ipreo Data Inc.		421 Fayetteville Street	Suite 900		Raleigh	NC	27601	
IRELL & MANELLA LLP		840 NEWPORT CENTER DR	STE 450		Newport Beach	CA	92660-6324	
IRENE KUBERT	LASC	600 SOUTH COMMONWEALTH AVE, DEPT 316			Los Angeles	CA	90005	
Iron Mountain - Off-Site Data Protection		PO Box 915026			Dallas	TX	75391-5026	
Iron Mountain Records Management	Whitelaw House	Alderstone House Business Park	MacMillan Rd		Livington		EH54 7DF	United Kingdom
Iron Mountain Records Management		PO Box 915004			Dallas	TX	75391-5004	

004143



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Ironwood Legal Solutions		Level 8, South Wing Millennium House, 46/58, Nawam Mawatha			Colombo	NV	2 89147	Sri Lanka
IRR - Las Vegas		3367 West Flamingo Road	Suite 100		Las Vegas	NV		
IRS		Earle Cabell Federal Building	1100 Commerce St #121		Dallas	TX	75242	
Irving ISD	Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
Irving, Katie		Address on File						
Isaac D. Leventon	c/o David Neier	Winston Strawn LLP	200 Park Avenue		New York	NY	10166	
Isaac Leventon	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue		New York	NY	10018	
Isaac Leventon	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Island Love Rebuilding Fund		PO Box 53412			Lafayette	LA	70505-3412	
Itch Inc.		6230 Wilshire Blvd, # 145			Los Angeles	CA	90048	
ITG Investment Research, Inc.	Attn Chris Stilo	380 Madison Ave			New York	NY	10017	
ITG Investment Research, Inc.		1270 Avenue of the Americas			New York	NY	10020	
ITG Investment Research, Inc.		PO Box 30270			New York	NY	10087-0270	
Ivanti Security		698 West 10000 South			Jordan	UT	84095-0000	
Ivins, Phillips & Barker Chartered		1700 Pennsylvania Avenue, NW			Washington	DC	20006	
J Gregory Stone		Address on File						
J. Sagar Associates		Vakils House	18 Sprrott Road	Ballard Estate	Mumbai	India	400 001	
J.C. Trident, Inc.		9035 Orlando Ave			Navarre	FL	32566	
Jack Boles Parking		PO Box 190326			Dallas	TX	75219-0326	
Jack Takacs		Address on File						
JACK YANG		Address on File						
Jackson Walker		PO Box 130989			Dallas	TX	75313-0989	
Jackson Walker LLP	Michael S. Held	2323 Ross Ave., Suite 600			Dallas	TX	75201	
Jackson Walker LLP		PO BOX 130989			Dallas	TX	75313-0989	
Jackson, Jesse		Address on File						
JACOBS ENGINEERING GROUP		PO BOX 651063			Charlotte	NC	28265	
JAGADEESH REDDY		Address on File						
Jain, Ajit		Address on File						
Jain, Ajit		Address on File						
Jain, Bhawika		Address on File						
Jain, Bhawika		Address on File						
JAKE AMBROSE		Address on File						
Jake Isnick		Address on File						
JAMAL CARTY		Address on File						
James A Shilkett		Address on File						
James C. Merrill & Associates, Inc.		Address on File						
James C. Merrill & Associates, Inc.		14677 Midway Rd, Ste 203			Addison	TX	75001	
James D. Calver		Address on File						
James D. Dondero	D. Michael Lynn	Address on File						
James D. Dondero		Address on File						

004144



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
James Dondero, as the successor-in-interest to the Canis Major Trust	James D. Dondero	D. Michael Lynn Address on File	420 Throckmorton Street, Suite 1000		Fort Worth	TX	76102	
James Edward		Address on File						
James Klein		Address on File						
James Lamar		Address on File						
James Love		Address on File						
James Mathis Consulting LLC		3701 Braewood Circle Bank of Marshall Islands Building, 2nd Floor, PO Box 509			Plano	TX	75093	Marshall Islands
James McCaffrey		Address on File						
JAMES PAGLIAROLI		Address on File						
James Palmer		Address on File						
James Peterson		Address on File						
James R. Thompson		Address on File						
James T. Bentley	Schulte Roth & Zabel LLP	919 Third Avenue			New York	NY	10022	
James, Carter & Coulter, P.L.C.		500 Broadway	Suite 400		Little Rock	AR	72203	
JAMESON, MATTHEW		Address on File						
JAMS, Inc.		PO Box 512850			Los Angeles	CA	90051-0850	
Jane Rose Reporting Inc.		2547 State Hwy. 35	Suites 1&2		Luck	WI	54853	
Janet McGreal		Address on File						
JANIS ROGERS & ASSOCIATES		1545 W MOCKINGBIRD LN	STE 1032		Dallas	TX	75235	
Jansen & Palmer, LLC		4746 Elliot Avenue South			Minneapolis	MN	55407	
JANULESKI, GEOFFREY J		Address on File						
Japan Alternative Investment Co Ltd		19th Floor, KDDI Otemachi Bldg	1-8-1 Otemachi, Chiyoda-ku		Tokyo		100-0004	JAPAN
Japanese Evangelical Missionary Society		948 East Second St			Los Angeles	CA	90012-4382	
Jardine, Jeffrey		Address on File						
Jardine, Jordan		Address on File						
Jaron Stern		Address on File						
Jason Chang		Address on File						
Jason Goldsmith		Address on File						
Jason Hoarell		Address on File						
Jason Kathman		Address on File						
JASON KIRSCHNER		Address on File						
Jason L. Janik		Address on File						
Jason Post		Address on File						
Jason Rothstein	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
JASON SANTAMARIA		Address on File						
Jason Vanacour		Address on File						
Jasper CLO Ltd MMP-5 Funding, LLC and IXIS Financial Products Inc.	Jasper CLO Ltd.	PO Box 1234 Queengate House	South Church Street	The Directors	Grand Cayman			Cayman Islands

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Jasper CLO Ltd.	JP Morgan Chase Bank	600 Travis Street	50th Floor	Worldwide Securities Services - Jasper CLO Ltd.	Houston	TX	77002	
Jasper CLO Ltd.		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Jasper CLO Ltd. JP Morgan Chase Bank, National Association	Jasper CLO Ltd. c/o Maples Finance Limited	Queensgate House, South Church Street, George Town		P. O. Box 1093GT	Grand Cayman			Cayman Islands
Jasper CLO, Ltd.	c/o Ogier Fiduciary Services (Cayman) Limited	PO Box 1234	Queensgate House, South Church Street		Grand Cayman			Cayman Islands
Jay Angotti		Address on File						
Jay Borikar		Address on File						
Jay Gierak		Address on File						
Jay M Cohen, PA		PO Box 2210	Winter Park		FL		32790	
Jay Sluis		Address on File						
Jay Steigenwald		Address on File						
JB Sigmon		Address on File						
JDRF Greater Dallas Chapter		9400 N Central Expressway	Suite 1201		Dallas	TX	75231	
Jean Paul Sevilla	Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Avenue		New York	NY	10018	
Jean Paul Sevilla	c/o David Neier, Winston Strawn LLP	200 Park Avenue			New York	NY	10166	
Jean Paul Sevilla	Michelle Hartmann	Baker & McKenzie LLP	1900 North Pearl, Suite 1500		Dallas	TX	75201	
Jean Paul Sevilla		Address on File						
Jean-Francois Lemay		Address on File						
Jeff Cohen		Address on File						
Jeff Damec		Address on File						
Jeff Gilbert		Address on File						
Jeff Graham		Address on File						
Jeff Habicht		Address on File						
Jeff Seaver		Address on File						
Jeff Turner		Address on File						
Jefferies	Ronald Wong	101 California Street	Suite 3100		San Francisco	CA	94111	
Jefferies LLC	Attn Casey Doherty	c/o Dentons US LLP	1221 McKinney Street, Suite 1900		Houston	TX	77010-2006	
Jefferies LLC	Attn Christopher Bianchi	Prime Brokerage Services	520 Madison Avenue		New York	NY	10022	
Jefferies LLC	Christopher Bianchi	520 Madison Avenue, 2nd Floor			New York	NY	10022	
Jefferies LLC	Dentons US LLP	Attn Lauren Macksoud, Esq. and Patrick Maxcy, Esq.	1221 Avenue of the Americas		New York	NY	10020	
Jefferies LLC		520 Madison Avenue, 12th Floor			New York	NY	10022	
Jeffrey Dutton		Address on File						
Jeffrey Rose		Address on File						
Jehyun Law		11st Floor, Samsung Life East Yeouido Bldg, 25	Yeouido-Dong	2Gil 17, International Financial-Ro	Yeongdeungpo-Gu	Seoul	150-878	South Korea
JEMS		948 EAST 2ND ST			Los Angeles	CA	90012-4317	
Jenifer Jurrius		Address on File						
JENKINS, AMY		Address on File						
JENNA BRIDGES		Address on File						

004146

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
JENNER & BLOCK LLP		353 N CLARK ST			Chicago	IL	60654-3456	
Jenni Logan		Address on File						
Jennifer Buntz		Address on File						
JENNIFER LYNN HUNTSMAN TRUST	ATTN BRIAN SHRUM	1 S MAIN ST 12TH FLR			Salt Lake City	UT	84111-1904	
Jennifer Ricci		Address on File						
Jennifer Wooton		Address on File						
JENSEN, ASTRID		Address on File						
JENSEN, MARTY		Address on File						
Jeong, Sang K.		Address on File						
Jeremy Kross		Address on File						
Jeremy Simpson		Address on File						
JERICO SERVICES		2571 MERRELL RD			Dallas	TX	75229	
Jerome Carter	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76012-4135	
Jessica Gimbel		Address on File						
Jessica Hoskings		Address on File						
Jessica Nalder		Address on File						
Jessica Ogle		Address on File						
Jessup Holdings LLC	Attn John Mandler	c/o Mandel, Katz and Brosnan LLP	100 Dutch Hill Road, Suite 390		Orangeburg	NY	10962	
Jesuit Alumni Homecoming		12345 Inwood Rd			Dallas	TX	75244	
Jetti, Vikram		Address on File						
JEWISH FEDERATION OF GREATER DALLAS	ATTN KAREN HANEY	JACOB FELDMAN BUILDING	7800 NORTHAVEN RD		Dallas	TX	75230	
JHAWER, SHANTANU		Address on File						
JHT Holdings, Inc.	Attn Christopher Reehl	10801 Corporate Drive	PO Box 581025		Pleasant Prairie	WI	53158	
Jillian Ashenbrenner		Address on File						
Jim Pagliaroli		Address on File						
Jinny Cha		Address on File						
JJB Hilliard, WL Lyons LLC	Attn Mac Thomas	500 West Jefferson Street			Louisville	KY	40202	
JOCELYN FRANK FABIANCIC		Address on File						
Jocoy, Laura C.		Address on File						
JOE DOUGHERTY		Address on File						
JOE DOUGHERTY		Address on File						
JOE EMMANUEL		Address on File						
Joe Farach		Address on File						
Joe Foster Company LLC		25 Highland Park Village	Suite 100-880		Dallas	TX	75205	
Joe Joyner		Address on File						
Joe Kingsley		Address on File						
Joe Leganza		Address on File						
Joe Norton		Address on File						
Joe Scanlon		CRT Capital Holdings LLC	262 Harbor Drive		Stamford	CT	06902	
JOEL ESHBAUGH		Address on File						
Joel Zeff Creative		PO Box 979			Coppell	TX	75019	
Johanna McBroom		Address on File						
JOHN A TOWNSEND, IOLTA	TAX PROCEDURE GROUP	5615 KIRBY DR, STE 830			Houston	TX	77005	
John Burer		Address on File						

004147

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
John Caron		Address on File						
John Chant		Address on File						
John Crocker		Address on File						
John Duval Associates		400 East 56th St Ste 10-S			New York	NY	10022	
John Duval Associates		446 Milan Hill Rd			Red Hook	NY	12571	
John F Yang	KLS Financial Advisors	127 Main Street, Suite A			Chatham	NJ	07928	
John F. Jack Yang	Daniel P Winikka	Loewinsohn Flegle Deary Simon LLP	12377 Merit Drive, Suite 900		Dallas	TX	75251	
John F. Jack Yang		Address on File						
John F. Warren, Dallas County Clerk	Attn Central Records	600 Commerce St--B1			Dallas	TX	75202	
John Fink		Address on File						
JOHN FRUSHA		Address on File						
JOHN GALANTE		Address on File						
John Gavin		Address on File						
John Guagliardo		Address on File						
John Hancock Life Insurance		PO Box 894764			Los Angeles	CA	90189-4764	
John Hare		Address on File						
JOHN HENNEGAN		Address on File						
John Holmes		Address on File						
John Honis		Address on File						
John Howard		Address on File						
JOHN HUNTINGTON		Address on File						
John Ly		Address on File						
John Martin		Address on File						
JOHN MELTON		Address on File						
John Morgan		Address on File						
JOHN MORRIS		Address on File						
John Partchenko		Address on File						
John Paul Rafflo		Address on File						
John Perkins		Address on File						
John R Ames, CTA		Records Bldg, 500 Elm St	PO Box 139033		Dallas	TX	75313-9033	
John R Ames, CTA		PO Box 139066			Dallas	TX	75313-9066	
John R. Watkins		Address on File						
John Reineberg		Address on File						
John Seng		Address on File						
John Yang		Address on File						
JOHN, KYLE		Address on File						
Johnston Tobey Baruch, P.C.		3308 Oak Grove Avenue			Dallas	TX	75204	
Jolles Associates, Inc.		PO Box 930			Great Falls	VA	22066	
JON BURKE		Address on File						
JON MARTIN		Address on File						
JON TAYLOR		Address on File						
Jones Day		Address on File						
Jones Reporting Company Inc		Two Oliver Street			Boston	MA	02109	
Jones Roach & Caringella, Inc.		10920 Via Frontera Ste 440			San Diego	CA	92127-1732	
JONES, DAVID		Address on File						

004148

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Jones, Michael		Address on File						
Jones, Owen		Address on File						
JONES, ROBERT		Address on File						
Jones, Terrence O.		Address on File						
Jordan Fraker Photography		8806 San Fernando Way			Dallas	TX	75218	
Jordan Kahn Music Company		3941 Legacy Drive	#204 A-225		Plano	TX	75023	
Jordan Malouf		Address on File						
Jordan Thompson		Address on File						
Jordan, Hyden, Womble & Culbreth P.C.		500 N Shoreline, Ste 900N			Corpus Christi	TX	78471	
Jordan, Micah		Address on File						
JORDEN BURT		Address on File						
JORGE JARAMILLO		Address on File						
Jose Antonio Blanco & Asociados		Valentin Vergara 1675	1602 Florida		Buenos Aires			ARGENTINA
Jose Ontiveros		Address on File						
Josef Yehia		Address on File						
JOSEPH BIDJOKA		Address on File						
Joseph Kevin Ciavarra		Address on File						
Joseph R Pinkston III		Address on File						
Josh Bock		Address on File						
Josh Phillips		Address on File						
Josh Terry	Attn Rakhee V. Patel, Winstead PC	Address on File						
Josh Terry		Address on File						
Joshua & Jennifer Terry	c/o Brian P. Shaw, Esq.	Rogge Dunn Group, PC	500 N. Akard Street, Suite 1900		Dallas	TX	75201	
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan	Brian P. Shaw	500 N. Akard St. Suite 1900			Dallas	TX	75201	
Joshua N. Terry on behalf of his IRAs and Jennifer G. Terry on behalf of her IRAs and The Terry Family 401-K Plan		Address on File						
Joshua Tree Feeding Program Inc		1601 W Indian School Rd			Phoenix	AZ	85015	
Joy Squad Dallas		1725 Prescott Drive			Flower Mound	TX	75028	
JP Morgan		WSS GLOBAL FEE BILLING	PO BOX 26040		New York	NY	10087-6040	
JP Morgan		ITS Fee Billing	PO Box 911953		Dallas	TX	75391-1953	
JP MORGAN HEDGE FUND SERVICES		ONE BEACON ST, 19TH FLR			Boston	MA	02108	
JP Sevilla		Address on File						
JP Morgan Chase Bank	Worldwide Securities Services	600 Travis Street, 50th Floor			Houston	TX	77002	
JP Morgan Clearing Corp	ATTN Metrotech Center North	1 MetroTech Center # 1			Brooklyn	NY	11201	

004149

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
JPMORGAN FCS		13455 Noel Rd, Ste 1150			Dallas	TX	75240	
JPMORGAN FCS		WSS GLOBAL FEE BILLING	PO BOX 26040		New York	NY	10087-6040	
JT Magen & Company Inc		44 West 28th Street	11 th floor		New York	NY	10001	
Judy Chamberlin		2604 Medline Ct			Southlake	TX	76092	
Entertainment		PO Box 8789			St Petersburg	FL	33738-8789	
Jumpline, Inc. Web Hosting		Address on File						
JUN HONG HENG		Address on File						
JUNG, KEVIN		Address on File						
Junior Achievement of Dallas	Athn Shelley Strickland	1201 W Executive Dr			Richardson	TX	75081	
JUNIOR LEAGUE OF DALLAS		8003 INWOOD RD			Dallas	TX	75209	
Justin Carfora		Address on File						
Justin Gould		Address on File						
Justin Nabours		Address on File						
Justin Smith		Address on File						
Juvenile Diabetes Research Foundation		200 Vesey St Frnt			New York	NY	10281-8000	
JW Cole Financial, Inc.		11811 N. Tatum Blvd	Ste 3055		Phoenix	AZ	85028	
JW Marriott Essex House NY		160 Central Park South			New York	NY	10019	
K & L Gates LLP		Suite 2800	1717 Main Street		Dallas	TX	75201	
K&L Gates LLP	A. Lee Hogewood, III	4350 Lassiter at North Hills Ave., Suite 300			Raleigh	NC	27609	
K&L Gates LLP	Athn Artoush Varshosaz	1717 Main Street, Suite 2800			Dallas	TX	75201	
K&L Gates LLP	James A. Wright III	State Street Financial Center	One Lincoln Street		Boston	MA	02111-2950	
K&L Gates LLP	Stephen G. Topetzes	1601 K Street, NW			Washington	DC	20006	
Kadleck & Associates		555 Republic Dr, suite 115			Plano	TX	75074	
KAHR REAL ESTATE SERVICES LLC		139 FULTON ST	STE 319		New York	NY	10038	
KAI CHEN		Address on File						
Kane Environmental Engineering, Inc.		8816 Big View Dr			Austin	TX	78730	
KANE RUSSELL COLEMAN & LOGAN PC		901 MAIN ST STE 5200			DALLAS	TX	75202-3705	
Kansas Corporate Tax Association		Department of Revenue	915 SW Harrison Street		Topeka	KS	66612-1588	
Kapil Mathur		229 E. William	Suite 211		Wichita	KS	67202-4027	
Kaplan Voekler Cunningham & Frank PLC		Address on File						
KAREL, TRAVIS		PO Box 2470			Richmond	VA	23218-2470	
Karen Weiss		Address on File						
Karl Kovelan	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Karl Eisleben		Address on File						
KARL FARMER		Address on File						
Karthik Bhavaraju		Address on File						
Kase Kinney		Address on File						
kasina, LLC		581 Avenue of the Americas	5th Floor		New York	NY	10011	

004150

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP		1633 BROADWAY PO BOX 75160			New York Baltimore	NY MD	10019-6799 21275-5160	
Kastle Systems Kathryn Plouff		Address on File 600 Madison Avenue, 17th Floor			New York Chicago	NY IL	10022 60661-3693	
Katten Muchin Rosenman LLP KattenMuchinRosenman LLP		525 W Monroe St Address on File						
Kaathik Bhavaraju KAUFFMAN, PAUL Kaufman County		Address on File 2777 N. Stemmons Freeway	Suite 1000		Dallas	TX	75207	
Kaufman County	Attn Elizabeth Weller c/o Laurie A. Spindler, Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
Kavita Naik KCD Financial, Inc.	Attn Vicki Berger	Address on File 3061 Allied St, Ste B	Suite B		Green Bay Green Bay	WI WI	54304 54304	
KEARNEY, JOSEPH KEITH BECKMAN		Address on File Address on File						
Keith Bowers Keith Dunlap Keith Gorman Keith Schneider Kelan Advisors Keller Williams		Address on File Address on File Address on File Address on File Address on File PO Box 122			Lexington	MA	02420	
Kellie Stevens	c/o Paula Barbee Michael P. Hutchens, Esq.	Address on File Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
KELLOGG Kellogg Huber Hansen Todd Evans Kelly Bennett Kelly Correll		KELLOGG ALUMNI CLUB 1615 M Street N.W. Address on File Address on File	7040 BROOKSHIRE DR. Ste 400		Dallas Washington	TX DC	75230 20036-3209	
Kelly Hart & Hallman Kelly Hart & Pitre Kelly Hart Pitre	Hugh G. Connor II, Michael D. Anderson and Katherine T. Hopkins Louis M. Phillips	201 Main Street, Suite 2500 301 Main Street, Suite 1600			Fort Worth Baton Rouge New Orleans	TX LA LA	76102 70801 70130	
Kelsey Ellenberg KEN KUNIMOTO Ken Owen & Associates Ken Paxton Campaign Kendall + Landscape Architecture	Amelia L. Hurt	400 Poydras Street, Suite 1812 17510 West Grand Parkway South Address on File 801 West Ave 1505 Elm Street, #1601	Suite 510		Sugarland Austin Dallas Dallas	TX TX TX TX	77479 78701-2207 75201 75214-2561	
Kendall Best Kennecott Funding Ltd Kennedy DMC Austin KENNETH BELLAIRE		6976 Santa Barbara Dr Address on File 330 Madison Ave, 11th Floor 5810 Trade Center Dr Address on File			New York Austin	NY TX	10017 78744	

004151

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kenneth Daewoo Park		Address on File						
Kenneth L Maun	Tax Assessor Collector	Collin County	PO Box 8046		McKinney	TX	75070	
Kenneth L. Maun		PO Box 8046			McKinney	TX	75070-8046	
Kenneth Tharp		Address on File						
Kenny Juarez		Address on File						
Kensho Technologies, Inc.		17 Dunster St	Suite 300		Cambridge	MA	02138	
KENT CAPPS		Address on File						
Kent Gatzki		Address on File						
Kentucky State Treasurer	Division of Securities	1025 Capital Center Drive, Suite 200			Frankfort	KY	40601	
KERA		3000 Harry Hines Blvd			Dallas	TX	75201	
Kercsmar & Feltus PLLC		6263 N. Scottsdale Rd.	Suite 320		Scottsdale	AZ	85250	
Kerns, Brian		Address on File						
Kerri Kearney		Address on File						
KEVIN CLEARY		Address on File						
Kevin Dowd		Address on File						
Kevin Dunwoodie		Address on File						
KEVIN ETHRIDGE		Address on File						
KEVIN LATIMER		Address on File						
Kevin Messerle		Address on File						
Kevin Potts		Address on File						
Kevin Price		Address on File						
KEVIN SHAHBAZ		Address on File						
KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110	
KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114	
Keybank National Association KFORCE PROFESSIONAL STAFFING	ATTN KREC Loan Services	4910 Tiedman Road	3rd Floor		Brooklyn	OH	44144	
KidLInks		PO BOX 2277997			Atlanta	GA	30384-7997	
KidLInks Foundation		6387B Camp Bowie Blvd	#278		Fort Worth	TX	76116	
Kiely, Thomas		5485 Belt Line Rd	Suite 400		Dallas	TX	75254-7604	
Kilcullen & Company		Address on File						
KILLEBREW, MATT		150 N. Radnor Chester Rd.	Suite C210		Radnor	PA	19087	
Kim & Chang		Address on File						
Kim Dawson Agency		Seyang Building, 223 Naeja- dong	Jongno-gu Suite #B		Seoul		110-720	South Korea
Kim Leslie Shafer		1645 Stemmons Freeway			Dallas	TX	75207	
Kim R. Kunz		Address on File						
Kim, Austen		Address on File						
KIM, HELEN		Address on File						
Kinder, Travis		Address on File						
KING & SPALDING LLP		1180 Peachtree St NE			Atlanta	GA	30309-3521	
KING & SPALDING LLP		PO Box 116133			Atlanta	GA	30368-6133	United Kingdom
King & Wood Mallesons LLP		10 Queen Street Place			London		EC4R 1BE	
Kingwood Administrative Services		15 Golf Linds Ct			Kinwood	TX	77339	

004152



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kingwood Forestry Service, Inc		PO Box 1290			Monticello	AR	71657	
Kingwood Forestry Services, Inc		145 Greenfield Drive			Monticello	AR	71655	
Kimney Recruiting LP		106 E 6th St Ste 300			Austin	TX	78701	
Kinsley & Associates, LLC		6732 West Coal Mine Avenue	#500		Littleton	CO	80123	
Kirkland & Ellis		777 S Figueroa St Ste 3700			Los Angeles	CA	90017	
Kirkland & Ellis		153 E 53RD ST	CITIGROUP CENTER		New York	NY	10022-4611	
Kirkpatrick Lockhart Preston		SUITE 2800	1717 MAIN ST		Dallas	TX	75201	
Gates Ellis		1601 K Street NW			Washington	DC	20006-1600	
Gates Ellis		2121 Ave of the Stars, Flr 33			Los Angeles	CA	90067	
Kleinberg, Kaplan, Wolff & Cohen		551 Fifth Ave 18th Flr			New York	NY	10176	
Kline & Kline		8117 Preston Rd, Ste 300			Dallas	TX	75225	
Klisares, Michael		Address on File						
KLOS, DAVID		Address on File						
Klostera Trading Corporation		61 Heather Lane			Williston	VT	05495	
KMS Financial Services, Inc.	Attn Megan Slater	2001 Sixth Avenue, Suite 280			Seattle	WA	98121-9833	
Knect365 US, Inc.		PO Box 3685			Boston	MA	02241-3685	
KNIGHT ELECTRICAL SERVICES CORP		599 11th Avenue			New York	NY	10036	
KNIGHT ELECTRICAL SERVICES CORP		111 8TH AVE	STE 526		New York	NY	10011-5298	
Knights of Columbus		2280 Springlake Road			Dallas	TX	75234	
Knott, Brandon		Address on File						
Knott, Brandon		Address on File						
Knox, Haley		Address on File						
KNUTSON, DEREK		Address on File						
Koch Companies Public Sector, LLC		PO Box 93901			Chicago	IL	60673	
Kody Krause		Address on File						
Komen Dallas Race for the Cure	ATTN GARI PHILLIPS	12820 HILLCREST	STE C105		Dallas	TX	75230	
Komen Dallas Race for the Cure		765 NorthPark Center			Dallas	TX	75225	
Korea Chonha Translation Co., Ltd.		1024 Manhattan Bldg. 36-2	Yeungdeungpo-gu		Seoul		150-746	South Korea
Korea Standard Transl Center Co. Ltd.		S-701, Garden 5 Works	Munjeong-dong Songpa-gu		Seoul		138-200	South Korea
KORNGUT, BRYAN		Address on File						
KORTLANDER, MATTHEW		Address on File						
KORTLANDER, MATTHEW A.		Address on File						
Kouzmenko, Svetlana		Address on File						
Kovack Securities Inc.		6451 N. Federal Hwy	Suite 1201		Ft. Lauderdale	FL	33308	

004153

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Kovelan, Kari		Address on File						
KPMG LLP		3 Chesnut Ridge Rd			Monvale	NJ	07645	
KRAMER LEVIN NAFTALIS & FRANKEL LLP		1177 AVENUE OF THE AMERICAS			New York	NY	10036-2714	
Krishnan, Prasad		Address on File						
Kroll Associates, Inc.		475 Sansome Street	Suite 510		San Francisco	CA	94104	DENMARK
Kromann Reurnert		Sundkrogsgade 5			Copenhagen		DK-2100	
Kruse & Associates, Ltd.		180 North LaSalle Street, Ste 3700			Chicago	IL	60601	
Krytzer, Damon		Address on File						
KUCHLER, TOM		Address on File						
Kuehn, Richard		Address on File						
KULWICH, STEPHANIE		Address on File						
Kuperman, Orr & Albers PC		2801 Via Fortuna	Suite 430		Austin	TX	78746	
KURATTI, MOHAN		Address on File						
KURT DAUM		Address on File						
KURT DAUM		Address on File						
KURT PLUMER		Address on File						
Kurtis Plumer		Address on File						
Kurtosys Systems Inc.		134 5th Ave	3rd Floor		New York	NY	10011	
KWOK, NAM		Address on File						
L.A. Fuess Partners		3333 Lee Pkwy, Ste 300			Dallas	TX	75219	
L.C. Kirk & Co		101 W Argonne	Ste 16		Saint Louis	MO	63122	
LABADIE, MICHAEL		Address on File						
Lackey Hershman LLP	Paul Lackey, Esq.	Stinson LLP	3102 Oak Lawn Avenue, Ste 777		Dallas	TX	75219	
Lackey Hershman LLP		3102 Oak Lawn, Ste 777			Dallas	TX	75219-4241	
LAFFER ASSOCIATES		103 Murphy Court			Nashville	TN	37203	
LAH Investments, LLC		4 Circle Drive			Rumson	NJ	07660	
Lamba, Menka		Address on File						
LAMENDORF, JONATHAN		Address on File						
Lamplighters Parents Association		Address on File						
Landmark Graphics Corp		11611 Inwood Road			Dallas	TX	75229	
Landmark Graphics Corp		PO Box 301341			Dallas	TX	75303-1341	
Landmark Graphics Corporation		2107 CityWest Blvd	Building 2		Houston	TX	77042-2827	
Landon Patterson		10200 Bellaire Blvd			Houston	TX	77072-5299	
Landpro Corporation		Address on File						
Landry, John		21755 I-45 North	Building 7		Spring	TX	77388	
Lanier Worldwide, Inc.		Address on File						
Larkin, William		PO Box 105533			Atlanta	GA	30348-5533	
LAROCHE PETROLEUM CONSULTANTS, LTD		Address on File						
LaRoche Petroleum Consultants, Ltd.		4600 GREENVILLE AVE	STE 160		Dallas	TX	75206	
LARRY LINDSEY		2435 N. Central Expwy	Suite 1500		Richardson	TX	75080	
Lars Enstrom		Address on File						
LARSEN, JESS S.		Address on File						
LARSON & MCGOWIN INC.		254 NORTH JACKSON ST	PO BOX 2143		Mobile	AL	36652	

004154

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Laser App		222 Valley Creek Blvd, Ste 300			Exton	PA	19341	
Laser App		3190 Shelby Street	Suite D-100		Ontario	CA	91764	
LATENTZERO INC		160 Federal Street	16 th Floor		Boston	MA	02110	
LATENTZERO INC		PO BOX 415437	16TH FLR		Boston	MA	02241	
Lateral Group NA, LLC		Dept CH 16755			Palatine	IL	60055-6755	
		5516 Collection Cir Drive			Chicago	IL	60693	
Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000			Washington	DC	20004	
Latham & Watkins LLP	Jamie Wine	885 Third Ave.			New York	NY	10022-4834	
Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100			Los Angeles	CA	90071	
LATHAM & WATKINS LLP		PO BOX 7247-8181			Philadelphia	PA	19170-8181	
Latham and Watkins LLP	Asif Attarwala	330 North Wabash Ave. Suite 2800			Chicago	IL	60611	
LATIMER, KEVIN		Address on File						
Latin Markets		10 W. 37th St	7th Floor		New York	NY	10018	
LatinFinance		Subscriptions	PO Box 4009		Chesterfield	MO	63006-4009	
Lattig, Larry		Address on File						
Lauren A. Coleman		Address on File						
Lauren Brady		Address on File						
LAUREN HOLLAND		Address on File						
Lauren Powell		Address on File						
Lauren Roche		Address on File						
Lauren Sekerke		Address on File						
Lauren Selevan		Address on File						
Lauren Thedford	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	United Kingdom
Law Debenture Corporate Services Limited		Fifth Floor	100 Wood Street		London		EC2V 7EX	
LAW JOURNAL PRESS		PO BOX 18105			Newark	NJ	07191-8105	
Law Office of Michael R. Boling		2305 W. Parker Rd	Suite 203		Plano	TX	75023	
Law Office of Sean F. Oshea		90 Park Ave, 20th Flr			New York	NY	10016	
Law Offices of Art Brender		600 Eighth Avenue			Ft. Worth	TX	76104	
LAW OFFICES OF CHAPMAN & CUTLER		PO BOX 71291			Chicago	IL	60694	
Law Offices of Charles Renfrew		710 Sansome St			San Francisco	CA	94111-1704	
LAW OFFICES OF CHRISTOPHER NOLLAND		1717 MAIN ST	STE 5550 LB 39		Dallas	TX	75201	
LAWLER, TIMOTHY		Address on File						
Lawrence A. Hamermesh		Address on File						
Lawrence Labanowski		Address on File						
LAWRENCE, SUZANNE		Address on File						
Lawyers Title of Arizona, Inc.		3131 E. Camelback Rd	Suite 220		Phoenix	AZ	85016	
LB GROUP, LLC	ATTN J LYONS BREWER	274 RIVERSIDE AVE			Westport	CT	06880	
LE, ELI		Address on File						
LEAK, ELIZABETH		Address on File						
LEAP Foundation		9101 N Central Expressway	Suite 600		Dallas	TX	75231	

004155

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
LED ENTERPRISES, INC.		11131 SHADY TRAIL			Dallas	TX	75229	
LEDERMAN, SHAWN		Address on File						
Lee Lord		Address on File						
Lee Park and Arlington Hall Conservancy		3333 Turtle Creek Blvd.			Dallas	TX	75219	
Lee, Dylan		Address on File						
Lee, Jae		Address on File						
LEE, JEFFREY		Address on File						
Lee, Shawn		Address on File						
Lee, Woenjun		Address on File						
Legal Concierge, Inc.		3975 McCreary Road			Parker	TX	75002	
LegalLink Dallas		PO Box 277951			Atlanta	GA	30384	
LegalLink Dallas		PO Box 538481			Atlanta	GA	30353-8481	
Legalpeople LLC		134 N. LaSalle Street, Ste 800			Chicago	IL	60602	
LegalSource LS, LLC		601 West 5th St, Ste 240			Los Angeles	CA	90071	
LEGG, BRIAN		Address on File						
Leif M Clark Consulting PLLC		PO Box 2676			San Antonio	TX	78299	
LEMME, MATTHEW		Address on File						
LEMUS, LUIS		Address on File						
LEMUS, LUIS C.		Address on File						
LENGE, ANDREW		Address on File						
Lenz & Staehelin		Route de Chene 30	CH-1211		Geneva		6	Switzerland
LEO, EDWARD		Address on File						
Leonard Budyonny		Address on File						
LESIE GILB TAPLIN LIVING TRUST		Address on File						
Leslie Kwang		Address on File						
Leung, Timothy		Address on File						
LEVENTON, ISAAC		Address on File						
Levinger PC		1445 Ross Avenue	Suite 2500		Dallas	TX	75202	
Levinger PC		1700 Pacific Ave Ste 2390			Dallas	TX	75201-7371	
Levy & Salomao Advogados		AV. Brog.Faria Lima, 2601- 12oAndar	CEP 01452-924		Sao Paulo-SP			BRAZIL
Lewis J. Shuster		Address on File						
Lewis Silkin LLP		5 Chancery Lane	Cliffords Inn		London		EC4A 1BL	United Kingdom
Lewis, Rice & Fingersh, L.C.		500 N Broadway, Ste 2000			Saint Louis	MO	63102-2147	
Lexecon		332 S. Michigan Ave.			Chicago	IL	60604-4397	
LexisNexis		PO Box 733106			Dallas	TX	75373-3106	
Lexitas		P.O. Box 734298	Dept. 2012		Dallas	TX	75373-4298	
LHWL		PO Box 38011			Dallas	TX	75238	
Li, Chaoyi		Address on File						
Liberty CLO Ltd.	JPMorgan Chase Bank	600 Travis Street	50th Floor	Worldwide Securities Services-Liberty CLO, Ltd.	Houston	TX	77002	
Liberty CLO Ltd.	Liberty CLO, Ltd. c/o Walkers SPV Limited	Walker House, PO Box 908GT, Mary Street	George Town, Grand Cayman	The Directors	Grand Cayman			Cayman Islands

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Liberty CLO Ltd.		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Liberty Life Assurance Co of Boston		Group Benefits	PO Box 2658		Carol Stream	IL	60132-2658	
Liberty Life Assurance Company of Boston		100 Liberty Way			Dover	NH	03821-0000	
Liberty Mutual Insurance Company		175 Berkley St			Boston	MA	02116-0000	
LIDDLE, BRIANNE		Address on File			Coppell	TX	75019	
Life Fitness		156 Oak Trail						
LIFE INSURANCE COMPANY OF NORTH AMERICA		PO BOX 13701			Philadelphia	PA	19101-3701	
Lighthouse Document Solutions		723 Main St	Suite 430		Houston	TX	77002	
Lighthouse Document Solutions		2520 Caroline			Houston	TX	77004	
Lightpath Capital, Inc.		1453 Third Street Promenade	Suite 315		Los Angeles	CA	90401	
Lincoln Discovery Services, Inc.		42 Nevada Ave			Long Beach	NY	15161	
Lincoln Financial Advisors Corp.	Attn Trish Kendregan, FBO David Chazin	1300 S. Clinton Street, 1H-53			Fort Wayne	IN	46802	
Lincoln Financial Advisors Corp.		1 Independent Drive	Suite 2901		Jacksonville	FL	32202	
Lincoln Financial Advisors Corp.		Trish Kendregan	1300 S. Clinton St, IH-53		Fort Wayne	IN	46802	
Lincoln Financial Advisors Corp.		18400 Von Karman, Ste 400			Irvine	CA	92612	
LINDEN, RICHARD		Address on File						
Lindsey McCully		Address on File						
Lindsey Norman		Address on File						
Linear Technologies		259 West 30th Street	Suite 201		New York	NY	10001	
Linear Technologies, Inc.		259 West 30th Street, Suite 201			New York	NY	10001	
LinkedIn Corporation		62228 Collections Center Drive			Chicago	IL	60693-0622	
LinkedIn Corporation		1000 West Maude Avenue			Sunnyvale	CA	94085-0000	
Linsco/Private Ledger		9785 Towne Centre Dr			San Diego	CA	92121-1968	
LINVEL, SHANNON		Address on File						
Lipper Inc		PO Box 417148			Boston	MA	02241	
LiquidFiles		PO Box 2403			North Parramatta	NSW	01750	AUSTRALIA
Lisa Bock		Address on File						
Lisa Joseph		Address on File						
LISA RIDLEY		Address on File						
Litigation Paralegals, LLC		1717 McKinney Avenue	Suite 700		Dallas	TX	75202	
Litigation Research		15 Golf Links Court			Kingwood	TX	77339-5335	
Litigation Solution, Inc.		901 Main St Concourse 121			Dallas	TX	75202	
Litigation Research	ATTN Litigation Research	15 Gif Lnknk Ct			Kingswood	TX	77339	
Little Forney Crossing, Ltd.	c/o Standridge Companies, Ltd	3008 E. Hebron Pkwy, Bldg 300			Carrollton	TX	75010	

004157

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Littler Mendelson, PC		PO Box 45547			San Francisco	CA	94145-0547	
LIU, JEFF		Address on File						
Live Healthy America		1300 Walnut Street	Suite 100		Des Moines	IA	50309	
LiveWire Technologies, Inc.		PO Box 550			Little Elm	TX	75068	
Lizarazo, Mireya		Address on File						
Llaughing Llama Productions	Attn Robert Briscoe	11 Moller St			Tenafly	NJ	07670	
LLOYD GROUP		PO BOX 1374 MIDTOWN STATION			New York	NY	10018	
LLOYD, ANDREA K.		Address on File						
LNR and Associates		9426 Chimney Corner Lane			Dallas	TX	75243	
Loan Syndications and Trading	Attn Alicia Sansone	366 Madison Ave, 15th Floor			New York	NY	10017	
Loan Syndications and Trading	ATTN LORENA DELUCA	360 MADISON AVE, 16TH FLR			New York	NY	10017	
Locke Liddell & Sapp LLP		PO Box 911541			Dallas	TX	75391-1541	
Lockton Companies of Dallas		PO Box #671195			Dallas	TX	75267-1195	
Loews Coronado Bay	Jessica Gaines	Loews Business Service Center	424 Church Street, Suite 300		Nashville	TN	37219	
Loews Coronado Bay	Loews Coronado Bay Hotel	4000 Coronado Bay Road			Coronado	CA	92118	
Loews Coronado Bay Resort		4000 Coronado Bay Road			Coronado	CA	92118	
Loews Las Vegas Resort		101 Montelago Blvd			Henderson	NV	89011	
Logan Allin		Address on File						
LogMelh, Inc.		PO Box 50264			Los Angeles	CA	90074-0264	
LogoLink		3001 LBJ Freeway Ste 103			Dallas	TX	75234	
LOHRDING, BRIAN		Address on File						
Loiben, Tara		Address on File						
LOMBARDI, CHRISTOPHER		Address on File						
London Stock Exchange		10 Paternoster Square			London		EC4M 7LS	United Kingdom
Longhorn Credit Funding, LLC	c/o Lord Securities Corp.	48 Wall Street, 27th Floor	Attn Secretary		New York	NY	10005	
Longhorn Credit Funding, LLC		874 Walker Rd, Ste C			Dover	DE	19904-0000	
Looper Reed & McGraw P.C.		1601 Elm St, Ste 4600			Dallas	TX	75201	
Loren Jackson, District Clerk	Att Civil/Family Post Trial	PO Box 4651			Houston	TX	77210-4651	
Lori Hosea		Address on File						
LOSEY, NICHOLAS		Address on File						
LOUGHLIN MEGHJI + COMPANY, INC.		148 MADISON AVE	8TH FLOOR		New York	NY	10016	
LOUGHLIN MEGHJI + COMPANY, INC.		220 West 42nd Street, 9th Floor			New York	NY	10036	
Louis Dessaint		Address on File						
LOVELACE, NAOMI		Address on File						
Lowenstein Sandler PC		65 Livingston Ave			Roseland	NJ	07068	
Loyal Source		3504 Lake Lynda Drive	Suite 175		Orlando	FL	32817	
Loyens Loeff		Address on File						
Loyola University- Barnett Professorship	ATTN Traci Wolff	Loyola University New Orleans	7214 St. Charles Ave., Campus Box 909		New Orleans	LA	70115	United Kingdom
LPGP Connect		98 Mereway Road			Twickenham		TW2 6RG	United Kingdom

**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
LPL Financial	Attn Accounts Receivable	PO Box 502308			San Diego	CA	92150-2308	
LPL Financial	Attn Client Comp Dept	4707 Executive Dr			San Diego	CA	92121-3091	
LPL Financial	Attn Comp Dept FBO Sid Lorio	4707 Executive Drive			San Diego	CA	92121-3091	
Lucas Associates, Inc.		PO Box 638364			Cincinnati	OH	45263-8364	
Lucas Group		PO Box 406672			Atlanta	GA	30384-6672	
LUCAS VOILES		Address on File						
LUCHEY, BRITTANY		Address on File						
LUCIDITY CONSULTING GROUP LP	ATTN ROBIN PARSONS	1300 LOOKOUT DRIVE	SUITE 225		Richardson	TX	75082	
Lucy Bannon	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
LUJ, VINCENT		Address on File						
Luis Gomez		Address on File						
Luis Lopez		Address on File			Denver	CO	80291-2806	
Lumension Security, Inc.		PO Box 912806						
Luna, Jose		Address on File						
LUNNEY, BRITTANY		Address on File						
Lutheran High School	c/o Hannah Culburtson	9531 Milltrail			Dallas	TX	75238	
Luu, Joye		Address on File						
LVOVICH, YARASLAV		Address on File						
Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	Lynn Pinker Cox & Hurst, LLP	2100 Ross Avenue, Ste 2700		Dallas	TX	75201	
LYNN, PHAM & ROSS, LLP		PO BOX 190466			Dallas	TX	75219-4129	
Lynne Fiske		Address on File						
Lynx Capital, LLC		10900 Wilshire Blvd Ste 300			Los Angeles	CA	90024	
Lyon Wealth Management Inc.		14646 N Kierland Blvd, Ste 125	HighTower Advisors		Scottsdale	AZ	85254	
LYON, RICHARD D.		Address on File						
Lyons Brewer Group		274 Riverside Ave			Westport	CT	06880	
LYRECO		DEER PARK - DONNINGTON WOOD			TELFORD SHROPSHIRE		TF2 7NB	United Kingdom
M Patrick McShan		Address on File						
M&M The Special Events Company		9500 W 55th St Ste A			Countryside	IL	60525-7125	
M&S Technologies		2727 LBJ Freeway	Suite 810		Dallas	TX	75234	
M/S Media Productions Inc		512 Main Street, Suite 1301			Fort Worth	TX	76102	
MA Division of Unemployment Assistance		Revenue Service	19 StanifoRd St		Boston	MA	02114-2566	
Mabry, Will		Address on File						
Macaulay LLC		300 Delaware Avenue	Suite 760		Wilmington	DE	19801	United Kingdom
Macfarlanes		10 Norwich St			London		EC4A 1BD	
MACKENZIE PARTNERS, INC		105 MADISON AVE			New York	NY	10016	
MacroMavens		180 W 20th Street	Suite 1700		New York	NY	10011-0000	
MacroMavens, LLC		180 W. 20th Street	Suite 1700		New York	NY	10011	
MADDEN, SAMUEL		Address on File						
MaddenSewell, LLP		1755 Wittington Place	Ste 300		Dallas	TX	75234	
MAH, JEFFERY		Address on File						



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
MAHMUD, GIBRAN		Address on File			Chicago	IA	60673-1258	
MailFinance		25881 Network Place						
Make-A-Wish Foundation of Metro New York		One Penn Plaza Ste 3600			New York	NY	10119	
MALCOLM M KNAPP, INC		46 E 92ND ST APT 5			NEW YORK	NY	10128-1371	
Malone Maxwell Borson Architects		718 North Buckner Blvd	Suite 400		Dallas	TX	75218	
Malwarebytes Corporation		10 Almaden Blvd, 10th Floor			San Jose	CA	95113	
Management Recruiters of Tallahassee		743 East Tennessee St			Tallahassee	FL	32308	
Management Search Inc		245 Peachtree Center Ave	suite 2500		Atlanta	GA	30303	
Manaswi Sharma		Address on File						
Manchester Grand Hyatt		PO Box 51914, Unit O			Los Angeles	CA	90051-6214	
MandateWire	ATTN Accounting	1430 Broadway, 12th Floor	Suite 1208		New York	NY	10018	
Manesh Shah		Address on File						
Mangia		50 West 57th Street			New York	NY	10019	
Mangin, Andrew		Address on File						
Manhattan Fire & Safety Corp.		242 West 30th Street	7th Floor		New York	NY	10001	
Manhattan Information Systems, Inc.		228 East 45th St			New York	NY	10017	
Manhattan Jewish Experience	Attn Danielle Yadaie	131 West 86th Street, Floor 11			New York	NY	10024	
Manian, Meagan		Address on File						
MANNING, ELLEN		Address on File						
MANO, JONATHAN		Address on File						
Mansoor Kazi		Address on File						
Manuel Lopez		Address on File						
Manulife Financial		PO Box 894764			Los Angeles	CA	90189-4764	
MANZO, MARC C.		Address on File						
MapAnything		5200 77 Center Dr, Ste 400			Charlotte	NC	28217	
Maples and Calder		UGLAND HOUSE	PO BOX 309GT S	George Town	Grand Cayman			Cayman Islands
Maples Compliance Services (Cayman) Limi		PO Box 1093, Queensgate House	CHURCH ST		Grand Cayman			Cayman Islands
Maples Fiduciary Services (Delaware) Inc.		4001 Kennett Pike, Ste 302			Wilmington	DE	19807	
MAPLES FINANCE		PO BOX 1093GT, QUEENSGATE HOUSE	SOUTH CHURCH ST		GEORGE TOWN			Cayman Islands
MaplesFS	attn Peter Huber	Boudry Hall, Cricket Square	PO Box 1093		Grand Cayman			Cayman Islands
MaplesFS Service Company Limited		PO Box 1093	Boundary Hall		GRAND CAYMAN			Cayman Islands
Marble Care Unlimited		705 N. Bowser	#110		Richardson	TX	75081	
Marc Carlson		Address on File						
MARC FABER LIMITED		SUITE 3311-3313	TWO INTERNATIONAL FINANCE CENTER	8 FINANCE STREET	CENTRAL HONG KONG			HONG KONG
MARC KLYMAN		Address on File						
MARC MANZO		Address on File						
March of Dimes	attn Megan Fletcher	12660 Colt Road, Suite 200			Dallas	TX	75251	

004160



**Exhibit C**  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Marco Consulting, LLC		913 Westminster Way			Southlake	TX	76092	
Marcus Evans Inc.		Address on File						
Margaret Peggy Boswell		Address on File						
Margarita Masters		906 Sunnyvale Dr			Arlington	TX	76010-2936	
Maricopa County Treasurer		301 West Jefferson St			Phoenix	AZ	85003	
Marion A. Patterson		Address on File						
Mark Badros		Address on File						
Mark Divine	Koa Kai, LLC	PO Box 232307			Leucadia	CA	92023	
Mark Drucker		Address on File						
Mark Gargiulo - CFO		Address on File						
MARK GELNAW		Address on File						
Mark K. Okada	Sullivan Cromwell LLP	Brian D. Glueckstein	125 Broad Street		New York	NY	10004	
Mark Kiniry		Address on File						
Mark Okada		Address on File						
Mark Patrick	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Mark Rywelski		Address on File						
Mark Schonfeld, Esq.	Regional Director	Securities & Exchange Commission	3 World Financial Center, Suite 400		New York	NY	10281-1022	
Mark Simmelkjaer		Address on File						
Mark Turner		Address on File						
MARKET AXESS CORPORATION		LOCKBOX # 30023, GENERAL POST OFC	PO BOX 30023		New York	NY	10087-0023	
Market Builders, Inc.		433 Begonia Ave.			Corona Del Mar	CA	92625	
Market76, Inc.		900 Grand Avenue	Suite A		New Haven	CT	06511	
MarketResearch		6101 Executive Blvd Ste 110			Rockville	MD	20852	
Markets Group		10 W. 37th St.	7th Floor		New York	NY	10018	
Markham Fine Jewelers		8355 Gaylor Pkwy			Frisco	TX	75034	
Markit	Attn John Taylor	IHS Markit Legal Department	IHS Markit, 450 West 33rd St,	5th Floor	New York	NY	10001	United Kingdom
Markit Equities Limited	c.o Market Group Limited, Level 4	Ropemaker Place, 25 Ropemaker Street			London		EC2Y9LY	United Kingdom
Markit Group Limited		4th Flr Ropemaker Place	25 Ropemaker St		London		EC2Y9LY	United Kingdom
Markit Group Limited		Level 5	2 More London Riverside		London		SE1 2AP	United Kingdom
Markit Group Limited / Markit North Amer		2 More London Riverside			London		SE12AP	United Kingdom
Markit North America Inc.		620 8th Ave	35th floor		New York	NY	10018	United Kingdom
Markit Valuations Ltd		level 5	2 More London Riverside		London		SE1 2AP	United Kingdom
Markit WSO Corp	Kendra Montoya	15 Inverness Way East			Englewood	CO	80112	
MARKIT WSO CORPORATION		Three Lincoln Centre	5430 LBJ Frwy, Ste 800		Dallas	TX	75240	
MarksADR, LLC		4833 Rugby Ave, Ste 301			Bethesda	MD	20814	
MARQUESS & ASSOCIATES		15441 KNOLL TRAIL	STE 280 LB1		Dallas	TX	75248	
Marriott Business Services		PO Box 402642			Atlanta	GA	30384-2642	
Mars Printing		17426 Studebaker Rd			Cerritos	CA	90703	
MARSHALL HESS		Address on File						

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Marson, Stacy		Address on File						
Martin G. Salazar		Address on File						
Martin Podorsky		Address on File						
Martin, Andrew		Address on File						
Martin, Carla		Address on File						
MARTIN, DANIEL G.		Address on File						
MARTIN, WILLIAM		Address on File						
MARTINSON, MARK		Address on File						
Marty Mooney		Address on File						
Marval & OFarrell		Av. Leandro N. Alem 928			Buenos Aires		01001	ARGENTINA
Mary Irving	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Mary Zappone		Address on File						
Maryam Rusch		Address on File						
Maryland Office of the Attorney General	Division of Securities	200 Saint Paul Place			Baltimore	MD	21202	
Marzullo Reporting Agency		345 North LaSalle	No 1605		Chicago	IL	60654	
MASON, DEANA		Address on File						
MASON, FREDERIC		Address on File						
MASON, FREDERIC		Address on File						
Mass. Dept. of Revenue	Attn Bankruptcy Unit	PO Box 9564			Boston	MA	02114	
MASSACHUSETTS DEPARTMENT OF REVENUE		PO Box 7025			Boston	MA	02204	
MASSACHUSETTS DEPARTMENT OF REVENUE		PO BOX 7065			Boston	MA	02204-7065	
Massachusetts Mutual Life Insurance Co		1295 State Street			Springfield	MA	01111	
Massand Capital, INC		130 East 18th Street #1P			New York	NY	10003	United Kingdom
MASSEYS LLP		Hilgate House	26 Old Bailey		London		EC4M 7QH	
MassMutual Financial Group		100 Bright Meadow Blvd			Enfield	CT	06082	
MassMutual Life Insurance Company		1000 N Central Expwy Ste 1000			Dallas	TX	75231-4177	
Massoud Karimzadeh		Address on File						
Mateo Hix		Address on File						
MATRIX RESOURCES INC.		PO BOX 101177			Atlanta	GA	30392	
Matt Culler		Address on File						
MATT DUNHAM		Address on File						
Matt Hurd		Address on File						
Matt McEligott		Address on File						
Matt McEligott Photography		1409 E. Windsor Drive			Denton	TX	76209	
MATTHEW BENDER & CO, INC		PO BOX 7247-0178			Philadelphia	PA	19170-0178	
Matthew Berry, Esq.	Office of General Counsel	Federal Communications Commission	445 12th Street, S.W.		Washington	DC	20554	
Matthew DiOrto	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Matthew Garrett		Address on File						

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Matthew Gould		Address on File						
Matthew Kirst		Address on File						
Matthew Murphy		Address on File						
MATTHEW SCHINABEL		Address on File						
Matthew Selman		Address on File						
MATTHEW WHITLEY		Address on File						
Mattos Filho Veiga Filho Marry Jr.		Address on File						
Maurice Robinson & Associates LLC		880 Apollo St Suite 125			El Segundo	CA	90245	
Maurice Robinson & Associates LLC		28 Dover Place			Manhattan Beach	CA	90266	
Mauricio Chavarriaga	c/o Highland Capital Mgmt.	245 Park Ave, 24th Fir			New York	NY	10167	
Mauricio Chavarriaga		Address on File						
Mauricio Delgado		Address on File						
MAWN, CHRISTOPHER		Address on File						
Max Russell Phinney		Address on File						
Maxim Group, LLC		405 Lexington Ave #2			New York	NY	10174	
MAY, DERRICK		Address on File						
MAYER BROWN LLP		2027 COLLECTION CENTER DR			Chicago	IL	60693-0020	
Mayer, Brown, Rowe & Maw LLP		1675 Broadway			New York	NY	10019-5820	
Mayeron, John		Address on File						
Mayo, Christopher L.		Address on File						
Mayors Intern Fellows Fund		The Dallas Foundation	3963 Maple Ave, Suite 390		Dallas	TX	75219	
Mazzeo Song & Bradham LLP		708 Third Ave, 19th Fl			New York	NY	10017	
MBA Reporting Services, Inc		555 Republic Drive	2nd Floor		Plano	TX	75074	
MBM Advisors, Inc.		440 Louisiana #2600			Houston	TX	77002	
McCafferty, Christopher		Address on File						
McCague Borlack LLP		130 King St. West Suite 2700			Toronto	ON	M5X1C7	CANADA
McClung, Elizabeth B.		Address on File						
McCormick, Robert		Address on File						
McCormick, Robert		Address on File						
McDaniel, Patrick		Address on File						
McDermott, Bonner		Address on File						
McDermott Investment Services, LLC		44 E Broad St, FL 2			Bethlehem	PA	18018	
McDermott Will & Emery LLP		Lockbox - New York PO Box 7247-6755			Philadelphia	PA	19170-6755	
McDermott Will & Emery LLP		PO BOX 2995			Carol Stream	IL	60132-2995	
McDermott Will & Emery LLP		227 West Monroe Street			Chicago	IL	60606-5096	
McDermott Will & Emery LLP		P.O. Box 6043			Chicago	IL	60680-6043	
McElroy & Company P.C.		16415 Addison Road	Suite 800		Chicago Addison	TX	75001	

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
McFARLANE, PETER A		Address on File						
McFARLING, BRANDON		Address on File						
McGRANER, MATTHEW		Address on File						
McGraner, Matthew		Address on File						
MCGREGOR, MICHELLE		Address on File						
McGuireWoods LLP		800 E. Canal Street			Richmond	VA	23219-3916	
McIntosh Search Incorporated		6310 Lemmon Ave Ste 202			Dallas	TX	75209	
McKay, Brad		Address on File						
MCKEE NELSON LLP		ONE BATTERY PARK PLAZA	34TH FLR		New York	NY	10004	
McKool Smith		300 Crescent Court	Suite 1500		Dallas	TX	75201	
McKool Smith P.C.	c/o Travis DeArman	300 Crescent Court Ste 1500	300 Crescent Court,		Dallas	TX	75201	
McKool Smith, P.C.	Gary Cruciani, Esq.	McKool Smith	Suite 1500		Dallas	TX	75201	
McLagan Partners		PO Box 905188			Charlotte	NC	28290-5188	
McLagan Partners		PO Box 100137			Pasadena	CA	91189-0137	
McLagan Partners Inc (Aon McLagan)		1600 Summer Street	Ste 601		Stamford	CT	06905-0000	
McLagan Partners, Inc.	Stephen Reuther	4 Overlook Point			Lincolnshire	IL	60069	
MCCLOHLIN, MICHAEL		Address on File						
MCCLOHLIN, MICHAEL P.		Address on File						
McMains, Aubree		Address on File						
McMillan Binch Mendelsohn		Brookfield Place Suite 4400	Bay Wellington Tower		Toronto	ON	M5J2T3	CANADA
McNamara, John		Address on File						
McRedmond, Edward		Address on File						
MCS Capital LLC c/o STC, Inc.		233 North Prospect St., Ste. 202			Hagerstown	MD	21740	
Meadows Collier Reed Cousins & Biau LLP		901 Main St. Suite 3700			Dallas	TX	75202	
MEANS, BRADLEY		Address on File						
Medanich, Michael		Address on File						
Mediant Communications Inc.	Mediant Communications	400 Regency Forest Drive, Suite 200			Cary	NC	27518	
Mediant Communications LLC		PO Box 29976			New York	NY	10087-9976	
MedPost Urgent Care-East Dallas		9540 Garland Rd	Suite C408		Dallas	TX	75218-5004	
Meeks, Lucas		Address on File						
MEETINGZONE LTD		OXFORD HOUSE	OXFORD ROAD		Thame		OX9 2AH	United Kingdom
MEGAN MCGEE		Address on File						
Meister Seelig & Fein LLP		125 Park Avenue	7th Floor		New York	NY	10017	
MELENDEZ, HELDER		Address on File						
MELISSA LOPEZ		Address on File						
Melody Po		Address on File						
Mendelsohn, Rosentzveig, Shact		1000 Sherbrooke St West, 27th Flr			Montreal	QC	H3A 3G4	CANADA
Mendenhall, Brad		Address on File						
MERCER (US) INC.	John Dempsey	1166 Avenue of the Americas			New York	NY	10036	

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Mercer Consumer	Attn DV1 Fin	PO Box 310293			Des Moines	IA	50331-0293	
Mercer Consumer	Wells Fargo Bank	c/o Regulus Lockbox Services 310293	666 Walnut Street		Des Moines	IA	50309	
Merchants Automotive Group, Inc.		1278 Hooksett Road			Hooksett	NH	03106	
Merchants Automotive Group, Inc.		PO Box 16415			Hooksett	NH	03106-6415	
Mercy Corps		P.O. Box 2669, Dept W			Portland	OR	97208-2669	
MEREDITH HERZFELD		Address on File						
Mergent, Inc.		PO Box 403123			Atlanta	GA	30384-3123	
Mergermarket		895 Broadway	4th Floor		New York	NY	10003	
Mergermarket (US) Limited (trading as Xt		1501 Broadway	Suite 801		New York	NY	10036-0000	
MERGERMARKET LTD		11 West 19th Street	2nd Floor		New York	NY	10011	
MERGERMARKET LTD		3 E 28th ST	4th FLR		New York	NY	10016	
Merit Court Reporters		307 W 7th Street	Ste 1350		Fort Worth	TX	76102	
Merope Pentogenis		Address on File						
Merrill Communications LLC		One Merrill Circle			Saint Paul	MN	55108	
Merrill Communications LLC		CM-9638			Saint Paul	MN	55170-9638	
MERRILL CORPORATION		CM-9638			Saint Paul	MN	55170	
MERRILL LYNCH	Attn Blake Bollinger	569 Brookwood Village	Ste 501		Birmingham	AL	35209	
MERRILL LYNCH	Attn Chad Kulm	110 S Phillips Ave, Ste 101			Sioux Falls	SD	57104	
MERRILL LYNCH	Attn Jason Aversa	3100 Hingston Ave			Egg Harbor Township	NJ	08234	
MERRILL LYNCH	Attn Lynae Carr	1221 McKinney Street, Ste 3900			Houston	TX	77010	
MERRILL LYNCH	Attn Megan Arnold	13355 Noel Rd, 7th Floor			Dallas	TX	75240	
MERRILL LYNCH	Attn Monty Willhite	60 E S Outh Temple St, #200-61			Salt Lake City	UT	84111	
MERRILL LYNCH	Attn Robert Luther	1100 Canal Street			The Villages	FL	32162	
MERRILL LYNCH	Attn Tiffany Contreras	17225 El Camino Real, Ste 200			Houston	TX	77058	
MERRILL LYNCH	C/O Girard Kovarik & Assoc	101 N. Clematis St, Ste 200			West Palm Beach	FL	33401	
MERRILL LYNCH		185 Asylum Street	City Place II, 14th Flr		Hartford	CT	06103	
MERRILL LYNCH		NJ-140-02-01	1400 Merrill Lynch Drive		Pennington	NJ	08534	
MERRILL LYNCH		4802 Deer Lake Dr E	CMS CBRU FL9-801-01-02		Jacksonville	FL	32246	
MERRILL LYNCH		CMS CBRU FL9-801-01-02	4802 Deer Lake Dr E		Jacksonville	FL	32246	
MERRILL LYNCH		21805 FIELD PARKWAY STE 220			DEER PARK	IL	60010	
Merrill Lynch Valuations LLC	Attn Richard Eimbinder	15514 Collections Center Drive			Chicago	IL	60693	
Merry Phengvath		450 E 4th Street			Brooklyn	NY	11218	
MERS Educational Conference	ATTN Bob Rust	Municipal Empee Retirement Syst of LA	7937 Office Park Blvd		Baton Rouge	LA	70809	
MESERVE, NICHOLAS		Address on File						
Meta-e Discovery LLC	Paul McVoy	Meta-e Discovery	Six Landmark Square, 4th Floor		Stamford	CT	06901	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Meta-e Discovery, LLC	Attn Paul H. McVoy	93 River Street			Milford	CT	06460	
Meta-e Discovery, LLC	Morrison Cohen LLP	Attn Joseph T. Moldovan and Sally Siconolfi	909 Third Avenue		New York	NY	10022	
Metalogix International		PO Box 83304			Pittsburgh	PA	15250	
METHVIN, JAMES		Address on File						
Metlife	Attn Placings Unit	1300 Hall Blvd.			Bloomfield	CT	06002	
Metlife	Attn Retail Life & DI Operations	18210 Crane Nest Dr, 5th Floor	Placings Unit		Tampa	FL	33647	
Metlife		PO BOX 371487			Pittsburgh	PA	15250-7487	
MetLife Investors USA Insurance Company		PO Box 13863			Philadelphia	PA	19101-0000	
MetLife SBC		5400 LBJ Freeway	Suite 1100		Dallas	TX	75240	
MetLife SBC		PO Box 804466			Kansas City	MO	64180-4466	
MetLife SBC		305 Broadway, 14th Flr			New York	NY	10007	
Metro-Reprow, Inc.		PO Box 560092			Dallas	TX	75356-0092	
METT	Attn Jana Clemans	Pioneer Natural Resources	5205 N. OConnor Blvd, Suite 200		Irving	TX	75039-3746	
Meunier, Marc		Address on File						
MGL Consulting Corp.		10077 Grogans Mills Rd Ste 300			The Woodlands	TX	77380	
MHA Petroleum Consultants LLC		730 17th Street	Suite 410		Denver	CO	80202	
MIAO, EUGENE		Address on File						
MICHAEL & TERESA OLSON TRUST		Address on File						
Michael Blackburn		Address on File						
MICHAEL COLVIN		Address on File						
Michael Cummings		Address on File						
MICHAEL DEVICO		Address on File						
Michael Hasenauer		Address on File						
Michael Jeong		Address on File						
MICHAEL KELLY		Address on File						
MICHAEL LANE CUISINE, INC		8409 PICKWICK # 112			Dallas	TX	75225	
MICHAEL LATHAM		Address on File						
Michael Ly		Address on File						
Michael Malone Architects, Inc		5646 Milton St Suite 705			Dallas	TX	75206	
Michael Morris		Address on File						
Michael P Zarrilli		Address on File						
MICHAEL PAGE INTERNATIONAL		8 BATIN RD			Slough Berkshire		SL 1 3SA	United Kingdom
MICHAEL PASSMORE		Address on File						
MICHAEL PETERSON		Address on File						
Michael Phillips		Address on File						
Michael R. Coker Company		2700 Swiss Ave Suite 100			Dallas	TX	75204	
Michael Radovan		Address on File						
Michael S. Held		Address on File						
MICHAEL SHERIDAN		Address on File						
Michael Sorell		Address on File						

004166

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
MICHAEL SZKODZINSKI		Address on File						
MICHAEL T DALBY IRA		Address on File						
Michael Teplitsky		Address on File						
MICHAEL WANG		Address on File						
MICHAEL WILCHER		Address on File						
Michael Paul Donaldson		Address on File						
Michelle French, Tax A/C		Address on File						
Michigan Department of Treasury		Address on File						
Mick Law P.C.		PO Box 30774			Lansing	MI	48909-8274	
Microsoft Corporation		816 South 169th Street			Omaha	NE	68118	
Microsoft Corporation and Subsidiary of Microsoft Corporation		1950 N Stemmons Fwy	Suite 5010		Dallas	TX	75207	
Microsoft Corporation and Subsidiary of Microsoft Corporation	David P. Papiez	Fox Rothschild LLP	1001 4th Ave, Suite 4500		Seattle	WA	98154	
Microsoft Licensing GP, a Subsidiary of Microsoft Corporation		Amber Brazier, Associate Paralegal	One Microsoft Way		Redmond	WA	98052	
Microsoft Services		One Microsoft Way			Redmond	VA	98052	
Microsoft Services		PO Box 844510			Dallas	TX	75284-4510	
MICRO-TEL		3700 Holcomb Bridge Rd	Suite 5		Peachtree Corners	GA	30092	
Mike Brennan		Address on File						
Mike Brohm		Address on File						
Mike Doyle		Address on File						
Mike Hurley		Address on File						
Mike Sharkey		Address on File						
Mike Wolbert		Address on File						
Milbank, Tweed, Hadley & McCloy LLP		1 CHASE MANHATTAN PLAZA			New York	NY	10005-1413	
Miles Littlefield		One Pennsylvania Plaza	49th Floor		New York	NY	10119	
Miller & Chevalier Chartered		Address on File						
Miller Buckfire & Co, LLC		P.O. Box 758604			Baltimore	MD	21275-8604	
Miller Korzenik Sommers Rayman LLP		601 Lexington Ave			New York	NY	10022	
MILLER, DEBORAH		1501 Broadway Ste 2015			New York	NY	10036-5600	
Miller, Egan, Molter & Nelson LLP		Address on File						
Miller, Egan, Molter & Nelson LLP		4514 Cole Avenue	Suite 1200		Dallas	TX	75205	
MILLMAN CONSULTANTS AND ACTUARIES		1402 San Antonio St.	Suite 100		Austin	TX	78701	
Mills, James		1550 LIBERTY RIDGE DR	STE 200		WAYNE	PA	19087-5572	
MILTENBERGER, WILLIAM		Address on File						
Mindy Billinghurst		Address on File						
Miner, Christopher		Address on File						
Minnesota Revenue		Mail Station 1260			Saint Paul	MN	55145-1260	

004167

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Minnesota State Treasurer		Minnesota Department of Commerce	85 7th Place East, Suite 500		Saint Paul	MN	55101	
Miramor OSC	Attn Leslie Henger	11763 Ashlock Way			San Diego	CA	92131	
Mirani, Parth		Address on File						
MISLAV TOLUSIC		Address on File						
Mississippi Secretary of State	Business Regulation & Enforcement Div	125 S. Congress Street			Jackson	MS	39201	
MISSISSIPPI STATE TAX COMMISSION		PO BOX 1033			Jackson	MS	39215	
Missouri Department of Revenue		PO Box 3020			Jefferson City	MO	65105-3020	
MISSOURI DIRECTOR OF REVENUE	TAXATION BUREAU	PO BOX 3365 (573)751-4541	600 West Main Street, 2nd Floor		Jefferson City	MO	65105-3365	
Missouri Secretary of State		Securities Division			Jefferson City	MO	65101	
Mitchell A. Harwood & Partners		791 Park Ave Ste 4B			New York	NY	10021	
Mitchell, Krysta		Address on File						
Mitchener Turnipseed		Address on File						
MITTS, BRIAN		Address on File						
MJL ENTERPRISE		PO BOX 852563			Richardson	TX	75085	
MLF Lex Serv LP		4350 East West Highway			Bethesda	MD	20814	
MODERN HEAL THCARES DAILY DOSE		CIRCULATION DEPT	1155 GRATIOT AVE		Detroit	MI	48207-2912	
Mohring, Christopher		Address on File						
Molecular Insights		160 Second Street			Cambridge	MA	02142	
Moloney Securities		13537 Barrett Parkway Drive	Suite 300		Manchester	MI	63021	
Monarch Investigation Inc		PO Box 292265			Lewisville	TX	75029-2265	
Money-Media, Inc.	Attn Accounting	330 Hudson Street	7th Floor		New York	NY	10013	
Monster, Inc.		PO Box 90364			Chicago	IL	60696-0364	
MONSTERTRAK		14372 COLLECTIONS CENTER DR			Chicago	IL	60693	
Moody's Analytics		395 Oyster Point Blvd	Suite 215		South San Francisco	CA	94080	
Moody's Analytics		PO BOX 102597			Atlanta	GA	30368-0597	
Moody's Analytics		PO BOX 116714			Atlanta	GA	30368-0597	
Moody's Analytics		PO Box 116647			Atlanta	GA	30368-6647	
Moody's Analytics, Inc.	Attn Christopher R. Belmonte and Pamela A. Bosswick	c/o Duane Morris LLP	230 Park Avenue, Suite 1130		New York	NY	10169	
Moody's Analytics, Inc.	Sue McGeehan	7 World Trade Center	250 Greenwich Street		New York	NY	10007	
Moody's Analytics, Inc.		7 World Trade Center			New York	NY	10007-0000	
Moody's Investor Service		PO Box 102597			Atlanta	GA	30368-0597	
Moody's Investors Service, Inc.	Attn Christopher R. Belmonte and Pamela A. Bosswick	c/o Duane Morris LLP	230 Park Avenue, Suite 1130		New York	NY	10169	
Moody's Investors Service, Inc.	Sue McGeehan	7 World Trade Center	250 Greenwich Street		New York	NY	10007	



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Moody Investors Service, Inc.	Sue McGeehan	VP, Collections, Finance Dept.	7 World Trade Center at 250 Greenwich Street		New York	NY	10007	
MOORE & VAN ALLEN PLLC		100 NORTH TRYON ST	STE 4700		Charlotte	NC	28202-4003	
MOORE, CALEB		Address on File						
MOORE, WILLIAM C.		Address on File						
Morgan Lewis & Bockius LLP		PO Box 8500 S-6050			Philadelphia	PA	19178-6050	
Morgan Stanley	Attn Accounts Receivable	PO Box 860			New York	NY	10008-0860	
Morgan Stanley	Attn Adam Razov	855 Franklin Ave.			Garden City	NY	11530	
Morgan Stanley	Attn Diana Sigona	1585 Broadway, 23rd Flr			New York	NY	10036	
Morgan Stanley	Attn Jonathan Cantler	10960 Wilshire Blvd, Ste 2000			Los Angeles	CA	90024	
Morgan Stanley	Attn Margaret Oshea-NW Managers Mtg	1585 Broadway, 23rd Floor			New York	NY	10036	
Morgan Stanley	Attn MF Billing Dept	1300 Thames St, 4th Flr			Baltimore	MD	21231	
Morgan Stanley	Attn Michael Lawrence	6037 La Flocha			Rancho Santa Fe	CA	92067	
Morgan Stanley	Attn Michelle Dolan	2 Jericho Plaza			Jericho	NY	11753	
Morgan Stanley	Attn Robyn Owens	370 17th Street, Suite 2800			Denver	CO	80202	
Morgan Stanley		111 S. Pflingsten Road	Suite 200		Deerfield	IL	60015	
Morgan Stanley		200 Crescent Court	Ste 900		Dallas	TX	75201	
Morgan Stanley		14850 N Scottsdale Rd	Ste 600		Scottsdale	AZ	85254	
Morgan Stanley		733 Bishop Street	Ste 2800		Honolulu	HI	96813	
MORGAN, JOHN		Address on File						
MORGANS, JONATHAN		Address on File						
MORLEY CAMPBELL		Address on File						
Morningstar Inc.		22 W Washington St			Chicago	IL	60602-0000	
Morningstar, Inc.		2668 PAYSphere Circle			Chicago	IL	60674	
Morningstar, Inc.		135 South LaSalle St Dept. 2668			Chicago	IL	60674-2668	
Morningstar, Inc.		5133 Innovation Way			Chicago	IL	60682-0051	
Morris James LLP		500 Delaware Avenue	Suite 1500	PO Box 2306	Wilmington	DE	19899-2306	
Morris, Manning, & Martin LLP		1600 Atlanta Financial Center	3343 Peachtree Road, NE		Atlanta	GA	30326-1044	
MORRIS, NICHOLS, ARSHT & TUNNELL LLP		1201 NORTH MARKET ST	PO BOX 1347		Wilmington	DE	19899-1347	
MORRIS, NICHOLS, ARSHT & TUNNELL LLP	William M. Lafferty	Kevin M. Coen	1201 N. Market Street		Wilmington	DE	19801	
Morrison & Foerster		1290 Ave of the Americas			New York	NY	10104-0050	
Morrison Cohen LLP	Attn Joseph T. Moldovan and Sally Siconolfi	909 Third Avenue			New York	NY	10022	
Morstad		79 East Putnam Ave	Outdoor Traders Building		Greenwich	CT	06830	
Mortensen, Christopher		Address on File						
Morton, David C.		Address on File						
MOSTLY SMOKED		VITTORIA HOUSE	2A TOWCESTER RD		BOW London		E3 3ND	United Kingdom
Motus Red LLC		7018 Hursey			Dallas	TX	75205	
Mourant Ozannes		Address on File						

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Move Solutions, Ltd.		1473 Terre Colony Ct, Dept DA			Dallas	TX	75212	
MoveWorks, Inc.		4945 Sharp Street			Dallas	TX	75247	
MP Advisory		43 Vila Nova Pauliceia			Sao Paulo-SP			BRAZIL
MPulse Maintenance Software		PO Box 22906			Eugene	OR	22906	
MQ Services Ltd.		Chancery Hall	52 Reid St		Hamilton			BERMUDA
MQ Services Ltd.		PO Box HM 1737			Hamilton			BERMUDA
MQ Services Ltd.		PO BOX HM 809			Hamilton			BERMUDA
MRB Research Partners Inc.		122 East 42nd Street	Suite 2310		New York	NY	10168	
MRI Contract Staffing		5151 Bellline Rd	Suite 550		Dallas	TX	75254	
MRI Contract Staffing		88276 Expedite Way			Chicago	IL	60695-0001	
MS Society of Long Island		40 Marcus Dr.	Suite 100		Melville	NY	11747	
MSCI Inc.		PO Box 414631			Boston	MA	02241-4631	
MSCI Inc.		7 World Trade Center	250 Greenwich St, 49th floor		New York	NY	10007-0000	
MT State Auditor, Securities Comm.		840 Helena Avenue			Helena	MT	59601	
MTV Staying Alive Foundation		1305 Wycliff Ave	Suite 120		Dallas	TX	75207	
Muck Holdings LLC	Attn Paul Haskel	c/o Crowell & Moring LLP	590 Madison Avenue		New York	NY	10022	
MULLER, MARY		Address on File						
Multichannel News		PO Box 5667			Harlan	IA	51593-1167	
MUNDASSERY, APPU		Address on File						
Munger Toiles & Olson LLP		355 South Grand Ave			Los Angeles	CA	90071-1560	
Munsch Hardt Kopf & Harr, P.C.	Davor Rukavina, Esq., Thomas D. Berghman, Esq., Julian P. Vasek, Esq.,	500 N. Akard St., Ste. 3800			Dallas	TX	75201	
Munsch Hardt Kopf & Harr, P.C.	Davor Rukavina, Julian P. Vasek	3800 Ross Tower	500 N. Akard Street		Dallas	TX	75202-2790	
Murano Connect LP		252 West 38th Street	Suite 402		New York	NY	10018	
Murder Mystery Texas		6304 Innsbrooke Dr			Arlington	TX	76016	
Murphy, George		Address on File						
MURPHY, MATTHEW		Address on File						
MURRAY HILL CENTER		14185 Dallas Parkway Suite 1200			Dallas	TX	75254	
SOUTHWEST INC		Address on File						
MURRAY, ANDREW		Address on File						
Murray, Mason		Address on File						
Murray, Wesley		Address on File						
Muscular Dystrophy Association	Attn Janice	PO Box 38			Terrell	TX	75160	
Musser, Carley		Address on File						
Muthu Dorai		Address on File						
Mxtoolbox		12710 Research Blvd	Ste 225		Austin	TX	78759	
MY HOUSE OF FINE EATS & CATERING		2025 PROMENADE CENTER			Richardson	TX	75080	
Myers Bigel Sibley & Sajovec, P.A.		PO Box 37428			Raleigh	NC	27627	
Myers Park Country Club		2415 Roswell Avenue			Charlotte	NC	28209	
Myron Corp.		PO Box 660888			Dallas	TX	75266-0888	

004170

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
N.C. DEPARTMENT OF REVENUE		PO BOX 25000			Raleigh	NC	27640-0002	
N9NE Group Dallas-Ghostbar		2440 Victory Park Ln, 33rd Floor			Dallas	TX	75219	
NAI OLYMPIA PARTNERS		320 NORTH MERIDIAN ST	STE 400		Indianapolis	IN	46204	
NAIFA - Greater Washington DC		600 State Street	Suite A		Cedar Falls	IA	50613	
Nalin Yogasundram		Address on File			Rhinebeck	NY	12572	
Namaro Graphics Designs		PO Box 148			South Pasadena	CA	91031	
NANCY SMITH-WELLS, CSR		PO BOX 1284			Dallas	TX	75222	
NAPE Expo, LP		PO Box 224531						
NAPONIC, JILL		Address on File						
NARAYAN HEGDE		Address on File						
NARY RADHAKRISHNAN		Address on File						
NASD Regulation, Inc.		701 Market St	W8705 c/o Mellon Bank, Rm 3490		Philadelphia	PA	19106	
NASD, CRD-IARD		PO Box 7777-W8705			Philadelphia	PA	19175-8705	
NASD, CRD-IARD		PO BOX 7777-W9995			Philadelphia	PA	19175-9995	
Nasdaq Information, LLC		LBX# 80200	PO Box 780200		Philadelphia	PA	19178-0200	
Nasdaq OMX	C/O Wachovia Bank	#90200	PO Box 8500		Philadelphia	PA	19178-0200	
NASDAQ Stock Market		PO Box 7777 W1555			Philadelphia	PA	19106	
NASH, CLARISSA		Address on File			Dallas	TX	75201	
Nasher Sculpture Center		2001 Flora Street						
NASKAR, ANJALI		Address on File						
NASKAR, ANJALI		Address on File						
NASP	Attn Michelle	727 15th Street, NW	Suite 750		Washington	DC	20005	
Natalie Uto		Address on File						
Nathan Brooks		Address on File						
Nathan Burns		Address on File						
Nathan Hall		Address on File						
Nathan Hukill		Address on File						
NATHAN SPEICHER		Address on File						
NATHAN ZANG		Address on File						
NATIONAL COMPLIANCE SERVICES, INC.		355 NE 5TH AVE	STE 4		Delray Beach	FL	33483	
National Corporate Research Ltd		122 E 42nd St Fl 18			New York	NY	10168-1899	
National Depo		P.O. Box 404743			Atlanta	GA	30384-4743	
NATIONAL ECONOMIC RESEARCH ASSOC. INC		PO BOX 29677	GENERAL POST OFFICE		New York	NY	10087-9677	
National Economic Research Associate		PO Box 7247-6754			Philadelphia	PA	19170-6754	
National Financial Services Corp.	ATTN Emily Ivers-Mailzone ZEF7	82 Devonshire St.			Boston	MA	02109	
National Financial Services, LLC		100 Salem St, Mail Zone O1S			Smithfield	RI	02917	
National Financial Services, LLC		82 Devonshire Street			Boston	MA	02109	

004171

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NATIONAL FLAG & DISPLAY CO.		22 W 21ST ST			New York	NY	10010	
National MS Society	Attn Cara Harting	2105 Luna Rd, Ste 390			Carrollton	TX	75006	
National Multiple Sclerosis Society		PO Box 4527			New York	NY	10163	
National Regulatory Services		33443 Treasury Center			Chicago	IL	60694-3400	
National Stripper Well Association		PO Box 18336			Oklahoma City	OK	73154	
National Trust Management Services	Accounts Receivable	7957 Wellington Dr			Warrenton	VA	20186	
National Trust Management Services		PO Box 3322			Warrenton	VA	20188	
National Valuation Consultants, Inc.		7807 E. Peakview Ave, Ste 200			Centennial	CO	80111	
Nationwide Business Concepts		1439 W. Chapman Avenue	#64		Orange	CA	92868	
Nationwide Services		P.O. Box 23099			Ft. Lauderdale	FL	33307	
Natixis North America LLC		1251 Avenue of the Americas			New York	NY	10020	
NAU, STEVEN		Address on File						
NautaDutith NV		Postbus 7113, 1007 JC						
NAVE,JAS, MARIANA		Amsterdam, Beethovenstraat 400			Amsterdam		1082 PR	Netherlands
NAVIGANT CONSULTING INC		Address on File						
Navigator 3, LLC		4511 PAYSPPHERE CIRCLE			Chicago	IL	60674	
Navigator 3, LLC		PO Box 5370			Wayland	MA	01778	
NC Office of the Secretary of State		1737 Washington st			E. Bridgewater	MA	02333	
NEAR EARTH LLC		2 South Salisbury Street	Old Revenue Complex		Raleigh	NC	27601	
Nebraska Department of Banking & Finance		945 WEST ROAD	HOYT DAVIDSON		New Canaan	CT	06840	
NEEL MITRA	Bureau of Securities	1526 K Street, Suite 300			Lincoln	NE	68508-2732	
Neil Menard		Address on File						
Neil Desai		Address on File						
Neil Menard		Address on File						
NELL GWYNN HOUSE APARTMENTS LTD		Address on File						
Nelson, Caitlin		SLOANE AVE			London		SW3 3AX	United Kingdom
Nelson, Kaitlin		Address on File						
NELSON, KRAMER		Address on File						
NELSON, KRAMER		Address on File						
NEOFUNDS BY NEOPOST		PO BOX 30193			Tampa	FL	33630-3193	
Nesmith, Christopher		Address on File						
NESTLE WATERS POWWOW		PO BOX 727						
Netapp		1395 Crossman Ave			CAMBERLEY	CA	GU15 9WZ	United Kingdom
Netherland, Sewell & Associates, Inc.		Sunnyvale					94089-0000	
Netherland, Swell & Associates, Inc.		2100 Ross Avenue	Suite 2200		Dallas	TX	75201	
Netherland, Swell & Associates, Inc.		1601 Elm St. Suite 4500			Dallas	TX	75201	

004172

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Netpro Computing Inc.		4747 N. 22nd St. #400			Phoenix	AZ	85016-4774	
NetWrix Corporation	Accounts Receivable	1460 Manning Parkway			Powell	OH	43065	
NEVADA COACHES, LLC		1550 S INDUSTRIAL RD			Las Vegas	NV	89102	
Nevada Dept of Taxation		PO Box 52609			Phoenix	AZ	85072-2609	
Nevada Secretary of State		Securities Division	2250 Las Vegas Blvd N		N Las Vegas	NV	89030-5873	United Kingdom
NEW CONCEPT		CROOKED COTTAGE,	LINGFIELD		SURREY		RH7 6BJ	
New Edge Networks		Unit 10 PO Box 5000			Portland	OR	97208-5000	
NEW ERA		2935 Tallisman			Dallas	TX	75229	
New Hampshire Department of State	Bureau of Securities Regulation	107 North Main Street	Room 204, State House		Concord	NH	03301-4951	
New Horizons Computer Learning Center		PO Box 671164			Dallas	TX	75267-1164	
New Mexico Securities Division		P.O. Box 25101			Santa Fe	NM	87504	
NEW YORK CITY DEPARTMENT OF FINANCE		345 ADAMS ST			Brooklyn	NY	11201	
NEW YORK CITY DEPARTMENT OF FINANCE		PO Box 3931			New York	NY	10008-3931	
NEW YORK CITY DEPARTMENT OF FINANCE		PO Box 5150			Kingston	NY	12402-5150	
New York Financial Writers Association		PO Box 338			Ridgewood	NJ	07451-0338	
New York State Corporation Tax	NYS Corporate Tax	Processing Unit	P.O. Box 22093		Albany	NY	12201	
New York State Department of Law		New York Office of the Attorney General	120 Broadway, 23rd Floor		New York	NY	10271	
New York State Department of State		Misc. Records Bureau	41 State St		Albany	NY	12231	
New York State Income Tax		W A HARRIMAN CAMPUS			Albany	NY	12227	
New York State Income Tax		Extension Request PO Box 4125			Binghamton	NY	13902-4126	
Newbridge Financial Inc.	ATIn Scott Weeks - Accountant	5200 Town Center Circle	Tower 1, Ste 306		Boca Raton	FL	33486	
Newbridge Securities Corporation	Attn Robert Spitzer-CFO	1451 W Cypress Creek Rd, Suite 204			FL Lauderdale	FL	33309	
Newbridge Securities Corporation		5200 Town Center Circle Tower 1	Ste 306		Boca Raton	FL	33486	
NewOak Advisors LLC		485 Lexington Ave, 25th Floor			New York	NY	10017	
NewOak Capital		485 Lexington Ave, 25th flr			New York	NY	10017	
News Communications		4th Flr, Chinyang Bldg	90-3 Chungjeongno 2-ga,		Seodamun-gu		120-012	SOUTH KOREA
NexBank	John Danilowicz	2515 McKinney Ave	Ste 1100		Dallas	TX	75201	
NexBank Capital Advisors		2515 McKinney Ave, Ste 1100			Dallas	TX	75201	

004173

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NexBank Capital, Inc., NexBank Securities, Inc., NexBank Title, Inc. and NexBank	Jason M. Rudd and Lauren K. Drawhorn	Wick Phillips Gould & Martin, LLP	3131 McKinney Avenue, Suite 500		Dallas	TX	75204	
NEXBANK SECURITIES, INC		2515 McKinney	Suite 1700		Dallas	TX	75201	
NEXBANK SECURITIES, INC		13455 NOEL RD	22ND FL		Dallas	TX	75240	
NexBank SSB	dba NexBank Credit Services	Grant Smith	2515 McKinney Ave.	11th Floor	Dallas	TX	75201	
NexBank SSB		1100			Dallas	TX	75201	
NEXBANK, SSB	ATTN MARCIA SANDS	13455 NOEL RD	STE 2220		Dallas	TX	75240	
NexPoint Advisers, L.P.	Attn Davor Rukavina, Esq. and Julian P. Vasek, Esq.	Munsch Hardt Kopf & Harr, P.C.	3800 Ross Tower	500 N. Akard Street	Dallas	TX	75202-2790	
NexPoint Advisers, L.P.		200 Crescent Court	Suite 700		Dallas	TX	75201	
NexPoint Latin America Opportunities Fund	K&L Gates LLP	Stephen G. Topetzes	1601 K Street, NW		Washington	DC	20006	
NexPoint Latin America Opportunities Fund	K&L Gates LLP	James A. Wright III	State Street Financial Center	One Lincoln Street	Boston	MA	02111-2950	
NexPoint Latin America Opportunities Fund	Stephen G. Topetzes	K&L Gates LLP	1601 K Street, NW		Washington,	DC	02006	
NexTel Communications		PO Box 54977			Los Angeles	CA	90054-0977	
NexVest, LLC	Jason Rudd	3131 McKinney Ave Suite 100			Dallas	TX	75204	
NexVest, LLC		2515 McKinney Ave Suite 1100			Dallas	TX	75201	
Ney Castro		Address on File						
NGO, HONGVIEN		Address on File						
Nguyen, Hung		Address on File						
NGUYEN, KRISTINE		Address on File						
NGUYEN, TONY KHOI		Address on File						
NH Dept of State	Bureau of Securities Regulation	107 N. Main St, State House Room 204			Concord	NH	03301	
Nicholas Headley		Address on File						
NICHOLAS HEADLEY		Address on File						
NICHOLAS OLENEC		Address on File						
Nicholas T. Meserve		Address on File						
NICHOLAS TRUYENS		Address on File						
NICK ALFERMANN		Address on File						
Nick Meserve		Address on File						
NICK PAULEIT		Address on File						
Nickey L. Oates Company		25 Highland Park Village	Suite 100		Dallas	TX	75205	
Nicklas James		Address on File						
NICODEMUS WINATA		14181 NOEL RD			Dallas	TX	75254	
Nicole Lacues		Address on File						
Nikolayev, Yegor		Address on File						
Niles Chura		Address on File						
Niles K Chura		Address on File						
NILSEN, CHRISTOPHER		Address on File						
Nirav Batavia		Address on File						

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Nisen & Elliott LLC		200 West Adams St			Chicago	IL	60606	
Nitro Software, Inc.		150 Spear St Ste 1500			San Francisco	CA	94105-5115	
NIXON PEABODY LLP	ATTN BOBBI HALL REVENUE PROCESSING CENTER	100 SUMMER ST			Boston	MA	02110	
NJ DIVISION OF TAXATION		PO BOX 642	PART		Trenton	NJ	08646-0642	
NMS Communications LLC		443 12th Street	5C		Brooklyn	NY	11215	
NMS MANAGEMENT, INC.		500 NORTH BROADWAY	STE 236		Jericho	NY	11753	
NOAH MAYER		Address on File						
NOBLE, SHELBY		Address on File						
Noel, Kirby		Address on File						
Noelle Williams		Address on File						
Nonna Knows Catering		1931 Market Center Blvd Apt 1323			Dallas	TX	75207-3500	
Noonmark Capital		9 Hall Avenue			Larchmont	NY	10538	
NORRIS, DUSTIN		Address on File						
NORRIS, DUSTIN		Address on File						
North Carolina Department of Revenue		PO Box 25000			Raleigh	NC	27640-0520	
North Ridge Securities		112 Madison Ave, 5th Floor			New York	NY	10016	
NorthPark Center		8687 North Central Expressway			Dallas	TX	75225	
Northwestern University	Attn Maureen Fenty	1800 Sherman Avenue, Suite 400			Evanston	IL	60201	
Norton Rose		Address on File						
Notable Solutions, Inc.		9715 Key West Avenue	Suite 200		Rockville	MD	20850	
Nouveau		2270 Springlake Rd	Suite 400		Dallas	TX	75234	
Nova Engineering, Inc		2625 N. Josey Lane, Suite 112			Carrollton	TX	75007	
Novack and Macey LLP		100 N Riverside Plaza			Chicago	IL	60606-1501	
NOW Advisors		1320 Greenway Dr	Suite 758		Irving	TX	75038	
NPB Financial Group, LLC		3500 W. Olive Avenue	Suite 300		Burbank	CA	91505	
NTR Review		407 East maple Street			Cumming	GA	30040	
Numara Software Inc		PO Box 102280			Atlanta	GA	30368-2280	
Numara Software Inc		PO BOX 933754			Atlanta	GA	31193-3754	
Nutter, McClennen & Fish, LLP	Attn Ian Roffman	Seaport West	155 Seaport Blvd		Boston	MA	02210	
NWCC, LLC	c/o of Michael A. Battle, Esq.	Barnes & Thornburg, LLP	1717 Pennsylvania Ave N.W. Ste 500		Washington	DC	20006-4623	
NWCC, LLC	James Peterson	375 Park Avenue, 36th Floor			New York	NY	10152	
NWCC, LLC	Jonathan D. Sundheimer	Barnes and Thornburg LLP	11 S. Meridian St.		Indianapolis	IN	46204	
NYC DEPARTMENT OF FINANCE		PO Box 3644			New York	NY	10008	
NYC DEPARTMENT OF FINANCE		PO Box 3646			New York	NY	10008	
NYC DEPARTMENT OF FINANCE		PO Box 3922	General Corporation Tax		New York	NY	10008-3922	
NYC DEPARTMENT OF FINANCE		PO Box 3931			New York	NY	10008-3931	
NYC DEPARTMENT OF FINANCE		59 Maiden Lane, 19th Floor			New York	NY	10038-4502	



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
NYC DEPARTMENT OF FINANCE		PO Box 5040			Kingston	NY	12402-5040	
NYC DEPARTMENT OF FINANCE		PO Box 5060			Kingston	NY	12402-5060	
NYC DEPARTMENT OF FINANCE		PO Box 5070			Kingston	NY	12402-5070	
NYC DEPARTMENT OF FINANCE		PO BOX 5100			Kingston	NY	12402-5150	
NYC DEPARTMENT OF FINANCE		PO BOX 5150			Kingston	NY	12402-5150	
NYC FIRE DEPARTMENT		CHURCH STREET STATION	PO BOX 840		New York	NY	10008-0840	
NYEMASTER GOODE LAW FIRM		700 WALNUT	STE 1600		Des Moines	IA	50309-3899	
NYIAC		150 E. 42nd St, 17th Floor			New York	NY	10017	
NYS Assessment Receivables		PO Box 4127			Binghamton	NY	13902-4127	
NYS Unemployment Insurance		PO Box 4301			Binghamton	NY	13902-4301	
NYS Workers Comp Board DB		One Exchange Plaza	55 Broadway Suite 201		New York	NY	10006	
NYSE ARCA, LLC		PO Box 223529			Pittsburgh	PA	15251-2529	
NYSE MARKET, INC		Grand Central Station	PO BOX 4695		New York	NY	10163	
NYSE MARKET, INC		BOX #223695			Pittsburgh	PA	15251-2695	
NYSE MARKET, INC		BOX #4006	PO BOX 8500		Philadelphia	PA	19178-4006	
NYSIF Disability Benefits	DCC	1 Watervliet Ave. EXT			Albany	NY	12206	
NYSIF Disability Benefits		PO Box 5239			New York	NY	10008-5239	
Oak Tree Securities, Inc.		4049 First Street	Suite 129		Livermore	CA	94551-4949	
Ober, Kaler, Grimes & Shriver		100 Light Street			Baltimore	MD	21202	
Objective Group, Inc.		201 South Biscayne Blvd, 28th Floor			Miami	FL	33131	
OBJECTIVE PARADIGM CORPORATION	ATTN RYAN POLLOCK	805 N MILWAUKEE AVE STE 300			Chicago	IL	60622	
OBRIEN, JUSTIN		Address on File						
OBRIEN, MICHAEL J		Address on File						
OC CRUISER, Inc		1439 W Chapman Ave #260			Orange	CA	92868	
Oce Imagistics Inc		PO Box 856193			Louisville	KY	40285	
OConnor, Shannon		Address on File						
OConnors		3800 Buffalo Speedway	Ste 500		Houston	TX	77098	
Office Depot, Inc		DEPT 56-4201182804	PO BOX 689020	OFFICE DEPOT CREDIT PLAN	Des Moines	IA	50368-9020	
Office Depot, Inc		Dept. 56 - 4201182804 PO Box 9020			Des Moines	IA	50368-9020	
Office Depot, Inc		PO Box 70025			Los Angeles	CA	90074-0025	
OFFICE EQUIPMENT								
FINANCE SERVICES		PO BOX 790448			Saint Louis	MO	63179-0448	
Office Expo		2025A Midway Rd			Carrollton	TX	75006	
Office of Secretary of State		1019 Brazos Street			Austin	TX	78701	
Office of the Attorney General	Michael B. Mukasey, Esq.	U.S. Department of Justice	950 Pennsylvania Avenue, N.W.		Washington	DC	20530-0001	

004176



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Office of the Attorney General		Securities Division	200 St Paul Place		Baltimore	MD	21202	
Office of the General Counsel	Re Prime Brokerage Services	Jefferies LLC	520 Madison Avenue, 16th Floor		New York	NY	10022	
Office of the General Counsel Office of the Securities Comm.		Pension Benefit Guaranty Corp.	1200 K Street, N.W.		Washington	DC	20005-4026	
KS	Securities Division	1300 SW Arrowhead Rd			Topeka	KS	66604-4019	
OGLETREE DEAKINS		PO BOX 89			Columbia	SC	29202	
OGLETREE DEAKINS		918 S PLEASANTBURG DR (29607)	PO BOX 167		Greenville	SC	29602	
Ogletree Deakins Nash Smoak & Stewart PC		P.O. Box 89			Columbia	SC	29202	
OHANNA, DAVID		Address on File						
OHC Advisors Inc		12060 SW 129th CT Ste 200			Miami	FL	33186-4582	
Ohio Division of Securities		77 South High Street	22nd Floor		Columbus	OH	43215	
Oil & Gas Information Systems		5801 Edwards Ranch Road	Suite 200		Fort Worth	TX	76109	
Oil & Gas Journal		Pennwell Corporation	PO Box 4362		Chicago	IL	60680-4207	
Oil and Gas Investor		PO Box 3001			Northbrook	IL	60065-3001	
Okada, Luke		Address on File						
Oklahoma Department of Securities		Oklahoma Department of Securities	204 N. Robinson Ave., Ste. 400		Oklahoma City	OK	73102-7001	
Oklahoma Independent Petroleum Assoc.		500 N.E. 4th Street			Oklahoma City	OK	73104	
OKLAHOMA TAX COMMISSION	GENERAL COUNSELS OFFICE	100 N. BROADWAY AVE, SUITE 1500			OKLAHOMA CITY	OK	73102	
OKLAHOMA TX COMMISSION		PO BOX 26930			Oklahoma City	OK	73126-0930	
OKOLITA, MATTHEW		Address on File						
Okta Inc.		100 1st St Fl 6			San Francisco	CA	94105-4632	
Old Republic National Title Ins. Co.		301 Brannan St	Suite 100		San Francisco	CA	94107	
Olander Reporting, Inc.		8201 Preston Rd	Suite 450		Dallas	TX	75225	
Olive & Ivy		1522 K St NW Ste 720			Washington	DC	20005	
OLIVER CASTELINO		7135 E Camelback Rd	No 195		Scottsdale	AZ	85251	
		Address on File						
OLSON, CANNON, GORMLEY, & DESRUISSEAUX		9950 WEST CHEYENNE AVE			Las Vegas	NV	89129	
OM5-DALLAS		Prestonwood Tower	5151 Bellline Rd. Suite 550		Dallas	TX	75254	
OMelveny & Myers LLP		400 South Hope St., 18th Floor			Los Angeles	CA	90071-2899	
Omgeo LLC		2967 Collections Center Dr			Chicago	IL	60693	
On Course Promotion		6865 Pear Tree Dr			Carlsbad	CA	92011	
Onelogin, Inc.		848 Battery St			San Francisco	CA	94111-1504	
On-Site Sourcing, Inc.		PO Box 75495			Baltimore	MD	21275	
Opal Financial Group		132 W 36th St Rm 200			New York	NY	10018-8840	
Open Text Inc.	c/o JP Morgan Lockbox	24685 Network Place			Chicago	IL	60673-1246	
Opentext		275 Frank Tompa Drive			Waterloo	ON	N2L 0A1	Canada

004177

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
OppenheimerFunds, Inc.	Attn Accounts Payable	6803 S. Tucson Way, Bldg 2 Garden Level			Centennial	CO	80112	
Options Group		121 East 18th St			New York	NY	10003	
Options Price Reporting Authority		PO Box 95718			Chicago	IL	60694-0001	United Kingdom
Opus 2 International Inc	Mr Matthew Finney Matthew Finney, Credit Controller	5th Floor, 5 New Street Square			London		EC4A 3BF	United Kingdom
Opus 2 International, Inc.		5 New Street Square			London		EC4A 3BF	United Kingdom
Opus 2 International, Inc.		100 Pine Street	Suite 560		San Francisco	CA	94111	
ORACLE AMERICA, INC		PO BOX 71028			Chicago	IL	60694-1028	
ORACLE AMERICA, INC		PO Box 203448			Dallas	TX	75320-3448	
Oracle America, Inc.		500 Oracle Parkway			Redwood Shores	CA	94065-0000	
Oracle America, Inc., Successor in Interest to Sun Microsystems	Shawn M. Christianson, Esq.	Buchalter, a Professional Corporation	55 2nd St., 17th Fl.		San Francisco	CA	94105	
Oracle Healthcare Advisors Inc.		12060 SW 129th Ct Ste 201			Miami	FL	33186-4582	
Orbis Marketing, Inc.		21550 Oxnard Street	Suite 850		Woodland Hills	CA	91367	
Orchard Group Productions		301 Park Forest Ct			Hurst	TX	76053	
Oregon Department of Revenue		955 Center St NE			Salem	OR	97301	
ORENT, COURTNEY		Address on File						
Organizational Talent		3752 Colliers Dr			Edgewater	MD	21037	
Orrick, Herrington & Sutcliffe LLP		4253 Collections Center Dr			Chicago	IL	60693	
OSD Investments, LLC		8951 Synergy Dr., Ste 225			McKinney	TX	75070	
OUTLOOKSOFT CORPORATION		ONE STAMFORD PLAZA	11TH FLR		Stamford	CT	06901-3281	
OutSource Management	c/o Cathy Wylet, Meeting Planner	14410 N. 10th Place			Phoenix	AZ	85022	
Ouyang, Kaixi		Address on File						
OVAATION TRAVEL GROUP	ATTN ANDREA KELLY	71 FIFTH AVE	11TH FLR		New York	NY	10003	
Ovis Creative		483 10th Ave	Suite 230		New York	NY	10018	
Owens, David		Address on File						
OXANA BROWN		Address on File						
Oxer Technologies		59 Franklin Street	Suite 5R		New York	NY	10013	
PA Consulting Group		1750 Pennsylvania Ave Ste 100			Washington	DC	20006-4506	
PAGER Service Center		PO Box 71364			Philadelphia	PA	71364	
PAGER Service Center		PO BOX 70951			Charlotte	NC	28272-0951	
PAGER Service Center		PO Box 277773			Atlanta	GA	30384-7773	
PAGER Service Center		P.O. Box 5208			Portland	OR	97208-5208	
Pachulski Stang Ziehl & Jones LLP		10100 Santa Monica Blvd	Ste 1300		Los Angeles	CA	90067	
Pacific Life Annuities & Mutual Funds		700 Newport Center Drive			Newport Beach	CA	92660-6397	
Paciugo Catering		1215 Viceroy Drive			Dallas	TX	75247	
Packerland Brokerage Services Inc.		432 Security Blvd			Green Bay	WI	54313-9709	

004178

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PADILLA, ANDREW		Address on File						
Paessler		Thurn-und-Taxis-Str. 14			Nuremberg		90411	Germany
Pageant Media		Dunstan House 14a St Cross St			London		EC1N 8XA	United Kingdom
PAIPANANDIKER, CHET		Address on File						
Palico LLC		420 Lexington Avenue	Suite 1425		New York	NY	10170	
Palisade Capital Management		One Bridge Plaza	Suite 695		Fort Lee	NJ	07024	
PALLEY, RENNICK		Address on File						
Palm Beach Investment Research Grp Inc.		13638 Via Flora	Suite A		Delray Beach	FL	33484	
PALMER, JAMES		Address on File						
PAM Capital Funding LP	c/o Maples & Calder	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PAM Capital Funding LP	c/o Queensgate SPV Services Limited	PO Box 1093GT / Suzanne St. Thomas	Compass Center, 2nd Flr, Crewe Road	George Town	Grand Cayman			Cayman Islands
PAM Capital Funding LP / Ranger Asset M	c/o Maples and Calder, PO Box 309	Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd.	c/o Maples & Calder	PO Box 309, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd.	c/o Queensgate SPV Services Limited	PO Box 1093, Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
PamCo Cayman Ltd. / Ranger Asset Managem	c/o Maples and Calder, PO Box 309	Ugland House	South Church Street	George Town	Grand Cayman			Cayman Islands
Panhandle Producers Royalty Ownrs Assoc.		3131 Bell Street	Suite 209		Amarillo	TX	79106	
PaperCut Software International Pty Ltd		308 SW 1st Ave Ste 300			Portland	OR	97204-3432	
PAR Plumbing		60 N. Prospect Avenue			Lynbrook	NY	11563-1395	
Paradigm		360 Park Avenue South	16th Floor		New York	NY	10010	
Paradise Bakery and Cafe		13710 Dallas Parkway, Suite H			Dallas	TX	75240	
Paradox Sports		710 10th Street	Suite 200		Golden	CO	80401	
Paragon Photocopying, Co.		1700 Commerce Ste 200			Dallas	TX	75201	
PARCELS INC		PO BOX 27			Wilmington	DE	19899	
PARVEDA SOLUTIONS		PO BOX 671060			Dallas	TX	75267	
Park Cities Quail 2016 Dinner & Auction		25 Highland Park Village	Suite 100-417		Dallas	TX	75205	
Park, Jun		Address on File						
Parker Poe Adams & Bernstein LLP		401 S. Tryon St, Ste 3000	Three Wells Fargo Center		Charlotte	NC	28202	
Parkinsons Disease Foundation		Gift Processing Center	PO Box 96268		Washington	DC	20090-6268	
Parkland Securities, LLC	ATtn Blayne Andersen	300 Parkland Plaza			Ann Arbor	MI	48103	
Parks Coffee		PO Box 110209			Carrollton	TX	75011-0209	
Parkway Bent Tree Partners, Ltd		17130 Dallas Parkway	Suite 240		Dallas	TX	75248	
Parmentier, Andrew		Address on File						
Parmentier, Andrew		Address on File						
Parmentier, Andrew		Address on File						

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PARNELL, CATHERINE		Address on File						
PARS International Corp	Attn Permissions A/R	253 West 35th Street, 7th Floor			New York	NY	10001	
Parth Shah		Address on File						
Partner Engineering & Science, Inc.		2154 Torrance Blvd	Suite 200		Torrance	CA	90501	
Partridge Snow & Hahn, LLP		40 Westminster Street	Suite 1100		Providence	RI	02903	
Party Frills		219 E White St			Anna	TX	75409	
PASSMORE, MICHAEL		Address on File						
Pat & Emmitt Smith Charities		16000 North Dallas Pkwy	Suite 550N		Dallas	TX	75248	
Pate & Knair		PO Box 1907			Oklahoma City	OK	73101-1907	
PATEL, VISHAL		Address on File						
PATRICK BOYCE		Address on File						
Patrick Bressler		Address on File						
Patrick Conner		Address on File						
Patrick Daugherty	c/o Thomas A. Uebler	McCollom DEmilio Smith #401	2751 Centerville Rd		Wilmington	DE	19808	
Patrick Daugherty	c/o Thomas A. Uebler, Esq.	McCollom DEmilio Smith Uebler LLC #401	2751 Centerville Rd		Wilmington	DE	19808	
Patrick Daugherty/Andrew K. York		Address on File						
Patrick Daugherty/Andrew K. York	Dylan O. Drummond	Gray Reed & McGraw, LLP	1601 Elm Street	Suite 4600	Dallas	TX	75201-7212	
Patrick Haganam Daugherty	Jason Kathman	2701 Dallas Parkway Suite 590			Plano	TX	75093	
Patrick Haganam Daugherty	Pronske and Kathman	Jason P. Kathman	2701 Dallas Parkway	Suite 590	Plano	TX	75093	
Patrick J. Eiverum		Address on File						
PATRICK KELLY		Address on File						
PATRICK, MARK		Address on File						
Patrina Corporation		45 Broadway	Ste 1440		New York	NY	10006	
Patton Boggs LLP		2550 M St NW			Washington	DC	20037	
Paul D. Kauffman		Address on File						
Paul D. Peterson, Ltd.		3040 Woodbury Drive			Woodbury	MN	55129	
Paul DiMartino		Address on File						
Paul Hastings, Janofsky & Walker LLP		55 Second St, 24th Flr			San Francisco	CA	94105-3441	
Paul Kauffman	Jason P. Kathman	Pronske & Kathman, P.C.	2701 Dallas Parkway,	Suite 590	Plano	TX	75093	
PAUL KAUFFMAN		Address on File						
Paul Kauffman		Address on File						
Paul Kaufmann		Address on File						
PAUL KUNKEL		Address on File						
PAUL N. ADKINS		Address on File						
Paula Shober		Address on File						
PAUS2 (Investments) GP Ltd.	Attn Eric Pedde	c/o Alberta Investment Management Corporation	1100-10830 Jasper	Avenue	Edmonton	AB	T5J2B3	Canada
Paws Cause 2015	Attn Paws Cause 2015	2400 Lone Star Drive			Dallas	TX	75212	

004180

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Paxstone Capital LLP	Attn Kasper Kemp Hansen	483 Green Lane 4005 NW Expressway, STE 500			London		N13 4BS	United Kingdom
PayCom Payroll, LLC		10802 Farnam Drive	Suite 100		Oklahoma City	OK	73116	
PayFlex Systems USA, Inc.		1400 American Ln # 1900			Omaha	NE	68154	
Paylocity		3850 N. Wilke Rd.			Schaumburg	IL	60173-5452	
Paylocity Corporation		10711 Preston Rd	Suite 110		Arlington Heights	IL	60004-0000	
Payne & Smith, LLC		PO Box 670805			Dallas	TX	75230	
Payne & Smith, LLC		PO Box 49283			Dallas	TX	75367-0805	
PayScale Inc		DEPT 77430, PO BOX 77000			San Jose	CA	95161-9283	
PBGC		PO Box 979120			Detroit	MI	48277-0430	
PBGC		PO Box 382808			Saint Louis	MO	63197-9001	
PC Connection					Pittsburgh	PA	15250-8808	
PC Serv LLC/SharePoint Solutions	Accounts Receivable	1521 Gordon Petty Dr			Brentwood	TN	37027	
PC Serv, LLC / SharePoint Solutions		PO Box 1588			Brentwood	TN	37024-1558	
PCMG Trading Partners XXIII, L.P.	c/o The Corporation Trust Company	1209 Orange St			Wilmington	DE	19801	
PCS Securities, Inc.		19020 88th Avenue West			Edmonds	WA	98026	
Peach Labs, Inc.		108 S Jackson St Ste 300			Seattle	WA	98104-2872	
Pearcock, Carissa		Address on File						
Pearson, James M.		Address on File						
Pearson, Kyle		Address on File						
PEGGY FRANCIS		Address on File						
Peller		Dreikonigstrasse 45	Postfach 2016		Zurich		CH-8027	SWITZERLAND
Peltkian, Michael		Address on File						
Peltkian, Michael		Address on File						
PELZEL, TERRY		Address on File						
Penant Management GP, LLC	c/o Highland Capital Management, L.P.	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Penland, Nathan		Address on File						
Pension Benefit Guaranty Corporation	Attn M. Baird	Office of the General Counsel	1200 K Street, N.W., Suite 3305		Washington	DC	20005	
Pension Benefit Guaranty Corporation	Lori Butler, Assistant General Counsel	1200 K Street, N.W., Suite 3513			Washington	DC	20005	
Pension Benefit Guaranty Corporation		Department 77430	PO Box 77000		Detroit	MI	48277-0430	
PensionDanmark	Attention Head of Legal	Langelinie Alle 43			Copenhagen		02100	Denmark
PensionDanmark								
Pensionsforsikringsaktieselskab	Attn David Grant Crooks	c/o Fox Rothschild LLP	5420 LBJ Freeway, Suite 1200		Dallas	TX	75240	
Pensions & Investments		Crain Communication Inc.	115 Gratiot		Detroit	MI	48207-2997	
Pensions & Investments		Subscriber Services Department 77940			Detroit	MI	48277-0940	
Pensions & Investments		PO BOX 79001	DRAWER #7718	SUBSCRIBER SERVICES	Detroit	MI	48279-7718	

004181

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PENTAGROUP FINANCIAL, LLC		5959 CORPORATE DR	STE 1400		Houston	TX	77036	
PENTON TECHNOLOGY MEDIA		221 E 29TH ST			Loveland	CO	80538	
Pepper Hamilton LLP		1201 Market St, Ste 1600			Wilmington	DE	19899	
Pepperdine University PEREIRA, TOM	ATTN Stacy Taylor	Pepperdine School of Law Address on File	24255 Pacific Coast Hwy		Malibu	CA	90263	
Perino, Inc		450 W 42nd Street	Apt 46M		New York	NY	10036	
Perkins Coie LLP	Attn Client Accounting	1201 Third Avenue, Suite 4900			Seattle	WA	98101	
Perot Museum of Nature and Science		2201 North Field Street			Dallas	TX	75201	
Perot Museum of Nature and Science		PO Box 151469			Dallas	TX	75315	
Pershing LLC	Alternative Invest Dept. - Zamena Khan	300 Colonial Center Parkway, 3rd Floor			Lake Mary	FL	32746	
Pershing LLC	Attn Brittany Crowley	300 Colonial Center Parkway			Lake Mary	FL	32746	
Pershing LLC	Attn Genesis Garcia	One Pershing Plaza, 8th Fl			Jersey City	NJ	07399	
Pershing LLC	Attn IBD - 15th Floor	One Pershing Plaza			Jersey City	NJ	07399	
Personel Concepts		PO Box 3353			San Dimas	CA	91773	
PERTRAC FINANCIAL SOLUTIONS, LLC		2650 Thousand Oaks, Ste 1340			Memphis	TN	38118	
PERTRAC FINANCIAL SOLUTIONS, LLC		10403 DOUBLE R BOULEVARD			Reno	NV	89521	
Pestotnik + Gold LLP		501 W. Broadway	Suite 1850		San Diego	CA	92101	
Petals & Stems Florist		13319 Monfort	LBJ at Monfort		Dallas	TX	75240	
PETER CHUNG		Address on File						
PETER CHUNG		Address on File						
PETER FERGUSON		Address on File						
PETER NOLAN		Address on File						
PETER PESTILLO		Address on File						
Peter Roman		Address on File						
PetroCap III and SLP	Marc Lombardi	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap III and SLP	Sarah Schultz	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap III and SLP	Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap Inc		2602 McKinney Avenue	Suite 400		Dallas	TX	75204	
Petrocap Incentive Partners III GP, LLC	Attn Lane Britain	Petrocap Incentive Holdings III, LP	3333 Lee Parkway, Suite 750		Dallas	TX	75219	
Petrocap Incentive Partners III GP, LLC	Marc Lombardi, Sarah Schultz, Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap Partners II GP, LLC	Attention William L. Britain	2602 McKinney Avenue	Suite 400		Dallas	TX	75204-0000	
Petrocap Partners II GP, LLC	Attn Lane Britain	Petrocap Incentive Partners II, LP	3333 Lee Parkway, Suite 750		Dallas	TX	75219	
PetroCap Partners II, GP, LLC	PetroCap, LLC	William L. Britain	2602 McKinney Avenue Suite 400		Dallas	TX	75204	

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PetroCap Partners III, L.P.	Marc Lombardi, Sarah Schultz, Wesley Williams	c/o Akin Gump Strauss Hauer & Feld, LLP	2300 N. Field Street, Suite 1800		Dallas	TX	75201-2481	
PetroCap Partners III, L.P.		3333 Lee Parkway	Suite 750		Dallas	TX	75219	
Petroleum Club of Midland		PO Box 10527			Midland	TX	79702-7527	
Petsmart Charities, Inc.		PO Box 96426			Washington	DC	20077-7227	
PFERTNER, JIM		Address on File			Philadelphia	PA	19182-8789	
PFPC DISTRIBUTORS		PO BOX 828789			Philadelphia	PA	19182-8810	
PFPC DISTRIBUTORS		PO BOX 828810			Philadelphia	PA	19182-8810	
Phase 3 Marketing and Communications		Dept# 7052	PO Box 2153		Birmingham	AL	35287-7052	
PHELAN, KEVIN		Address on File						
PHIL GALPIN		Address on File						
Phil Rochefort		Address on File						
Philadelphia Biblical University	Attn Mr. Tim Hui	200 Manor Ave			Langhorne	PA	19047-9989	
PHILET FOODS		5331 E MOCKINGBIRD LN	STE 413		Dallas	TX	75206	
Philip Settimi		Address on File						
Philippine American Physicians		PO Box 690695			Orlando	FL	32869	
Phillips, Michael		Address on File						
Phoenician Operating LLC		6000 East Camelback Road			Scottsdale	AZ	85251	
PicFlips, LLC		8553 N Beach St #280			Fort Worth	TX	76244	
Pillsbury Winthrop Shaw Pittman LLP		PO Box 7880			San Francisco	CA	94120-7880	
Pink Ribbon Cleaning Services		PO Box 541141			Dallas	TX	75354	
Pinnacle Aviation Charter		14988 North 78th Way	Suite 106		Scottsdale	AZ	85260	
Pinnacle Business Systems		609 S. Kelly Avenue, Suite E-7			Edmond	OK	73003	
Pinnacle Group International		PO BOX 2800, # 265			Carefree	AZ	85377	
Pinnacle International		5420 LBJ, Ste 390			Dallas	TX	75240	
Pinnacle International		PO Box 2800, #265			Carefree	AZ	85377	
Pinnacle Office Products LLC		8024 Glenwood Ave	Suite 200		Raleigh	NC	27612	
Pinnacle Office Products LLC		8024 Glenwood Ave Ste 200	STE 200		Raleigh	NC	27612	
PIONEER INVESTMENT MANAGEMENT		60 STATE STREET			Boston	MA	02109	
Pipos Travel Corp.		2333 Brickell Ave.	Mezz UL4		Miami	FL	33129	
PIRA Energy Group		3 Park Ave, 26th Flr			New York	NY	10016-5989	
Piriform Inc.		590 Madison Avenue	21st Floor		New York	NY	10022	
Pirozzi & Hillman, Inc.		274 Madison Ave			New York	NY	10016	
Pirtle Design		506 Union St			Hudson	NY	12534-2816	
Pitney Bowes Credit Corp.		PO Box 856460			Louisville	KY	40285-6460	
PITNEY BOWES FINANCIAL SERVICES LLC		PO BOX 371887			Pittsburg	PA	15250-7887	
Pitney Bowes Global Financial Services		PO Box 371874			Pittsburgh	PA	15250-0000	
Pitney Bowes Inc.		PO Box 371896			Pittsburgh	PA	15250-7896	

004183



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Pitney Bowes- Purchase Power		PO Box 371874			Pittsburgh	PA	15250-2648	
PITTMAN, TABOR J.		Address on File						
Pivotal Research Group LLC	Jeff Shelton	c/o 12 John Street			Demarest	NJ	07627	
Pivotal Research Group LLC		12 John Street			Demarest	NJ	07627	
PJ Mechanical Service & Maint. Corp.		135 W. 18th Street			New York	NY	10011	United Kingdom
Planatech Solutions Ltd.		Grosvenor Gardens House	35/37 Grosvenor Gardens		London		SW1W 0BY	
Plano East Golf Booster Club	Attn Brian Flanagan	700 Bear Creek Dr.			Murphy	TX	75094	
Plano Party Animals		600 Legacy Drive			Plano	TX	75023	
PLANT DECOR		PO BOX 8	Suite 111		Ponder	TX	76259-0008	
Plant Interscapes, Inc.		6436 Babcock Rd.			San Antonio	TX	78249	
PlantKeeper		PO BOX 226142			Dallas	TX	75222-6142	
Plastic News		Subscriber Services	PO Box 07938		Detroit	MI	48207-9944	
Platinum Litigation Solutions, LLC		325 N. Saint Paul Street	Suite 1100		Dallas	TX	75201	
Platinum Parking		300 Crescent Court	Level G1, LB#102		Dallas	TX	75201	
Platypus Studios	Attn Mark Baldi	2055 Corte Del Nogal			Carlsbad	CA	92011	
Plexus Groupe LLC		21805 W Field Parkway, Ste 300			Deer Park	IL	60010	
Plimus, Inc.		142 N. Milpitas Blvd #435			Milpitas	CA	95035-4401	
PLS Inc.		PO Box 4987			Houston	TX	77210-4987	
PLUM, KEITH		Address on File						
PLUMER, KURTIS		Address on File						
PMC Commercial Trust		17950 Preston Road	Ste 600		Dallas	TX	75252	
PMC Service Company		2425 DillaRd St			Grand Prairie	TX	75051	
PNC Global Investment Servicing								
PNP Productions		PO Box 828789			Philadelphia	PA	19182-8789	
POER, MARY		8312 Westlawn Avenue			Los Angeles	CA	90045	
POGLITSCH, JON		Address on File						
POGRANICHNY, PAUL		Address on File						
Point Multimedia LLC		501 Elm Street	Suite 350		Dallas	TX	75202	
Pollock, Staci		Address on File						
Polsen, Gregory		Address on File						
Pope, Harwicke, Christie, Schell, Kelly & Taplett LLP		500 W 7th Street	Ste 600		Fort Worth	TX	76102	
POPE, JAMES		Address on File						
POPE, THERESA		Address on File						
Portfolio Media, Inc		860 Broadway	6th Floor		New York	NY	10003	
POST, ROBERT		Address on File						
Potbelly Sandwich Works, LLC		222 Merchandise Mart Plaza	23rd FL		Chicago	IL	60654	
POTTER ANDERSON & CORROON LLP	Timothy R. Dudderar	Hercules Plaza, 6th Floor	1313 North Market Street		Wilmington	DE	19801	
Potter, Anderson & Corroon POWELL, ETHAN K.		1313 North Market St PO Box 951			Wilmington	DE	19899-0951	
		Address on File						



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PR Newswire		PO Box 5897			New York	NY	10087-5897	
PR Newswire Association, LLC		602 Plaza	Three Harborside Financial Center		Jersey City	NJ	07311-0000	
PRACTICING LAW INSITUTE		810 SEVENTH AVE			New York	NY	10019	
PRACTICING LAW INSITUTE		PO Box 26532			New York	NY	10087-6532	
Prairie Rose Studio		PO Box 1316			Commerce	TX	75429	
PRAMOD RAJU		Address on File			Mesquite	TX	75149	
Precise Land Surveying, Inc.		4625 Eastover Dr						
Premier Wealth Strategies	Attn Jon Rustad	8777 E. Via de Ventura, Ste 140			Scottsdale	AZ	85258	
Premiere Global Services		PO Box 404351			Atlanta	GA	30384-4351	
Premiere Speakers Bureau, Inc.		109 International Drive	Suite 300		Franklin	TN	37067	United Kingdom
Preqin Ltd.		Scotia House	33 Finsbury Square		London		EC2A 1BB	
Preqin Ltd.		PO Box 200918			Pittsburgh	PA	15251-0918	
Presbyterian Hospital of Dallas		PO Box 910013			Dallas	TX	75391	
Prescott Legal Search		PO Box 1024140			Atlanta	GA	30368-4140	
Presidential Process Service Inc		419 Park Ave South	Suite 700		New York	NY	10016	
Preston Florist		14856 Preston Rd Ste 110			Dallas	TX	75240	
Preston Hollow Catering		3419 Westminster	#235		Dallas	TX	75205	
Preston Hollow Elementary								
PTA		6423 Walnut Hill Lane			Dallas	TX	75230	United Kingdom
PRI Association		5th Floor	25 Camperdown Street		Whitechapel		E1 8DZ	
PRICE, BRIAN		Address on File						
Price, Kevin		Address on File						
PRICE, WHITNEY		Address on File						
Pricewaterhouse Coopers, LLP		8 Cross St. #17-00	PWC Singapore Building		Singapore		048424	SINGAPORE
Pricewaterhouse Coopers, LLP		P.O. Box 952282			Dallas	TX	75395	
Pricewaterhouse Coopers, LLP		PO Box 75647			Chicago	IL	60675-5647	
PricewaterhouseCoopers	c/o John Wander, Vinson Elkins LLP	2001 Ross Avenue	Suite 3900		Dallas	TX	75201	
PRICEWATERHOUSECOOPE		SOUTHWARK TOWERS	32 LONDON BRIDGE		London		SE1 9SY	United Kingdom
RS								
PricewaterhouseCoopers LLP		One North Wacker			Chicago	IL	60606-0000	
Prime Brokerage Services		Jefferies LLC	520 Madison Avenue		New York	NY	10022	
Primedia		PO Box 96985			Chicago	IL	60693	
Princeton Club of NY		15 West 43rd Street			New York	NY	10036-7497	
Princeton Search LLC		d/b/a PrincetonOne	PO Box 52265		Newark	NJ	07101-0220	
Principal Financial Group		PO Box 477			Appleton	WI	54912-0477	
Principal Life		Dept. 400 PO Box 14416			Des Moines	IA	50306-3416	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
PrintComm		1161 Executive Drive West			Richardson	TX	75081	
PrintGlobe		PO Box 975659			Dallas	TX	75397-5659	
Privcap LLC		86 Chambers Street	7th Floor		New York	NY	10007	
Probe Ministries		2001 W. Plano Pkwy	Suite 2000		Plano	TX	75075	
Probe Ministries		1900 Firman Dr Ste 100			Richardson	TX	75081-6796	
Professional Technologies, Inc.	Accounting Dept.	4950 N. OConnor Rd., 1st Floor			Irving	TX	75062-2778	
PROFESSIONALS PUBLISHING GROUP		1911 N US HWY 301	STE 140		Tampa	FL	33619	
PROFESSIONAL TECHNOLOGIES INCORPORATED		CORPORATE PLAZA 1, 1st floor	4950 North OConnor Rd		Irving	TX	75062-2778	
Professional Video Services, LLC		8 Canterbury Lane			Westfield	NJ	07090	
Progenics Pharmaceuticals, Inc.	Attn CEO	777 Old Saw Mill Road			Tamytown	NY	10591	
Progressive Business Publication		370 Technology Drive	PO BOX 3019		Malvern	PA	19355	
Pronske and Kathman Proofpoint	Jason P. Kathman	2701 Dallas Parkway Suite 590			Plano	TX	75093	
Proposal Software, Inc.		892 Ross Drive			Sunnyvale	CA	94089	
Prosek Partners LLC		1140 US Hwy 287	Suite 400-102		Broomfield	CO	80020	
Proskauer Rose LLP		1552 Post Road			Fairfield	CT	06824	
Prospect News Inc.		Eleven Times Square	9th floor		New York	NY	10036-8299	
Prospect News Inc.		6 MAIDEN LANE			New York	NY	10038	
Prospect News Inc.		164 Prospect Park West #4R			Brooklyn	NY	11215	
Prosper Sports Association		1050 High Willow			Prosper	TX	75078	
ProStar Services, Inc		PO Box 110209			Carrollton	TX	75011	
Protection Networks		4887 Alpha Road, St 200			Farmers Branch	TX	75244-4632	
PROVIDEA CONFERENCEING LLC		PO Box 636132			Cincinnati	OH	45263	
PROVIDEA CONFERENCEING LLC		1297 Flynn Rd.	Suite 100		CAMARILLO	CA	93012	
Prudential	Attn Nirsa Reyes	100 Mulberry St, Gateway Ctr 3, 14 flr			Newark	NJ	07102	
Prudential		PO BOX 856138			Louisville	KY	40285	
Pryor Cashman LLP		410 Park Ave			New York	NY	10022	
PUBLIC COMPANY ACCTNG OVERSIGHT BOARD		PO BOX 631116			Baltimore	MD	21263-1116	
Puerto Rico Secretary of the Treasury		Securities Division	1492 Ponce de Leon Avenue, Suite 600		San Juan	PR	00907-1492	
Puglisi & Associates		850 Library Ave, Suite 204			Newark	DE	19711	
PUNCHSTOCK		8517 EXCELSIOR DR	STE 200		Madison	WI	53717	
PUNCHSTOCK		PO Box 953604			Saint Louis	MO	63195	
PURCELL, ONDINA		Address on File						
PURCELL, ONDINA A.		Address on File						
Purdy-McGuire		4300 Sigma Ste 200			Dallas	TX	75244-4416	
Pure Compliance		PO BOX 951839			Dallas	TX	75395	

004186

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Purshe Kaplan Sterling Investments, Inc.		18 Corporate Woods Blvd Address on File	4th Floor		Albany	NY	12211	
PUSATERI, MICHAEL		1155 Metcalfe St, 4th Fir			Montreal	QC	H3B 4S9	CANADA
PwC Product Sales LLC		PO Box 952282			Dallas	TX	75395-2282	
Q&A RECRUITING		14241 N DALLAS PKWY, STE 550			Dallas	TX	75254	
Q.O.P.S.		PO Box 10429			Van Nuys	CA	91410	
Quadriga Partners, LLC	Attn Jason Ficken	100 Fillmore, Suite 425			Denver	CO	80206	
Quality High-Tech Services, Inc.		11807 Forestgate Dr Address on File			Dallas	TX	75243	
QUAN ZHANG		DEPT 0596	PO BOX 120596		Dallas	TX	75312	
QUANTUM		Queens Ballpark Co.	126-01 Roosevelt Ave.		Flushing	NY	11368	
Quest CE	Attn Marc Candelaria	10100 W. Innovation Drive	Suite 200		Milwaukee	WI	53226	
Quest Events		2591 Dallas Parkway	Suite 201		Frisco	TX	75034	
QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # x9811		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO JON POGLIITSCH, ACCT. # x0612		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # x8311		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO NEIL DESAI, ACCT. # x9211		17171 Park Row #100			Houston	TX	77084	
Quest Software		PO Box 51739			Houston	TX	77084	
Quick Trak Messengers		267 West 17th Street	3rd Floor		Los Angeles	CA	90051-6039	
Quinn Emanuel Trial Lawyers		865 S Figueroa St	10th FL		New York	NY	10019	
Quintairo, Prieto Wood & Boyer		9300 South Dadeland Blvd, 4th Floor			Los Angeles	CA	90017	
Quintairo, Prieto Wood & Boyer		865 S. Figueroa St	10th FL		Miami	FL	33156	
QVerity, Inc.		740 Greenville Blvd.	Suite 400, PMB 154		Los Angeles	CA	90017	
Rabbit Reproduction		PO Box 29764			Greenville	NC	27858	
Rachael Romine		Address on File			Dallas	TX	75229	
RACHAL, TRAVIS		Address on File						
RACHAL, TRAVIS		Address on File						
Rademacher, Cole		Address on File						
Radianz Americas Inc	ATTN Head of Legal	620 Eighth Ave	45 th Floor		New York	NY	10018	
Radianz Americas Inc		PO Box 7247-6642			Philadelphia	PA	19170-6642	
Radianz Americas Inc		DEPT CH 19227			Palentine	IL	60055-9227	
Rafael Anchia		Address on File						
RAJU, PRAMOD		Address on File						
Rakhee V. Patel, Phillip Lamberson, Annmarie Chiarello		500 Windstead Building	2728 N. Harwood Street		Dallas	TX	75201	
Rally Point Media Strategies LLC		1320 North Veitch St Address on File	#1712		Arlington	VA	22201	
RAMAMURTHY, SUNDAR		Address on File						

004187

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Ramesh Swaminathan		Address on File						
Rand Advisors Series I Insurance Fund	c/o Rand Advisors	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Rand Advisors, LLC / Atlas IDF LP, et al	Attn: John Honis	87 Railroad Place	Ste 403		Saratoga Springs	NY	12866-0000	
Rand PE Fund I, L.P.	c/o Rand PE Fund Management, LLC	John Honis	87 Railroad Place	Suite 403	Saratoga Springs	NY	12866	
Randal Stout Entertainment		2341 Hummingbird Trail			Grapevine	TX	76051	
RANDAL ZIEGENHAGEN		5317 ELLSWORTH AVE			Dallas	TX	75206	
Random Lengths		PO Box 867			Eugene	OR	97440-0867	
RANGEL, VICTOR		Address on File			Abilene	TX	79602	
Ranger Creek Goose		209 Alex Way						
Ransom, Garrett		Address on File						
Rapid7 LLC		120 Causeway St Ste 400			Boston	MA	02114-1314	
Ratcliffe for Congress		PO Box 347377			Pittsburgh	PA	15251-4377	
RAWLINGS, OLSON, CANNON		2931 Ridge Road, Ste 101	PMB #217		Rockwall	TX	75032	
Raymond Dougherty		GORMLEY & DESRUISSEAUX AVE			Las Vegas	NV	89129	
Raymond James & Associates, Inc		Address on File						
Raymond James & Associates, Inc	Attn Kristin Koscho	880 Carillon Parkway			St. Petersburg	FL	33716	
Raymond James & Associates, Inc	Attn Treasury/RMB-M/F	PO Box 23591			St. Petersburg	FL	33742	
Raymond James & Associates, Inc		70 East Main St			Avon	CT	06001	
Raymond James Financial	ALPG attn Todd Moulton	Granada Building, 5th Floor	1216 State Street, Suite 500		Santa Barbara	CA	93101	
Raymond James Financial	Attn Catina Cruz/RJ BP Dev Conf Free	3610 N. University Ave, Ste 350			Provo	UT	84604	
Raymond Joseph Dougherty	D. Craig Shew, PLLC	PO Box 23613			St. Petersburg	FL	33742	
Raymond Joseph Dougherty		PO Box 1373			Ada	OK	74821-1373	
RBC Capital Markets, LLC	Attn Dave Hiron	Address on File						
RBC Capital Markets, LLC	Attn Jim Brick	4250 Executive Square, Ste 800			Lajolla	CA	92037	
RCR Wireless News		60 South Street, P21			Minneapolis	MN	55402	
Real Capital Analytics		Subscriber Services Department 77940			Detroit	MI	48277-0940	
REAL ESTATE ALERT		139 5th Ave			New York	NY	10010	
Real Time Services		5 Marine View Plaza #400			Hoboken	NJ	07030	
REALPOINT		452 West John Street			Hicksville	NY	11801-1301	
REALPOINT		BOX #3001	200 WITMER RD		Horsham	PA	19044	
Reasoning Mind		Receiveable Management Services	4836 Brecksville Rd		Richfield	OH	44286	
Rebecca A. Thompson		5910 N. Central Expressway # 250			Dallas	TX	75206	
Rebecca Stropoli		Address on File						
Record Press Inc.		Address on File						
Records Deposition Service		229 West 36th Street			New York	NY	10018	
		1701 N Collins Blvd Ste 334			Richardson	TX	75080-3602	

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Red Hat		100 East Davie Street			Raleigh	NC	27601-0000	
Red Oak Compliance Solutions LLC		1320 Arrow Point Dr Ste 411			Cedar Park	TX	78613-2095	
Red River CLO Corp.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Red River CLO Ltd c/o Ogier Fiduciary Services (Cayman) Limited	Attention The Directors	P.O.Box 1234,	Queensgate House South Church Street	George Town	Grand Cayman		KY1-1108	Cayman Islands
Red River CLO Ltd.		190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Red River CLO Ltd. et al	U.S. Bank National Association Corporate Trust Services/CDO Department	One Federal Street, Third Floor			Boston	MA	02110	
Red River CLO Ltd. Grand Central Asset Trust	LaSalle Bank N.A., as Collateral Administrator	181 West Madison Street	Suite 3200	CDO Trust Services - Roy Hykal	Chicago	IL	60602	
Red River CLO Ltd. Grand Central Asset Trust	U.S. Bank, National Association	One Federal Street	3rd Floor	Mr. Jackson Carneiro	Boston	MA	02110	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	Highland Special Opp. Holding Company	2 Galleria Towers 13455 Noel Road	Suite 1300		Dallas	TX	75240	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	LaSalle Bank N.A., as Collateral Administrator	181 West Madison Street	Suite 3200	CDO Trust Services - Maciej Zurawski	Chicago	IL	60602	
Red River CLO Ltd. Highland Special Opportunities Holding Company U.S. Bank National Association	U.S. Bank, National Association	One Federal Street	Third Floor	Mr. Jackson Carneiro	Boston	MA	02110	
Red River CLO Ltd. MMP-5 Funding, LLC IXIS Financial Products Inc.	IXIS Financial Products Inc.	9 West 57th Street	36th Floor		New York	NY	10019	
Red River CLO Ltd. MMP-5 Funding, LLC IXIS Financial Products Inc.	MMP-5 Funding, LLC	120 White Plains Road	Suite 115		Tarrytown	NY	10591	
Red River CLO Ltd. U.S. Bank National Association IXIS Financial Products Inc.	Red River CLO Ltd. Address c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1234	Queensgate House South Church Street	Red River CLO Ltd.	George Town		KY1-1108	Cayman Islands
Red River CLO Ltd., et al	c/o Ogier Fiduciary Services (Cayman) Limited	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Red River CLO, Ltd.	Red River CLO Ltd. c/o Ogier Fiduciary Services (Cayman) limited	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Red River CLO, Ltd.	U.S. Bank National Association Corporate Trust Services/CDO Department	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors c/o Ogier Fiduciary Services (Cayman) Limited	George Town			Cayman Islands
Red River CLO, Ltd. U.S. Bank National Association	Red River CLO Ltd. U.S. Bank National Association	One Federal Street, Third Floor	Ref Red River CLO Ltd		Boston	MA	02110	
Red River CLO, Ltd. U.S. Bank National Association	Red River CLO Ltd. U.S. Bank National Association	P.O. Box 1234	Queensgate House South Church Street	The Directors - Red River	George Town		KY1-1108	Cayman Islands

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Red Rock Strategic Partners		PO Box 35			Watkinsville	GA	30677	
Redbud E&P Inc.		2602 McKinney Ave	Ste 400		Dallas	TX	75204	
Redeemer Committee - Highland Crusader	Attn Eric Felton	731 Pleasant Ave.			Glen Ellyn	IL	60137	
Redeemer Committee Highland Crusader Fund	c/o Terri Mascherin, Esq.	Jenner & Block 6731 W. 121 St, Ste 226	353 N. Clark Street		Chicago	IL	60654-3456	
Redmond Law Firm		27271 Las Ramblas	Suite 200		Overland Park	KS	66209	
Redspih		Address on File			Mission Viejo	CA	92691	
REED SMITH		PO Box 360074M			Pittsburgh	PA	15251-6074	
REED SMITH		PO BOX 759052			Baltimore	MD	21275-9052	
REED WATSON		Address on File						
Reese Energy Consulting, Inc.		725 South Boulevard			Edmond	OK	73034	
Refinitiv	c/o Sarah E. Doerr	Refinitiv f/d/b/a Thomson Reuters	Moss & Barnett	150 5th St S, Suite 1200	Minneapolis	MN	55402	
Refinitiv US LLC		3 Times Square			New York	NY	10036	
Regulatory Compliance Watch		PO Box 9407			Gaithersburg	MD	20898-9407	
Regus Business Centre		Colleen Susini, Centre Manager	245 Park Ave, 39th Flr		New York	NY	10167	
Regus Management Group LLC		PO Box 842456			Dallas	TX	75284-2458	
Reid Collins & Tsai	William T. Reid, Esq.	Reid Collins & Tsai LLP	810 Seventh Avenue, Ste 410		New York	NY	10019	
Reid Collins & Tsai LLP		1301 S. Capital of Texas Hwy	#C300		Austin	TX	78746	
Reid Collins & Tsai LLP		4301 Westbank Drive	Building B Suite 230		Austin	TX	78746	
Reid Davis		Address on File			New York	NY	10036	
REIS SERVICES, LLC		530 Fifth Ave5th Floor			New York	NY	10018	
Reis, Inc.		5 West 37th St			New York	NY	10036	
REIT ZONE PUBLICATIONS, LLC		530 5TH AVE, 5TH FLR						
Reiter, Jon		448 IGNACIO BLVD	STE 345		Novato	CA	94949	
Relationship Science LLC		Address on File			New York	NY	10022	
Relationship Science LLC		909 3rd Ave	FL 18		Pittsburgh	PA	15251-4989	
Ren Morrison Photography		PO Box 347989			Dallas	TX	75225	
Rentacrate Incorporated		5445 Caruth Haven 121			Waltham	MA	02453	
Rentacrate Incorporated		124 Prospect St	Suite 420		Nashville	TN	37214	
Rentacrate Incorporated		22 Century Blvd			New York	NY	10087-2194	
Rentfro, Tyler		PO Box 32194						
Reorg Research, Inc.		Address on File			New York	NY	10001	
Reorg Research, Inc.		1140 Broadway	Ste 201		New York	NY	10010-0000	
Reporters Central LLC		11 East 26th Street	12th Floor		New York	NY	10001	
Republic Title of Texas, Inc.		363 Seventh Ave, 21st Fl			New York	NY	10001	
Reputation Management Consultants		2701 W. Plano Parkway, Suite 100			Plano	TX	75075	
Rescue Cell Phone		92 Corporate Park	Suite C-700		Irvine	CA	92606	
		280 Legacy Dr	#104		Plano	TX	75023	

004190

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Rescue Cell Phone		6121 Greenville Ave			Dallas	TX	75206	
Research in Motion Corporation		12432 Collections Center Dr			Chicago	IL	60693	
Resolutions, LLC.		222 Berkeley Street	Suite 1060		Boston	MA	02116	
Resort Capital Advisors		712 Intracoastal Dr			Ft. Lauderdale	FL	33304	
Resource Technologies Corp.		PO Box 3201			Troy	MI	48007-3201	
Restaurant Associates	Attn Jeanine Miller	1071 Fifth Avenue			New York	NY	10128	
Resulte Universal		5151 Belt Line Rd	Suite 455		Dallas	TX	75254	
REUTERS LOAN PRICING CORPORATION		GENERAL POST OFFICE	PO BOX 26803		New York	NY	10087-6803	
Rey Rodriguez		Address on File						
Reynolds Frizzell Black Doyle Allen		1100 Louisiana	Ste 3500		Houston	TX	77002	
Reynolds, Steven		Address on File						NETHERLAN DS
RFPnetworks B. V.		Laan van Kronenburg 14			Amstelveen		1183AS	
Rhinotek Computer Products		PO Box 6205			Carson	CA	90749	
Rhode Island Dept. Business Regulation		Securities Division	1511 Pontiac Ave. Bldg		Cranston	RI	02920	
Rialto Capital Advisors, LLC		790 NW 107th Avenue	Suite 400		Miami	FL	33131	
RICCI, JENNIFER		Address on File						
Riccione Resources, Inc		17194 Preston Rd	Suite 102-390		Dallas	TX	75248-1221	
RICE, BRIAN		Address on File						
RICE, CHARLES		Address on File						
Rice, Christopher		Address on File						
Rich Bitterman		Address on File						
RICH DAPAAH		Address on File						
RICH, MICHAEL		Address on File						
RICHARD & SYLVIA TUCKER TRUST		Address on File						
Richard Arnitz		Address on File						
RICHARD BARNES TRUST		Address on File						
Richard Egelhof		Address on File						
Richard Even		Address on File						
Richard Harris		Address on File						
Richard Layton & Finger		One Rodney Square	920 North King Street		Wilmington	DE	19801	
RICHARD LINDENMUTH		Address on File						
Richard M. Alderman		Address on File						
Richard Pines		Address on File						
Richard Redden		Address on File						
Richard Rinehart		Address on File						
RICHARD TUCKER		Address on File						
Richards Partners		8750 N Central Expy	Suite 100		Dallas	TX	75231-6437	
Richards, Paul		Address on File						
Richards, Paul A.		Address on File						
Richardson, Kellie		Address on File						
Richmond Communicatinos Group, Inc.		2750 Northhaven Rd Ste 202			Dallas	TX	75229	
Richofsky, Lori		Address on File						



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
RICK DREW		Address on File						
Ricky Swadley	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Ricoh Americas Corporation		PO BOX 13852			Newark	NJ	07188-0852	
Ricoh Americas Corporation		PO Box 4245			Carol Stream	IL	60197-4245	
Ricoh Americas Corporation		PO BOX 73210			Chicago	IL	60673-7210	
Ricoh Americas Corporation		PO Box 660342			Dallas	TX	75266-0342	
Ricoh Americas Corporation		PO BOX 730366			Dallas	TX	75373-0366	
RICOH BUSINESS SOLUTIONS		First Floor	4667 N. Royal Atlanta Dr.		Tucker	GA	30084	
RICOH BUSINESS SOLUTIONS		PO BOX 73210			Chicago	IL	60673-7210	
Ricoh USA, Inc.		PO Box 827577			Philadelphia	PA	19182-7577	
Ricoh USA, Inc.		21146 Network Place			Chicago	IL	60673-1211	
Ricoh USA, Inc.		PO Box 660342			Dallas	TX	75266-0342	
Riddle, Cara		Address on File						
Ridgely, Taylor		Address on File						
RIDGELY, TAYLOR		Address on File						
RIDGELY, TAYLOR		Address on File						
RIDGEWAY, BRIAN		Address on File						
Rigzone.com, Inc.		14531 FM 529, Ste 225			Houston	TX	77095	
RINGHEIMER, JEREMY		Address on File						
RIORDAN, TERRENCE		Address on File						
RIORDAN, TERRENCE C.		Address on File						
Rios, Heriberto		Address on File						
Ripe4Offices		13-19 Circus Rd	St. Johns Wood		London		NW8 6PB	United Kingdom
Ripple Effect Strategies, Inc.		503 E. Jackson St.	Suite 235		Tampa	FL	33602-4904	
RISI		PO BOX 16586			North Hollywood	CA	91615-6586	
Risk Metrics Group		PO Box 2621			Buffalo	NY	14240-2621	
Ritch, Lauren N.		Address on File						
Riveron Consulting, LLC		2515 McKinney Avenue	Suite 1200		Dallas	TX	75201	
RL Consulting		19228 Charandy Drive			Leesburg	VA	20175	
RME		PO Box 261237			Tampa	FL	33685-1237	
ROARK, BRANDEN		Address on File						
ROB BUCK PHOTOGRAPHS, INC		34-11 CLEARVIEW DR			Austin	TX	78703	
ROB PEDERSON		Address on File						
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP		2000 K Street, NW	4th FL		Washington	DC	20006	
Robert A. Leonard		Address on File						
Robert Carey		Address on File						
Robert Flink		Address on File						
ROBERT GAGE		Address on File						
ROBERT GEORGE		Address on File						
Robert Half Finance and Accounting		2613 Camino Ramon			San Ramon	CA	94583	
Robert Half Finance and Accounting		PO Box 743295			Los Angeles	CA	90074-3295	

004192



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Robert Half Legal		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Half Legal		File 73484	PO Box 60000		San Francisco	CA	94160-3484	
Robert Half Management Resources		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Half Management Resources		PO Box 60000			San Francisco	CA	94160-3484	
Robert Half Technology		PO Box 743295			Los Angeles	CA	90074-3295	
Robert Half Technology		FILE 73484	PO Box 60000		San Francisco	CA	94160-3484	
Robert Hargreaves		Address on File						
Robert M. Garza & Associates, Inc.		1001 Hot Springs Dr			Allen	TX	75013	
ROBERT MUNROE		Address on File						
Robert Pederson		Address on File						
Robert Peiser		Address on File						
Robert Roland		Address on File						
Robert Sullivan		Address on File						
ROBERT THOMPSON		Address on File						
Robert William Chanda		Address on File						
Roberta L. Fisher		Address on File						
Robin Russell, Joseph P. Rovira		600 Travis Street, Suite 4200			Houston	TX	77002	
Robust Advisors, Inc.	Huntton Andrews Kurth LLP	7 DeGraaf Court			Mahwah	NJ	07430	
ROBY, JOHN		Address on File						
Rochelle McCullough, LLP	E. P. Keiffer	325 North St Paul Street, Suite 4500			Dallas	TX	75201	
Rockwall CDO II Ltd.		P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Rockwall CDO II, Ltd. Investors Bank & Trust Company	Investors Bank & Trust Company	200 Claredon Street	CDO Services Group		Boston	MA	02116	
Rockwall CDO II, Ltd. Investors Bank & Trust Company	Rockwall CDO II Ltd. c/o Maples Finance Limited	P.O. Box 1093GT, Boundary Hall	Cricket Square George Town, Grand Cayman	Attention The Directors-Stratford CLO Ltd. Worldwide Securities Services-Rockwall CDO Ltd.	Grand Cayman			Cayman Islands
Chase Bank, National Association	JPMorgan Chase Bank	600 Travis Street	50th Floor		Houston	TX	77002	
Rockwall CDO Ltd.	c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House	George Town	Grand Cayman			Cayman Islands
Rockwall CDO Ltd., et al		P.O. Box 1093GT, Queensgate House	South Church Street		Grand Cayman			Cayman Islands
Rockwell CDO (Delaware) Corp.	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street		Grand Cayman			Cayman Islands
Rockwell CDO I Ltd	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street		Grand Cayman			Cayman Islands
Rockwell CDO II Ltd	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street		Grand Cayman			Cayman Islands
Rockwell CDO, Ltd	c/o Maples Finance Limited	PO Box 1093 GT, Queensgate House	South Church Street		Grand Cayman			Cayman Islands
Rod Laughlin		Address on File	South Church Street	George Town	Grand Cayman			Cayman Islands
Rod Lim		Address on File						

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
RODDA, SANDIE		Address on File						
RODDA, SANDIE K		Address on File						
Roderick Givens		Address on File						
Rodolfo Esquivel		Address on File						
Roe Golightly		Address on File						
Roerber, Blair A.		Address on File						
ROGER CHEN		Address on File						
ROGER LI		Address on File						
ROGGE DUNN GROUP, PC	Brian P. Shaw	500 N. Akard Street, Suite 1900			Dallas	TX	75201	
Romacorp. Inc.	David Short	1700 Alma Drive	Suite 400		Plano	TX	75075	
Ron Attar		Address on File						
Ron D'vari		Address on File						
Ron Patterson Insurance		2435 N Central Expy Ste 1600			Richardson	TX	75080-2784	
Ronald McDonald House of Dallas		5641 Medical Center Dr			Dallas	TX	75235	
ROOS, PAUL		Address on File						
Ropes & Gray LLP		800 Boylston Street			Boston	MA	02199	
Ropes & Gray LLP		One International Place			Boston	MA	02110-2624	
Ropes & Gray LLP		PO Box 414265			Boston	MA	02214-4265	
Rosen Systems, Inc.		2323 Langford St.			Dallas	TX	75208	
Rosenthal, Monhait, & Goddess PA		Suite 1401, 919 Market St	PO Box 1070		Wilmington	DE	19899-1070	
Rosewood Crescent Hotel	Attn Ms Eva Delgadillo	PO Box 845576			Dallas	TX	75284-5576	
Rosewood Crescent Hotel		400 Crescent Court			Dallas	TX	75201	
Rosewood Crescent Hotel & Rosewood Crescent Hotel & Creek		Rosewood Mansion on Turtle Creek	400 Crescent Court		Dallas	TX	75201	
Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610			Dallas	TX	75201	
Ross Smith Energy Group		400, 407 - 8th Avenue			Dallas	TX	75201	CANADA
Ross Vaillancourt		Address on File			CALGARY	AB	T2P 4Z2	
ROSS, JAMES		Address on File						
Roth Staffing Companies, LP		PO Box 848761			Los Angeles	CA	90084-8761	
ROTHSTEIN, JASON		Address on File						
Rothstein, Kass & Company, P.C.		9171 Wilshire Blvd, Ste 500			Beverly Hills	CA	90210-5591	
Roubini Global Economics, LLC		131 Varick St., Ste 1005			New York	NY	10013	
Roubini Global Economics, LLC		PO Box 10087			Uniondale	NY	11555	
Rough Creek Lodge		PO Box 2400			Glen Rose	TX	76043	
Round Hill Country Club		3169 Roundhill Rd			Alamo	CA	94507	
ROURKE, KEVIN		Address on File						
ROWLETT HILL, LLP		25 HIGHLAND PARK VILLAGE	STE 100-448		Dallas	TX	75205	
Rowlett Law PLLC		100 HIGHLAND PARK VILLAGE	STE 200		Dallas	TX	75205	
Rowlett Law PLLC		12655 N Central Expy Ste 421			Dallas	TX	75243	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
ROY SEROUSSI		Address on File			Long Island City	NY	11101	
Royal Dispatch Services Inc		43-22 Van Dam Street						
ROYAL PRINTING GROUP, INC.			STE 250		Dallas	TX	75229	
RR Donnelley		2035 ROYAL LN			Cleveland	OH	44193	
RR Donnelley		PO Box 932721			Atlanta	GA	30353-8602	
RR Donnelley Financial, Inc.		PO Box 538602			Cleveland	OH	44193	
RR Donnelley Financial, Inc.		PO Box 932721			Dallas	TX	75373-0216	
RR Donnelley Financial, Inc.		PO Box 730216						
RR Donnelley Receivables, Inc		PO Box 13654			Newark	NJ	07188-0001	
RSM MCGladrey		5155 Paysphere Circle			Chicago	IL	60674	
RSM US LLP		5155 Paysphere Circle			Chicago	IL	60674	
RTB Media LLC		619 Willow Ave	Suite 3L		Hoboken	NJ	07030	
Rubin and Rudman LLP		50 Rowes Wharf			Boston	MA	02110	
Rudy Mora Brick Masonry		131 Rosegarden Dr.			McKinney	TX	75070	
RUGG, STACEY		Address on File						
Rugmakers Gallery, Inc.		4920 Cash Rd.			Dallas	TX	75247-6308	
RUSCH, MARYAM		Address on File						
Russ Kathrein		Address on File						
Russel Reynolds & Associates		Church Street Station	Post Office Box 6427		New York	NY	10249	
Russell Jones & Walker		61 Sandmere Rd	Clapham		London		SW1Y4UR	United Kingdom
Russell Reynolds Associates		Church Street Station	PO Box 6427		New York	NY	77100	
Russell W. May		Address on File						
Russell W. May		Address on File						
RUTLEDGE, ROBERT		Address on File						
Ryan Associates Technology LLC		Address on File						
RYAN HIGHTOWER		21 Hillandale Dr			New Rochelle	NY	10804	
Ryan Law		Address on File						
Ryan Lucero		Address on File						
Ryan Moore		Address on File						
Ryan Odown Photography		Address on File						
Ryan P. Newell (Connolly Gallagher LLP)		3924 County Road 168			McKinney	TX	75071	
RYAN VOTAW		Attn Jeffrey C. Wisler, Esq.	1201 N. Market Street, 20th Floor		Wilmington	DE	19801	
Ryan, Inc.		Address on File						
Ryder, Phillip		Address on File						
S&P Global Market Intelligence		33356 Collection Center Drive			Chicago	IL	60693-0333	
S&P Global Market Intelligence LLC		55 Water Street			New York	NY	10041-0000	
S. LeBlanc & Company		942 Shore Crest Rd.			Carlsbad	CA	92011	
Saagar Grover		Address on File						
Sachdev, Kunal		Address on File						
Sacred Heart in NYC		1 East 91st St.			New York	NY	10128	
SACRS	c/o Strategic Local Govt Services, LLC	1415 L Street, Suite 1000			Sacramento	CA	95814	

004195

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Sadis & Goldberg	Stephen Huttler	551 Fifth Avenue, 21st Flr			New York	NY	10176	
SAEHLER, CHRISTOPHER J.		Address on File						
Sagar Vira		Address on File						
Sage Document Services Group LLC								
Sage Search Partners		2 West 45th Street	Ste 407		New York	NY	10036	
SagePoint Financial, Inc.	Attn Supervision-Reimbursement	3811 Turtle Creek Blvd	Suite 850		Dallas	TX	75219	
SagePoint Financial, Inc.		2800 N Central Ave, Suite 1200			Phoenix	AZ	85004	
SAKUNGEW, PON		74 8th St. SE	Suite 105		Hickory	NC	28602	
Sal Villacorta		Address on File						
Salesforce.com		Address on File						
Salesforce.com		PO BOX 842569			Boston	MA	02284	
Salesforce.com		PO Box 5126			Carol Stream	IL	60197-5126	
Salesmanship Club Chrtbl Golf Dallas Inc		PO Box 203141			Dallas	TX	75320-3141	
Sali Fund Management, LLC	Tom Nieman	106 E. Tenth St.	Suite 320		Dallas	TX	75203	
Salomon Smith Barney Inc. Highland Loan Funding V Ltd.		6836 Austin Center Blvd.	Queensgate House South Church Street		Austin	TX	78731	
Salomon Smith Barney Inc. Highland Loan Funding V Ltd.		P.O. Box 1093 GT		The Directors	George Town		KY11-1108	Cayman Islands
Salomon Smith Barney Inc. Highland Loan Funding V Ltd.		390 Greenwich Street	4th Floor	FI Structured Products Group	New York	NY	10013-2396	
Salutis Valuation Group, Inc.		111 West Myrtle Ave	Unit 6		Foley	AL	36535	
Sam Engineering & Testing		1115 Luke St, Suite 100			Irving	TX	75061	
SAM GARCIA		Address on File						
Sam Graham		Address on File						
Sams Club		PO Box 9001152			Louisville	KY	40290-1152	
Sanborn, Brian		Address on File						
SANBORN, PATRICIA		Address on File						
SANCHEZ, RODERICK		Address on File						
SANDEEP GUPTA		Address on File						
SANDEEP GUPTA		Address on File						
Sandlapper Securities, LLC		406 N Pleasantburg Dr			Greenville	SC	29607-2128	
Sands Point Funding, Ltd.	c/o Guggenheim Partners	330 Madison Ave, 11th Floor			New York	NY	10017	
SANJEEV MEHTA		Address on File						
Santoyo Moore Wehmeyer P.C.		1020 NE Loop 410, Suite 320			San Antonio	TX	78209	
Sard Verbinnen & Co.		630 Third Ave			New York	NY	10017	
Sard Verbinnen & Co.		General Post Office	PO Box 26781		New York	NY	10087-6781	
Sard Verbinnen, LLC		PO Box 26781			New York	NY	10087-6781	
Satuit Technologies Inc.		80 Washington St.	Unit M50		Norwell	MA	02061	
Satuit Technologies Inc.		100 Grossman Drive	Suite 302		Braintree	MA	02184	
Sawvy Training & Consulting		4530 Independence Trail			Evergreen	CO	80439	
Sawko & Burroughs, P.C.		1172 Bent Oaks Drive			Denton	TX	76210	
Saxton Morgan		PO Box 2302			Addison	TX	75001	
Sayles Werbner		Address on File						
Sbati & Company PLLC	Mazin A Sbati	J.P. Morgan Chase Tower	2200 Ross Avenue		Dallas	TX	75201	
SBC		PO Box 660324			Dallas	TX	75266-0324	

004196

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SBC Long Distance		PO Box 660688			Dallas	TX	75266-0688	
SBC Southwestern Bell		PO Box 5069			Saginaw	MI	48605-5069	
SC Department of Revenue		300A Outlet Pointe Boulevard			Columbia	SC	29210	
Scarab Consulting	AMEGY BANK NATIONAL ASSOCIATION	ASSIGNEE FOR SCARAB ACQUISITION, LLC	DEPT 338, PO BOX 4346		Houston	TX	77210-4346	
Scarab Consulting		Dept 338, PO Box 4346			Houston	TX	77210	
SCF Securities, Inc.		504 Lavaca, Suite 910			Austin	TX	78701	
SCHEMBRI, STEPHEN		155 E. Shaw Avenue Address on File	Suite 102		Fresno	CA	93710	
Schmidt & Stacey Consulting Eng. Inc.		400 City Place Address on File	2711 N. Haskell Ave. Lock Box 29		Dallas	TX	75204	
SCHNABEL, MATTHEW		Address on File						
School, Jennifer		Address on File						
SCHRAY, NATHAN		Address on File						
SCHRECK, DEANNE		Address on File						
Schroepfer Wessels Jolesch		8401 North Central Expwy Ste 300			Dallas	TX	75225	
SCHROTH, MELISSA		Address on File						
SCHULER, ELLIOT		Address on File						
SCHULER, KARISSA		Address on File						
Schulte Roth & Zabel LLP	James T. Bentley	919 Third Avenue			New York	NY	10022	
Schumacher Cargo Logistics, Inc.		550 W. 135th Street			Gardena	CA	90248	
SCI		31/507 Clerknwell Close			London		EC1R 0AT	United Kingdom
Scoop Reprint Source		30270 Rancho Viejo Road	Suite E		San Juan Capistrano	CA	92675	
Scott A. Snook		Address on File						
Scott B. Ellington	c/o David Neier, Winston Strawn LLP	200 Park Avenue			New York	NY	10166	
Scott B. Ellington	Scott Ellington c/o Francis A Smith, Ross & Smith PC	Plaza of the Americas Address on File	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
SCOTT COOPER		Address on File						
SCOTT Douglass & McConnico LLP		303 Colorado Street, Suite 2400			Austin	TX	78701	
Scott Ellington	Debra A. Dandeneau	Baker & McKenzie LLP	452 Fifth Avenue 1900 North Pearl, Suite 1500		New York	NY	10018	
Scott Ellington	Michelle Hartmann	Baker & McKenzie LLP Address on File			Dallas	TX	75201	
Scott F. Kavanaugh		Address on File						
Scott F. Kavanaugh		Address on File						
Scott Harris		Address on File						
Scott Hoermann		Address on File						
Scott K Meyer		Address on File						
SCOTT KOHNEN		Address on File						
Scott McCurry		Address on File						
SCOTT NELSON		Address on File						
Scott Niebling Valuation Group		3930 East Ray Rd	Suite 180		Phoenix	AZ	85044	

004197

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SCOTT ROSENTHAL		Address on File						
SCOTT SCHEIN		Address on File						
Scott Shpilberg		Address on File						
SCOTT TANDBERG		Address on File						
Scott Waggoner		Address on File						
Scura Paley Securities LLC		489 5th Ave, 15th Flr			New York	NY	10017	
Sea Island Company	c/o Group Billing, Acctg Dept	100 Cloister Drive			Sea Island	GA	31561	
SEAL Legacy Foundation		1401 McKinney	Ste 2222		Houston	TX	77010	
SEAMAN, CRISTINA		Address on File						
SeamlessWeb Professional Solutions, Inc.		PO Box 5439			New York	NY	10087-5439	
SeamlessWeb Professional Solutions, Inc.		PO Box 71649			Chicago	IL	60694-1649	
Sean Neumayer Photography		4321 S. Coolidge Ave			Tampa	FL	33611	
Search Finance		14001 Dallas Pkwy	Ste 1200		Dallas	TX	75240	
Seaver, Jeffrey		Address on File						
SEC Headquarters	Mail Stop 7010 / 2017 Annual Report	100 F Street, NE	Mail Stop 7010		WASHINGTON	DC	20549-2000	
Secretary of State	Division of Corporations	Franchise Tax	P.O. Box 7040		Dover	DE	19903	
Secretary of State		PO BOX 12887			Austin	TX	78711	
Secretary of State		1500 11th St	IRC Unit, 3rd FL		Sacramento	CA	95814	
Secretary of State		PO Box 13550			Austin	TX	78711-3550	
Secretary of State		PO Box 13697			Austin	TX	78711-3697	
Secretary of State		801 Capitol Way South	PO Box 40234		Olympia	WA	98504-0234	
Secretary of State of Illinois		Illinois Securities Department	421 E. Capital Ave., 2nd Fl.		Springfield	IL	62701	
SECRETARY OF STATE OF TEXAS	ACCOUNTS RECEIVABLE	PO BOX 12887			Austin	TX	78711-2887	
Secretary of the Commonwealth		Securities Division	One Ashburton Place, Rm 1701		Boston	MA	02108	
Secretary of Treasury		P.O. Box 7040			Dover	DE	19903	
Secretary of Treasury		15th & Pennsylvania Avenue, N.W.			Washington	DC	20220	
Secure Concepts LLC		128 East BRdway #501			New York	NY	10002	
Secure Options, Inc.		5420 Bryan Street			Dallas	TX	75206	
Secure Options, Inc.		2156 W Northwest Hwy Ste 300			Dallas	TX	75220	
Secure Share Network LLC		3475 Piedmont Road NE, Ste 450			Atlanta	GA	30305	
Secure Source Inc.		710 South Kimball Ave			Southlake	TX	76092	
Secured Access Systems, LLC		1913 Walden Court			Flower Mound	TX	75022	
Securities & Exchange Commission	Division of Trading & Markets	100 F Street, NE	Mail Stop 7010		WASHINGTON	DC	20549-2000	
Securities & Exchange Commission	Michael A. Berman, Esq.	Office of General Counsel-Bankruptcy	100 F Street, N.E.		Washington	DC	20549	
Securities America	Attn Accounting Dept	12325 Port Grace Blvd.			La Vista	NE	68128	
Securities America, Inc. (Cooper McManus)		9870 Research Drive			Irvine	CA	92618-3302	

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Securities Commissioner State of ND		State Capitol	600 East Boulevard Avenue, 5th Floor		Bismarck	ND	58505-0510	
Securities Division, AZ Corp. Comm		Securities Division	1300 W Washington St #3		Phoenix	AZ	85007	
Securities Investor Protection Corp		PO Box 92185			Washington	DC	20090-2185	
Securities Service Network		115 Glastonbury Blvd			Glastonbury	CT	06033	
See Food Media LLC		496 Lagurdal Place # 4C			New York	NY	10012	
SEI Investments Distribution Co.	Attn Chris Rowan-SIDCO Acctng	One Freedom Valley Dr			Oaks	PA	19456	
SEIDEN KRIEGER ASSOCIATES, INC		375 PARK AVE			New York	NY	10152	
Selah Photography		5421 Shiver Road			Keller	TX	76244	
Select Security & Private Investigations		PO Box 1352			Rockwall	TX	75087	
Selig ADR, Inc		5009 Caroline St, Ste 100			Houston	TX	77004	
Selman, Matthew		Address on File						
SERENI, ALEXIS J.		Address on File						
SERV/CORP		Level 19	Two International Finance Center	8 Finance Street	CENTRAL HONG KONG			HONG KONG
SERV/CORP		6 BATTERY ROAD	RAFFLES PLACE		Singapore		049909	SINGAPORE
Service Systems Associates	Attn Robin Scichilli	650 S RL Thornton Frwy			Dallas	TX	75203	
SET, AUGUSTUS		Address on File						
Selfords Solicitors		14 Haydon Place			Guilford		GU1 4LL	United Kingdom
Seth Weinstein		Address on File						
Seton Hall University	Attn Bryan Felt	400 South Orange Ave			South Orange	NJ	07079	
Severson, Keith		Address on File						
SEVILLA, JEAN-PAUL		Address on File						
Seward & Kissel		One Battery Park Plaza			New York	NY	10004	
Seyfarth Shaw LLP		131 S. Dearborn Street, Suite 2400			Chicago	IL	60603	
ShadowTV, Inc.		630 9th Ave	Suite 1000		New York	NY	10036	
Shag Carpet Productions, Inc.		502 South 2nd Avenue			Dallas	TX	75226	
SHAH, AMOL		Address on File						
SHAHDA, CHRIS		Address on File						
SHAHDA, CHRISTOPHER		Address on File						
Shahzad Pirvani		Address on File						
Shakelford Melton & McKinley		3333 Lee Pkwy	10 th fl		Dallas	TX	75219	
Shane Tipton		Address on File						
Shannon, Gracey, Ratliff & Miller, LLP		420 Commerce St, Ste 500			Fort Worth	TX	76102	
SharePoint Solutions	Attn Accounts Receivable	PO Box 1588			Brentwood	TN	37024-1588	
SHARON EASLEY		Address on File						
SHARON SHUSTER		Address on File						
SHARRY, GREGORY		Address on File						
Shasta Land Management Consultants		1229 South Street			Redding	CA	96001	

004199



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SHAWN LEDERMAN		Address on File						
Shawn Raver		Address on File						
Shayla Kelly		Address on File						
Shea & Carlyon Ltd		701 Bridger Ave #850			LasVegas	NV	89101	
Shearman & Sterling LLP		5990 Lexington Ave			New York	NY	10022-6069	
Shelley Shackelford & Co.		5807 SANDHURST LN SUITE D			Dallas	TX	75206	
SHELLY RASTOGI		Address on File						
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP		333 S. Hope Street	48th Floor		Los Angeles	CA	90071	
SHIFFERD, CHARLES		Address on File						
Shoot2Sell		14681 Midway Rd	Ste 105		Addison	TX	75001	
Short, Lauren		Address on File						
SHPILBERG, SCOTT		Address on File						
Shred-it USA		11101 Franklin Avenue	Suite 100		Franklin Park	IL	60131-1403	
Shred-it USA		28883 Network Place			Chicago	IL	60673-1288	
Shred-it USA		PO Box 730504			Dallas	TX	75373-0504	
Shred-it USA		PO Box 101007			Pasadena	CA	91189-1007	
SHUMWAY, CLAY		Address on File						
SHUSTER, SHARON		Address on File						
Siber Systems, Inc		3701 Pender Dr Ste 400			Fairfax	VA	22030-6045	
Siddharth Mehra		Address on File						
SIDLEY AUSTIN LLP		PO BOX 0642			Chicago	IL	60690	
SIEGEL, HAROLD		Address on File						
Siepe Services, LLC	Chris Doty	5440 Harvest Hill Road Suite 100			Dallas	TX	75230	
Siepe Services, LLC		5440 Harvest Hill Road	Suite 100		Dallas	TX	75230	
Siepe Services, LLC		2200 Ross Ave, Ste 4700E			Dallas	TX	75201-0000	
Siepe, LLC		6135 Churchill Way			Dallas	TX	75230	
SIEVERT, AMY		Address on File						
Sigma Financial Corp	Attn Jackie Pascarella	1717 N. IH 35, Ste 150			Round Rock	TX	78664	
Sigma Financial Corporation		300 Parkland Plaza			Ann Arbor	MI	48103	
Signator Investors, Inc.		20 E Thomas Rd Ste 2000			Phoenix	AZ	85012-3129	
Signature Productions, Ltd.		5331 85th St.			Lubbock	TX	79424	
Silis Cummis & Gross		The Legal Center	One Riverfront Plaza		Newark	NJ	07102-5400	
Silva, Alison		Address on File						
Silver Scriptor LLC		PO Box 9012			Austin	TX	78766	
Silver Scriptor LLC		PO Box 61064			Seattle	WA	98141	
Silverman Communications Group		11 Carol Ct.			Glen Rock	NJ	07452	
SIMEK, DAVID		Address on File						
SIMMONS, DAVID		Address on File						
Simon, Scott		Address on File						
Simpson Appraisal, Inc		6009 Belt Line Rd., Suite 145			Dallas	TX	75254	
SIMPSON THACHER & BARTLETT LLP		425 LEXINGTON AVE			New York	NY	10017-3954	
SIMPSON THACHER & BARTLETT LLP		PO Box 29008			New York	NY	10087-9008	
Sims, Austin		Address on File						

004200



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SINGH, TANIA		Address on File						
SISK, JESSICA		Address on File						
Sitrick and Company Inc.		11999 Vincente Blvd	Penthouse		Los Angeles	CA	90049	
Sitrick and Company Inc.		1840 Century Park East Ste 800			Los Angeles	CA	90067	
SK Research, LLC		10320 Little Patuxent Parkway	12th Floor		Columbia	MD	21044	
Skadden, Arps, Slate, Meagher & Flom LLP		Four Times Square			New York	NY	10036	
Skadden, Arps, Slate, Meagher & Flom LLP		PO Box 1764			White Plains	NY	10602	
SK COMMUNICATION PRODUCTS, LLC		P.O. BOX 874843			Kansas City	MO	64187-4843	
Skybridge Alternatives Conference	Attn Jeanie Reyes	527 Madison Ave, 16th Flr			New York	NY	10022	
SkyBridge SALT LLC	Attn Jeanie Reyes	527 Madison Ave, 16th Floor			New York	NY	10022	
Skyline DFW Exhibits & Events		900 Avenue S			Grand Prairie	TX	75050	
Skyline Sector 5		525 113th Street			Arlington	TX	76011	
Siant Partners		3838 Oak Lawn Avenue	Suite 1550		Dallas	TX	75219	
Slayton International		One North Franklin Ste 2500			Chicago	IL	60606	
SlideGenius, Inc.		1660 Hotel Cir N # 175			San Diego	CA	92108-2807	
SloMo Lounge		4901 Harbor Court			Flower Mound	TX	75022	
Smallwood, Allan		Address on File						
Smarsh		921 SW Washington St	Suite 540		Portland	OR	97205	
Smarsh		PO Box 505265			Saint Louis	MO	63150-5265	
Smith Katzenstein Jenkins LLP		800 Delaware Avenue, Ste. 1000	P.O. Box 410		Washington	DE	19899	
SMITH, DAVID		Address on File						
Smith, Felicia		Address on File						
Smith, Ian		Address on File						
Smith, Jackson, Boyer & Bovard		9400 NCX, Ste 420 9400 N Central Expwy			Dallas	TX	75231-5063	
SMITH, SEAN		Address on File						
Smith, Theodore		Address on File						
SMS		WELLS FARGO BANK-IN CARE OF SMS	6480 ARGO ST		Dallas	TX	75214	
SMU Cox School of Business		Pitts Leadership Award	PO Box 750333		Dallas	TX	75275-0333	
Snaptraffic Consulting		9 Cherry Pl.			Huntington	NY	11743	
Snell & Wilmer LLP		One Arizona Center	400 E. Van Buren, Suite 1900		Phoenix	AZ	85004-2202	
SNI Companies		14241 Dallas Parkway	Suite 550		Dallas	TX	75254	
SNL Financial		PO BOX 414624			Boston	MA	02241-4624	
SNR Denton US LLP		233 S. Wacker Dr	Suite 7800		Chicago	IL	60606	
Snyder Kearney, LLC		10320 Little Patuxent Pkwy			Columbia	MD	21044	
Snyder, Evan		Suite 1200						
Social Matters		Address on File			Dallas	TX	75380-0357	
		PO Box 800357						

004201

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
SOCIETY FOR HUMAN RESOURCE MANAGEMENT		PO BOX 79482			Baltimore	MD	21279-0482	
Society of St. Vincent de Paul, Inc	Diocesan Council of Dallas	10500 Steppington Drive, Suite 251			Dallas	TX	75230	
Software Shelf International, Inc		601 Cleveland Street, Suite 710			Cleanwater	FL	33755	
SoftwareONE, Inc.		PO Box 7343 20875 Crossroads Cir.	Suite 1		Menlo Park Waukesha	CA WI	94026 53186	
SoftwareONE, Inc.		PO Box 510944	15700 W. Cleveland Ave		New Berlin	WI	53151-0944	
Sohn Conference Foundation	c/o Garwood Events	225 106 Street, Ste 15M			New York	NY	10025	
Solarwinds		7171 Southwest Parkway	Bldg 400		Austin	TX	78735-0000	
SolarWinds, Inc		PO Box 730720			Dallas	TX	75373	
Solid Details LLC		2121 Santa Anna Ave.			Dallas	TX	75228	
Solomon R. Guggenheim Foundation		345 Hudson Street	12th Floor		New York	NY	10014	
SOLOW BUILDING COMPANY II, LLC		PO BOX 27112			New York	NY	10087-7112	
SOLOW BUILDING COMPANY II, LLC		PO Box 823812			Philadelphia	PA	19182-3812	
SOMMER FRAZIER		Address on File						
Sonny Bryans Smokehouse		2625 Seeloco St			Dallas	TX	75235-2608	
Sony Pictures Studio Group	A Sony Pictures Entertainment Company	File #54715			Los Angeles	CA	90074-4715	
Soto, Hailey		Address on File						
Source Code North America, Inc		Dept CH 16510			Palatine	IL	60055-6510	
Source, Inc.		PO Box 202414			Dallas	TX	75320	
SourceMedia		PO Box 4871			Chicago	IL	60680	
SourceMedia		PO Box 4634			Chicago	IL	60680-9598	
SourceMedia		PO Box 71633			Chicago	IL	60694-1633	
South Dakota Division of Securities		124 S. Euclid, Ste. 104			Pierre	SD	57501	
Southern Conference Teacher Retirement		PO Box 642			Sturbridge	MA	01566	
Southern Methodist University	Attn Erin Sutton	PO Box 750460			Dallas	TX	75275-0460	
Southfork CLO Ltd. JPMorgan Chase Bank, National Association	Attention The Directors-Stratford CLO Ltd.	Queensgate House, South Church Street, George Town		P. O. Box 1093GT	Grand Cayman			Cayman Islands
Southfork CLO Ltd. JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	600 Travis Street	50th Floor	Institutional Trust Services-Southfork CLO Ltd.	Houston	TX	77002	
Southfork CLO, Ltd.	The Directors	PO Box 1093 GT	Queensgate House, South Church Street	George Town	Grand Cayman			Cayman Islands
Southland Property Tax Consultants, Inc		201 S Main St Ste 1460			Fort Worth	TX	76102-3146	

004202

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Southland Property Tax Consultants, Inc		777 Main Street	Suite 1960		Fort Worth	TX	76102-5323	
Southwest Ford Inc.		PO Box 234			Weatherford	TX	76086	
Southwest Glass, Inc.		2333 Glenda Lane			Dallas	TX	75229	
Southwest Reporting & Video Service		826 Heights Blvd.			Houston	TX	77007	
Southwest Search		PO Box 710596			Dallas	TX	75371-0596	
Southwest Securities, Inc.	Attn Holly Peritz	1201 Elm St, Ste 3500			Dallas	TX	75270	
Southwestern Medical Foundation		Parkland Hall at Old Parkland	3889 Maple Ave, Ste 100		Dallas	TX	75219	
Sove Lavi		Kimberly Simeus	1212 Wyndham Hill Lane		Southlake	TX	76092	
SOWIN, JOSEPH		Address on File						
SOWIN, JOSEPH		Address on File						
Spears & Associates		8908 S. Yale	Suite 440		Tulsa	OK	74137	
Special Delivery Service, Inc.		5470 L.B.J. Freeway			Dallas	TX	75240	
Special Fund For Disability Benefits	Accounts-DB Penalty	328 State Street			Schenectady	NY	12305-2318	
Special Fund For Disability Benefits	Accounts-DB Penalty Room	301 20 Park St			Albany	NY	12207-1674	
Specialized Schedulers, Inc.		22334 SW 107th Ave			Tualatin	OR	97062	
SPECTOR, ANASTASIYA		Address on File						
SPECTRUM GAMING GROUP LLC		2 DONOVAN ROAD			Pennington	NJ	08534	
SPEICHER, NATHAN		Address on File						
Spence, Austin		Address on File						
Spherion		PO Box 100186			Atlanta	GA	30384-0186	
Spinner Printing Company		3335 Keller Springs #100			Carrollton	TX	75006	
Spin-Off Advisors, LLC		1327 W. Washington Blvd	Ste 4-G		Chicago	IL	60607	
Spoke LLC		3304 9th St. NE #1			Washington	DC	20017	
Spot Cooling Systems		1420 Century Dr Ste 800			Carrollton	TX	75006	
Spotlight Marketing								
Communications		18101 Von Karman Ave.	Third Floor		Irvine	CA	92612	
Springboard Network LLC		9900 Spectrum Drive			Austin	TX	78717-0000	
Sprint		PO Box 660092			Dallas	TX	75266-0092	
Square, Inc		1455 Market St.	Suite 600		San Francisco	CA	94103	
Squire Patton Boggs (US) LLP		PO Box 643051			Cincinnati	OH	45264	
ST JUDE CHILDRENS RESEARCH HOSPITAL		501 St. Jude Place			Memphis	TN	38105	
ST JUDE CHILDRENS RESEARCH HOSPITAL		4324 N BELTLINE RD	STE C-206		Irving	TX	75038	
ST LOUIS CARDINALS		700 Clark St	Group Ticket Dept.		Saint Louis	MO	63102	
STA SVDP		6306 Kenwood Ave			Dallas	TX	75214	
Stacey Morimoto		Address on File						
STACEY RUGG		Address on File						
Staffelbach, Inc.		2525 McKinnon, Suite 800			Dallas	TX	75201	
STAGGS, JOE		Address on File						
Staltari, Mauro		Address on File						
Stan Lata		Address on File						

004203

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Standard & Poors	Capital IQ	2542 Collection Center Dr			Chicago	IL	60693	
Standard & Poors/Capital IQ		33356 Collection Center Drive			Chicago	IL	60693-0333	
Standard Ins. Co. RAS Executive Benefits	Attn Glenda Wright-P4B	1100 SW 6th Ave			Portland	OR	97204	
Standard Ins. Co. RAS Executive Benefits		INDIVIDUAL CLIENT SERVICES	PO BOX 711		Portland	OR	97207-0711	
Standard Ins. Co. RAS Executive Benefits		PO BOX 5674			Portland	OR	97228-5674	
Standard Insurance Company		1100 SW 6th Ave			Portland	OR	97204	
Standard Insurance Company		PO Box 2707			Portland	OR	97208-3358	
Standard Insurance Company		PO BOX 3358			Portland	OR	97208-3358	
Standard Research Corporation		4430 Tyne Blvd			Nashville	TN	37215	
STANLEY ACCESS TECH LLC		PO BOX 0371595			Pittsburgh	PA	15251-7595	
Stanton Advisors LLC		300 Coles Street	Apt. 802		Jersey City	NJ	07310	
Stanton Law Firm PC	James Stanton	1717 Main St., Suite 3800			Dallas	TX	75201	
Stanton Law Firm PC		4350 Beltway Drive			Addison	TX	75001	
Stanton LLP		1717 Main St, Ste 3800			Dallas	TX	75201	
Stanton LLP		9400 N Central Expwy	Ste 1304		Dallas	TX	75231	
Staples Credit Plan		Dept. 22 - 0008144217 PO Box 9020			Des Moines	IA	50368-9020	
Star Displays		16914 FM 2920			Tomball	TX	77377	
Star Pro Staffing		8600 Preston Rd Apt 113			Dallas	TX	75225-3529	
State Auditor		1900 Kanawha Boulevard East	Building 1, Room W-100		Charleston	WV	25305	
STATE BAR OF TEXAS		PO Box 5075			Saginaw	MI	48605-5075	
State Bar of Texas		PO Box 12487			Austin	TX	78711-2487	
State Bar of Texas		PO BOX 13007	MCLE DEPT		Austin	TX	78711-3007	
State Bar of Texas		PO Box 149335			Austin	TX	78714-9335	
State Comptroller		111 E 17th St			Austin	TX	78774-0001	
State Comptroller		Comptroller of Public Accounts	111 E 17th St		Austin	TX	78774-0100	
State Fair of TX Youth Livestock Auction		PO Box 150009			Dallas	TX	75315	
State Insurance Fund		PO Box 4779			Syracuse	NY	13221-4779	
State Insurance Fund		PO Box 5261	Disability Benefits		Binghamton	NY	13902-5261	
State of Alaska		Securities Section, Division of Banking	333 W. Willoughby Ave., Ste. 9		Juneau	AK	99801	
STATE OF ARKANSAS STATE OF CALIFORNIA, FRANCHISE TAX BOARD	DEPT OF FINANCE & ADMINISTRATION	PO BOX 919	CORPORATION INCOME TAX SECTION		Little Rock	AR	72203-0919	
State of Delaware	Division of Corporations	PO BOX 942867			Sacramento	CA	94267-0011	
		PO Box 5509			Binghamton	NY	13902-5509	

004204

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
STATE OF MARYLAND	Dept of Assessments & Taxation	Personal Property Division	PO Box 17052		Baltimore	MD	21297-1052	
STATE OF MICHIGAN	COMPOSITE RETURN	PO BOX 30058	MICHIGAN DEPT OF TREASURY		Lansing	MI	48909	
STATE OF MICHIGAN	Corp. Securities & Comm Licensing Bureau	525 W. Allegan Street	Audit & Exam Division		Lansing	MI	48909	
STATE OF MICHIGAN	MICHIGAN DEPARTMENT OF TREASURY	DEPT 77375	PO BOX 77000		Detroit	MI	48277-0375	
STATE OF MICHIGAN		PO Box 30774			Lansing	MI	48909-8274	
State of New Hampshire		New Hampshire Dept. of State	107 N. Main Street, Rm 204, State House		Concord	NH	03301-4951	
STATE OF NEW JERSEY	DEPT OF LABOR AND WORKFORCE	PO BOX 929	DIV OF REVENUE PROCESSING		Trenton	NJ	08646-0929	
STATE OF NEW JERSEY		New Jersey Dept of Law & Public Safety	153 Halsey Street, 6th Floor		Newark	NJ	07102	
STATE OF NEW JERSEY		REVENUE PROCESSING CENTER	PO BOX 642		Trenton	NJ	08646-0642	
State of New Jersey-CBT	Division of Tax Revenue Proc Center	PO Box 66			Trenton	NJ	08646-0666	
State of Oregon	Div of Finance & Corporate Securities	350 Winter St NE, Rm 410	Labor & Industries Bldg 401 Adams Avenue, Suite 280		Salem	OR	97301	
State Securities Commissioner of Alabama		Registration Division			Montgomery	AL	36104	
State Street Bank and Trust Company		200 Clarendon Street	Mail Code EUC-108		Boston	MA	02116	
State Street Bank and Trust Company	CDO Services Group	PO Box 5607			Boston	MA	02206-5607	
State Street Corporation		PO Box 5013			Boston	MA	02206-5013	
State Street Corporation		PO Box 5607			Boston	MA	02206-5607	
State Street Global Exchange	State Street Bank and Trust Company	Elkins McSherry LLC	One Lincoln Street		Boston	MA	02111	
State Street Global Markets, LLC		One Lincoln Street			Boston	MA	02111	
Status Labs.com		151 South 1st	Suite 100		Austin	TX	78704	
Stax Media, Inc.		4630 Soquel Drive	Suite 5		Soquel	CA	95073	
Stefan Peller		Address on File						
Stellar Adventures		PO Box 8329			Scottsdale	AZ	85252	
Stenstrom-Schneider, INC		13748 Neutron Rd			Dallas	TX	75244-4412	
Stephanie Catalano		Address on File						
Stephanie Vitello	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
STEPHEN LORENZ		Address on File						
Stephen M. Frengen		Address on File						
Steptoe & Johnson LLP		1330 Connecticut Ave, N.W.			Washington	DC	20036-1795	
STERLING VALUATION GROUP, INC		590 MADISON AVE	5TH FLR		New York	NY	10022	
STEVE LEACH		Address on File						
Steve Mackay		Address on File						
Steve Thel		Address on File						
STEVE ZIMMERMAN		Address on File						

004205

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 144 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Steven Delarosa		Address on File						
STEVEN GART		Address on File						
Steven Haltom	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
Steven J White MD		PO Box 650772			Dallas	TX	75265-0772	
Steven J. Kaplan, P.C.		5910 Stoneshire Ct			Dallas	TX	75252	
Steven Johnson		Address on File						
STEVEN SUN		Address on File						
Stevens, Kellie		Address on File						
Stevens, Kellie		Address on File						
Stewart F. House Photography		2600 Bunker Hill Cr			Plano	TX	75075	
Stewart, Phoebe		Address on File						
Stewart, Phoebe L.		Address on File						
STEWART, STEVEN a.		Address on File						
STF Services Corporation		PO Box 3251			Syracuse	NY	13220-3251	
STIKEMAN ELLIOT		5300 Commerce Court West	199 Bay Street West		Toronto	ON	M5L 1B9	CANADA
Stillman & Friedman, P.C.		425 Park Avenue	26th Floor		New York	NY	10022	
Stinson Leonard Street LLP	Stinson LLP	Attn Paul Lackey	3102 Oak Lawn Avenue, Suite 777		Dallas	TX	75219	
Stinson Leonard Street LLP		PO Box 843052			Kansas City	MO	64184	
Stinson LLP	Attn Paul Lackey	3102 Oak Lawn Avenue, Suite 777			Dallas	TX	75219	
Stinson LLP	Deborah Deitsch-Perez, Michael P. Aigen	3102 Oak Lawn Avenue, Suite 777			Dallas	TX	75219	
Stinson LLP	Paul M. Hoffmann	1201 Walnut Street, Suite 2900			Kansas City,	MO	64106-2150	
STINSON MORRISON								
HECKER LLP		PO Box 219492			Kansas City	MO	64121	
Stone, David		Address on File						
Stone, Kenneth		Address on File						
Stoneypher, Abbie		Address on File						
Stonelake Capital Holdings, LP	Attn Blake Wilson	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn Jacob Becker	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn John A. Kiltz	3200 Gracie Kiltz Lane, Suite 500			Austin	TX	78758	
Stonelake Capital Holdings, LP	Attn Kenneth E. Aboussie, Jr.	100 Crescent Court, Suite 850			Dallas	TX	75201	
Stonelake Capital Holdings, LP	Attn W. Hunter Sage, Esq.	200 Park Place, 4200 Westheimer, Suite 900			Houston	TX	77027	
Stonelake Capital Holdings, LP	Attn William C. Wiushusen	Haynes & Boone, LLP	2323 Victory Avenue, Suite 700		Dallas	TX	75219	
STOOPS, CLIFFORD		Address on File						
Stout Management Company		10151 Park Run Drive			Las Vegas	NV	89145	
Stradley Ronon Stevens & Young, LLP		2005 Market Street	Suite 2600		Philadelphia	PA	19103-7018	
Strand Advisors Inc.		1209 Orange Street			Wilmington	DE	19801-0000	

004206

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Strand Advisors, Inc.	Attn James Seery	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strand Advisors, Inc.	Attn John Dubel	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strand Advisors, Inc.	Attn Russell Nelms	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240	
Strasburger & Price, L.L.P.		PO Box 50100			Dallas	TX	75250-9989	
Strategas Research Partners LLC	ATTN Eileen Gabay	52 Vanderbilt Avenue	8th Floor		New York	NY	10017	
Strategas Securities LLC		52 Vanderbilt Ave	8th Fl		New York	NY	10017	
STRATEGIC ALLIANCE GROUP, LLC		500 W CYPRESS CREEK RD	STE 420		Ft. Lauderdale	FL	33309	
Strategic Financial Solutions		2650 Thousand Oaks Blvd	Suite 1340		Memphis	TN	38118	
Strategic Growth, Inc		5004 Crestway Drive			Austin	TX	78731	
Strategic Insight Group		1300 Summit Ave Ste 512			Fort Worth	TX	76102-4419	
STRATEGIC WORKFORCE SOLUTIONS								
Stratford CLO Ltd.		PO BOX 32960			Hartford	CT	32960	
Stratford CLO Ltd. State Street Bank and Trust Company	State Street Bank and Trust Company	P.O. Box 1093GT, Queensgate House	South Church Street	George Town	Grand Cayman			Cayman Islands
Stratford CLO Ltd. State Street Bank and Trust Company	Stratford CLO Ltd.	200 Clarendon Street			Boston	MA	02116	
Stratford CLO, Ltd.		P.O. Box 1093 GT, Queensgate House						
Stratos Legal Services, LP		4295 San Felipe			Grand Cayman			Cayman Islands
Stratus Energy Group	Attn P. Hudson	1206 San Antonio Street			Grand Cayman			Cayman Islands
Strohi Systems Group		631 Park Ave			Houston	TX	77027	
STRONCZEK, JILLIAN N. Ledyard, L.L.P.		Address on File			Austin	TX	78701	
Stroock & Stroock & Lavan LLP		1400 San Jacinto Building, 595 Orleans			King of Prussia	PA	19406	
Structural and Steel Products, Inc		180 Maiden Lane			Beaumont	TX	77701-3255	
Structure Tone Southwest, Inc.		3001 W Pafford Street			New York	NY	10038	
Structured Credit Investor		3333 Weilborn St, Ste 200			Fort Worth	TX	76110-0000	
Studio Movie Grill		507 Clerkwel Workshops	27/31 Clerkenwell Close		Dallas	TX	75219	
STUECHELI, GREGORY		5405 Bellline Rd			Farrington	TX	EC1R 0AR	United Kingdom
Stuhlsatz, Amy		Address on File			Dallas	TX	75248	
Sutman Treister & Glat PC		Address on File						
Styx International, Ltd.		1901 Avenue of the Stars			Los Angeles	CA	90067-6013	
Syax Partners, LP		875 Third Avenue			New York	NY	10022	
Success CE		875 Third Avenue			New York	NY	10022	
Succession Resource Group		2 Corporate Plaza Drive	Suite 100		Newport Beach	CA	92660	
		PO Box 1573			Tualatin	OR	97062	

004207



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Sue McGeehan	VP, Collections, Finance Dept.	7 World Trade Center at 250 Greenwich Street			New York	NY	10007	
Sui Hock Goy		Ni Advisors, Inc.	1138 Cadillac Ct.		Niipitas	CA	95035	
Suicide and Crisis Center of North Texas		10625 Northboro			Dallas	TX	75230	
Sullivan Cromwell LLP	Brian D. Glueckstein	125 Broad Street			New York	NY	10004	
SULLIVAN, JOURDAN		Address on File						
Summit Brokerage Services, Inc.	Attn Compliance/Payroll	595 South Federal Highway	Ste 500		Boca Raton	FL	33432	
Summit Brokerage Services, Inc.		500 S. Federal Highway	Suite 500		Boca Raton	FL	33432	
Summit Management Limited Sun Life Assurance Company of Canada		23 Lime Tree Bay Avenue	Suite #4-210	Govenors Square			KY1-1209	Cayman Islands
Sunbelt Securities, Inc.		PO Box 7247-7184			Philadelphia	PA	19170-7184	
Sundance Painting		2700 Post Oak Blvd, Suite 1700			Houston	TX	77056	
SunDiego Charter Company		3702 N Buckner Blvd			Dallas	TX	75228-5612	
SUNEET AGARWAL		522 W 8th Street			National City	CA	91950	
SunGard		444 WASHINGTON BLVD			Jersey City	NJ	07310	
Sungard Availability Services		Bank of America Lockbox Services	15138 Collections Center Dr		Chicago	IL	60693	
Sungard Protegent	Automated Securities Clearance LLC	91233 Collection Center Drive			Chicago	IL	60693	
Sunil Devarakonda		15138 Collections Center Dr			Chicago	IL	60693	
SunTrust Robinson Humphrey Inc.	Attn Documentation	111 East 125th Street, Apt 3 E			New York	NY	10035	
Superior Search & Staffing		SunTrust Robinson Humphrey	711 5th Avenue 14th Fl.		New York	NY	10022-0000	
Supermarket News		5001 Spring Valley Rd Ste 1000 W			Dallas	TX	75244	
SURGENT, THOMAS		PO Box 15548			North Hollywood	CA	91615-5548	
Susan Burton Consulting, LLC		Address on File						
Susan Leahy		4127 Towne Green Circle			Addison	TX	75001	
SUSMAN GODFREY LLP		Address on File						
Sutherland Asbill & Brennan LLP		1000 Louisiana	Ste. 5100		Houston	TX	77002	
Sutherland Asbill & Brennan LLP		700 Sixth Street NW	Suite 700		Washington	DC	20001	
Swadley, Emily		999 Peachtree Street NE			Atlanta	GA	30309-3996	
SWADLEY, RICK		Address on File						
Swank Audio Visuals		Address on File						
Sweeney, Katelyn		400 Crescent Court			Dallas	TX	75201	
SWIXMED		Address on File						
Sybari Software, Inc.		Zurichbergsrasse 20			Zurich		08032	SWITZERLAN D
		353 Larkfield Rd			East Northport	NY	11731	



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Symphony Communication Services LLC		1117 S California Ave			Palo Alto	CA	94304-0000	
Synnex Corporation		5845 Collections Center Dr			Chicago	IL	60693	
Sysco Food Services		PO Box 560700			Lewisville	TX	75056-0700	
System Electric		1278 Montalvo Way			Palm Springs	CA	92262	
T.H. Quest, Inc.		5001 Spring Valley Rd.		Ste 400-E	Dallas	TX	75244	
T4 Capital Talent, LLC		272 E. Deerpath Rd		Suite 236	Lake Forest	IL	60045	
TACA The Arts Community Alliance	Attn Julie Bice	One Arts Plaza	1722 Routh Street, #115		Dallas	TX	75201	
TAK-CHEUNG DAVIDSON WAN		5050 S LAKE SHORE DR, APT #1509			Chicago	IL	60615	
Talkingbox DMG, LLC		284 Sport Hill Road			Easton	CT	06612	
TAMALE SOFTWARE, INC		320 CONGRESS ST			Boston	MA	02210	
TANDBERG, SCOTT		Address on File						
Tanner Morgan		Address on File						
Tara Allen		Address on File						
TARAS LIMO & AIRPORT SERVICE		PO BOX 795581			Dallas	TX	75379-5581	
Tarrant County	Elizabeth Weller	Linebarger Goggan Blair & Sampson, LLP	2777 N. Stemmons Freeway, Suite 1000		Dallas	TX	75207	
TARSHA, DANIEL S.		Address on File						
TARUN K BHATT		PO BOX 71687			Chicago	IL	60694-7687	
Tax & Accounting-R&G		Address on File						
TAX EXECUTIVES INSTITUTE, INC		PO BOX 9407			Uniondale	NY	11555-9407	
Taylor Porter		Address on File						
Taylor, Brian		Address on File						
TAYLOR, GREGORY		Address on File						
TCS Central Region GP LLC	ATTN Kelly Thomas	5001 Spring Valley	Suite 600W		Dallas	TX	75244	
TCS Corporate Services	Allied Capital Partners	PO Box 676649			Dallas	TX	75267	
TCS Corporate Services		PO Box 671160			Dallas	TX	75267-1160	
TD Ameritrade Trust Company	Attn FFC RMT	PO Box 17748			Denver	CO	80217-0748	
TDA Associates, Inc.		2101 Sardis Rd N, Suite 109			Charlotte	NC	28227	
TDIndustries		PO Box 300008			Dallas	TX	75303-0008	
Technology Team, LLC		1120 South Freeway	Suite 215		Fort Worth	TX	76104	
Ted Kanarek		Address on File						
Telecomm Strategies Inc		6404 Highland Drive			Chevy Chase	MD	20815	
TELOS Performance Center		13701 Dallas Pkwy			Dallas	TX	75240	
Temple Emanu-El	Attn Rick Rosenberg	8500 Hillcrest			Dallas	TX	75225	
Tennessee Department of Revenue		500 Deaderick Street	Andrew Jackson State Office Building		Nashville	TN	37242	
Tennessee Dept of Commerce & Insurance		Securities Division	500 James Robertson Parkway, Suite 680		Nashville	TN	37243	
TERRELL, ARTIS		Address on File						
Terrie Rabinowitz, L.C. S.W.		7186 Promenade Dr Apt 801			Boca Raton	FL	33433-6977	
Terry Jackson		Address on File						
Terry Jackson		Address on File						
Terry Swagerty		Address on File						
Terry, Doris A.		Address on File						

004209

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 148 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TERRY, JOSHUA N.		Address on File						
TESLA, NIKOLA		Address on File						
Texas Alliance of Energy Producers		900 8th Street, Suite 400			Wichita Falls	TX	76301	
Texas Best Meats		PO Box 4810			Wichita Falls	TX	76308	
Texas Best Meats		7043 Seymour Hwy			Wichita Falls	TX	76310	
Texas Commerce Bank, N.A.		600 Travis Street	8th Floor, Texas Commerce Tower	Global Trust Services	Houston	TX	77002	
Texas Comptroller of Public Accounts		PO Box 149348			Austin	TX	78714-9348	
Texas Department of Insurance	Financial Regulation Division	Company Licensing and Registration	333 Guadalupe		Austin	TX	78701	
Texas Dept of Licensing and Regulation		PO Box 12157			Austin	TX	78711	
TEXAS DEPT OF STATE HEALTH SERVICES		LOCKBOX-DSHS ASBESTOS/DEMO NOTIFICATION			Austin	TX	78711-2190	
Texas Entertainment Group		103 N Kirby St	PO BOX 12190		Garland	TX	75042	
Texas LawBook LLC		3888 Everwood Lane			Addison	TX	75001	
TEXAS ROOF MANAGEMENT, INC		728 LINGCO DR			Richardson	TX	75081	
Texas Secretary of State	Accounts Receivable	PO Box 12887			Austin	TX	78711-2887	
Texas Secretary of State		PO Box 13697			Austin	TX	78711	
Texas State Comptroller		9241 LBJ FREEWAY			Dallas	TX	75243	
Texas State Comptroller		PO Box 12030	STE 205		Austin	TX	78711-2030	
Texas State Securities Board		Securities Commission of Texas	208 E 10th, Room 610		Austin	TX	78701	
TEXPERS		13111 Northwest Freeway	Suite 100		Houston	TX	77040	
Thackray Williams LLP		32-40 Widmore Rd	Bromley		Kent	NC	BR1 1RY	United Kingdom
Tharrington Smith LLP		PO Box 1151			Raleigh	NC	27602	
The American Cancer Society		18505 West Twelve Mile Rd			Southfield	MI	48076	
The Ashcroft Lawfirm, LLC		950 North Glebe Road	Suite 2400		Arlington	VA	22203	
The Ashcroft Lawfirm, LLC		1100 Main Street	Suite 2710		Kansas City	MO	64105	
The Aspen Institute		Society of Fellows	1000 N. Third Street		Aspen	CO	81611	
The Badge of Honor Memorial Foundation		David Blanchard	3131 Maple Ave		Dallas	TX	75201	
The Bailey Group		PO Box 1395			Whitehouse Station	NJ	08889	
The Bank of New York Mellon	Elizabeth Stern	Director and Managing Counsel	240 Greenwich Street, 18th Floor		New York	NY	10286	
The Bank of New York Mellon Trust Compan		601 Travis, 16th floor			Houston	TX	77002-0000	
The Bank of New York Trust Co.	Global Corp. Trust	600 Travis Street, 50th Floor			Houston	TX	77002	
The Bermuda Monetary Authority		43 Victoria Street			Hamilton	BM	HM 12	Bermuda
The Bowman Law Firm, LLC		840 Tom Wheeler Lane			McEwen	TN	37101	
The Bradbury Group		10661 Rockley Rd			Houston	TX	77099	

004210

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Brattle Group		44 Brattle St			Cambridge	MA	02138-3736	
The Bretton Woods Institute		R.R. #1 Simcoe			Toronto	ON	N3Y 4J9	CANADA
The Bryant Park Hotel		40 W. 40th Street			New York	NY	10018	
THE BUREAU OF NATIONAL AFFAIRS, INC		PO Box 419889			Boston	MA	02241-9889	
The Bureau of National Affairs, Inc. (Blo		1801 South Bell Street			Arlington	VA	22202-0000	
The Burnett Companies Consolidated, Inc.		PO Box 973940			Dallas	TX	75397	
The Cake Guys		730 Big Stone Gap Rd	Suite B		Duncanville	TX	75137	
The Cayman Islands Monetary Authority		171 Elgin Ave, SIX Cricket Square		George Town	Grand Cayman			Cayman Islands
The Charlotte Observer		600 S. Tryon Street			Charlotte	NC	28202	
The Chart Store		11768 Tarrynot Ln			Carmel	IN	46033	
The Claro Group, LLC		123 N Wacker Dr Ste 2100			Chicago	IL	60606-1747	
THE CLUEN CORPORATION		135 5TH AVE FL 4			NEW YORK	NY	10010-7157	
The Crystal Charity Ball		Mrs. Mark D Leyendecker, Underwriting	3838 Oak Lawn Avenue, Suite L150		Dallas	TX	75219	
The Cystic Fibrosis Foundation		4040 North Central Expressway	Ste 730		Dallas	TX	75204	
The da Vinci School	Attn Christi Warren	10909 Midway Rd			Dallas	TX	75229	
The Dallas Morning News		Subscriptions Dept.	PO Box 630054		Dallas	TX	75263-0054	
The Darden School	Attn Development- CFR	PO Box 7726			Charlottesville	VA	22906-7726	
The Day Group		The 401 Centre	302 Regent Street		London		W1B3HH	United Kingdom
The Deal LLC		105 Madison Ave	5th floor		New York	NY	10016	
The Deal LLC		PO BOX 26356			New York	NY	10087-6356	
The Deal LLC		PO Box 3502			Northbrook	IL	60065-9850	
The Devon Trust II		#2800	715 - 5th Avenue SW		Calgary	AB	T2P 2X6	CANADA
The DI Wire Publishing LLC		18101 Von Karman Ave	Suite 300		Irvine	CA	92612	
The Dugaboy Investment Trust	Grant Scott, Trustee	4140 Park Lake Ave., Suite 600			Raleigh	NC	27612	
The Economist		Subscription Center	PO Box 46978		Saint Louis	MO	63146-6978	
The Economist		Subscriptions Department	PO Box 58522		Boulder	CO	80322-8522	
The Efficient Business LLC		13601 Preston	Ste 250E		Dallas	TX	75240	
The Efficient Business LLC		14800 Quorum Dr	Suite 560		Dallas	TX	75254-7679	
The Emblem Source, LLC		4575 Westgrove Drive	Suite 500		Addison	TX	75001	
The Englishmans Interiors		14655 Midway Rd			Addison	TX	75001	
The Executive Centre		Tokyo Ginko Kyokai Bldg 15th Floor	1-3-1 Marunouchi		Chiyoda-ku	Tokyo	100-0005	JAPAN
The Expert Series LLC		317 Madison Avenue	Suite 920		New York	NY	10017	
The Family Place	Attn Shivangi Pokharel	PO Box 7999			Dallas	TX	75209	
THE FRANCHISE TAX BOARD		PO BOX 942867			Sacramento	CA	94267-0001	
THE FRANK W. NORRIS FOUNDATION		PO Box 6071			Athens	GA	30604	
THE FRANK W. NORRIS FOUNDATION		Warnell School of Forestry	and Natural Resources		Athens	GA	30602-2152	
THE FREDONIA GROUP		767 BETA DR			Cleveland	OH	44143	

004211

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Garden Gate		2615 Routh Street			Dallas	TX	75201	
The Garden Gate		2303 Farrington			Dallas	TX	76207	
The General Counsel Forum		PO Box 131263	#100		Dallas	TX	75313	
The Greitens Group		4500 West Pine Boulevard			Saint Louis	MO	63108	
The Griffith Law Firm		4925 Greenville Ave	Suite 200		Dallas	TX	75206	
The Gym		921 W. Mayfield Rd.	Suite 112		Arlington	TX	76015	
The Hanover Insurance Group		PO Box 580045			Charlotte	NC	28258-0045	
The Harry Walker Agency, Inc.		355 Lexington Ave			New York	NY	10017	
THE HARTFORD		PO BOX 2907	Fir 21		The Hartford	CT	06104-2907	
THE HARTFORD		PO Box 660916			Dallas	TX	75266-0916	
The Hockaday School	Attn Holly Hook	11600 Welch Road			Dallas	TX	75229	
The Hogan Firm		1311 Delaware Ave			Wilmington	DE	19806	
The House Oldtown Brasserie		6936 E. Main St.			Scottsdale	AZ	85251	
The Intl Stock Exchange Authority Ltd		PO Box 623, Helvetoa Court	Block B, 3rd Floor	Les Echelons	St Peter Port	GUERNSEY	GY1 1AR	United Kingdom
The Irish Stock Exchange plc		28 Anglesea Street			Dublin	CA	D02 XT25	IRELAND
The Island Hotel		690 Newport Center Drive			Newport Beach	CA	92660	
The Joule		1530 Main Street			Dallas	TX	75201	
The Junior League of Dallas		PO Box 12707			Dallas	TX	75226	
The Kaplan Group		2250 King Ct, Suite 50			San Luis	CA	93401	
The Kiplinger Tax Letter		PO Box 62300			Tampa	FL	33662-2300	
The Kiplinger Tax Letter		PO Box 3299			Harlan	IA	51593-0479	
The Ladders	Accounting Dept	137 Varick St			New York	NY	10013	
THE LAKESHORE COMPANIES		1081 MOMENTUM PL			Chicago	IL	60689-5310	
The LDM Group, LLC		Renaissance Tower	1201 Elm Street, Ste. 4201		Dallas	TX	75270	
The Leukemia & Lymphoma Society		1311 Mamaroneck Ave, Suite 310			White Plains	NY	10605	
The Leukemia & Lymphoma Society		8111 LBJ Freeway	Suite 425		Dallas	TX	75251	
The Loan Syndications and Trading Assoc		366 Madison Ave	15th Floor		New York	NY	10017	
The Mark and Pamela Okada Family Exempt Trust #1	Brian D. Glueckstein	Sullivan Cromwell LLP	125 Broad Street		New York	NY	10004	
The Markets.com		PO Box 9420			Uniondale	NY	11555-9420	
The Matchbox Studio		3013 Canton Street			Dallas	TX	75226	
The McCarton Foundation		331 W. 25th Street			New York	NY	10001	
The Medleh Group		PO Box 96370			Houston	TX	77213	
The Money Management Institute		1101 17th St, NW Ste 703			Washington	DC	20036	
The Money Management Institute		PO Box 759231			Baltimore	MD	21275-9231	
The Montessori School of Raleigh		7005 Lead Mine Road			Raleigh	NC	27615	

004212

## Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
The Morgan Library & Museum		225 Madison Avenue			New York	NY	10016	
The NASDAQ OMX Group Inc.		Lockbox 90200	PO Box 8500		Philadelphia	PA	19178-0200	
The NASDAQ Stock Market LLC	c/o Wells Fargo Bank	Lockbox 80200/PO Box 8500	10205 Westheimer Rd, Ste 500		Philadelphia	PA	19178-0200	
The National due Diligence Alliance		West8 Tower			Houston	TX	77042	
The Neighbors Law Firm P.C.		2500 Regency Parkway			Cary	NC	27518	
The New York Times		PO Box 4039			Woburn	MA	01888-4039	
The New York Times		PO BOX 371456			Pittsburgh	PA	15250-7456	
The nGage Company, LLC	Attn Phil McKay	170 Pine Point Rd			Scarborough	ME	04074	
The Oechsli Institute		PO Box 29385			Greensboro	NC	27429	
The Optimal Networking Event, LLC		5 Block Court			Randolph	NJ	07869	
The Optimal Networking Event, LLC		PO Box 191			Mt. Freedom	NJ	07970-0191	
The Original Butt Sketch		PO Box 4495			Dallas	TX	75208-4495	
The Paley Center for Media	Attn Accounting Department	25 West 52nd Street			New York	NY	10019	
The Party New York		137 Avenue A	Suite 2E		New York	NY	10009	
The Paul Revere Life Ins. Co.		PO Box 740590			Atlanta	GA	30374-0590	
The Pension Bridge, Inc		4504 S Ocean Blvd			Highland Bch	FL	33487-4233	
THE PLACEMENT GROUP, INC.		6060 North Central Expressway	Suite 524		Dallas	TX	75206	
THE PLANT PLACE		10704 Goodnight Lane	Suite 300		Dallas	TX	75220	
The Plexus Group		21805 Field Parkway			Deer Park	IL	60010	
The Plumbing Mechanical Fire Prot. Co		60 North Prospect Avenue			Lynbrook	NY	11563-1395	
The Promise House	Attn Christy Cerralvo	RBC Capital Markets	2711 N Haskell Ave, Site 2500		Dallas	TX	75240	
The Real Estate Council		Three Lincoln Center	5430 LBJ Frwy, Suite 100		Dallas	TX	75240	
The Real Estate Council Foundation	Attn Stephanie Keller Hudiberg	3100 McKinnon Street	Suite 1150		Dallas	TX	75201	
The Reeds Public Relations Corporation		3232 McKinney Avenue	Suite 855		Dallas	TX	75204	
The Renaissance Consulting Group		870 San Jacinto Twr 2121 San Jacinto St			Dallas	TX	75201	
The Rhythm Room	Attn Elaine Hewlett	4734 Tremont Street			Dallas	TX	75246	
The Rise School		4220 Monterey Oaks Blvd.			Austin	TX	78749	
The Ritz-Carlton		455 Grand Bay Drive			Key Biscayne	FL	33149	
The Ritz-Carlton		2121 McKinney Avenue			Dallas	TX	75201	
THE RITZ-CARLTON, LAKE LAS VEGAS	ATTN AVR	1610 LAKE LAS VEGAS PKWY			Henderson	NV	89011	
The Rowland Law Firm	Ronald L. Rowland, Authorized Agent	2453 Vineyard Lane			Crofton	MD	21114	
The Ryan Anthony Foundation		2512 Boll Street			Dallas	TX	75204	
The Search Group		222. W Las Colinas Blvd	Ste 844E		Irving	TX	75039	

004213

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 152 of 175  
 Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
THE SIGN COMPANY		575 MADISON AVE			New York	NY	10022	
The Spencer Company		2121 North Akard	Suite 100		Dallas	TX	75201	
The Standard		1100 SW Sixth Ave			Portland	OR	97204-0000	
The Standard		PO Box 3358			Portland	OR	97208-3358	
The Standard		PO BOX 5674			Portland	OR	97228-5674	
The Standard Life Insurance Co of NY		PO Box 3358			Portland	OR	97208-3358	
The State of Texas	Deana K. Adams, CSR	Official Court Reporter	600 Commerce, 630 C		Dallas	TX	75202	
The Stewpot Alliance		4516 Lovers Lane	Suite 229		Dallas	TX	75225	
The Strategic Financial Alliance, Inc.		202 Abbey Court			Alpharetta	GA	30004	
The Strategic Financial Alliance, Inc.		2200 Century Parkway, Ste 500			Atlanta	GA	30345	
The TAARP Group, LLP		8333 Douglas Avenue	Suite 1500		Dallas	TX	75225	
The TAARP Group, LLP		PO Box 797337			Dallas	TX	75379-7337	
The TASA Group, Inc.		1166 DeKalb Pike			Blue Bell	PA	19422-1853	
The Texas Lyceum Association, Inc		3305 Steck Ave Ste 200			Austin	TX	78757-8155	
The Texas Lyceum Association, Inc		7131 Lavendale Ave			Dallas	TX	75230	
The Townwide Fund of Huntington, Inc.		148 East Main Street			Huntington	NY	11743	
The United States Ski & Snowboard Assoc		1 Victory Lane	Box 100		Park City	UT	84060	
The United States Treasury		Internal Revenue Service	PO Box 9941		Ogden	UT	84409	
The University of Texas at Arlington		Grants and Accounting, Box 19136			Arlington	TX	76019-0136	
The VIA Group, Inc		2610 Technology Forest Blvd			The Woodlands	TX	77381	
The Wall Street Journal		Corporate Subscription Program	102 First Ave		Chicopee	MA	01020	
The Wellness Group, LLC		1000 N. Green Valley Pkwy	Suite 440 #401		Henderson	NV	89074	
The Wellness Group, LLC		100 N. Green Valley Pkwy	Suite 440 #401		Henderson	NV	89074	
The Westin Charlotte		601 South College Street			Charlotte	NC	28202	
The YGS Group		3650 West Market Street	Content Division-AR		York	PA	17404	
The Yield Book, Inc.		PO Box 13755			Newark	NJ	07188-0755	
THEDFORD, LAUREN E.		Address on File						
Theodore N Dameris		Address on File						
Theodore N. Dameris		Address on File						
Think-Cell		InvalidenstrBe 34			Berlin	GERMANY	10115	
Think-cell Sales GmbH & Co. KG		Chausseestr. 8/E			Berlin	GERMANY	10115	
Thirstystone Resources		860 E 19th St			Tucson	AZ	85719	
THOMAS HENNING		Address on File						
Thomas Hoerner		Address on File						
Thomas Printworks		PO Box 740967			Dallas	TX	75374-0967	
Thomas Reprographics		P.O. Box 740967			Dallas	TX	75374-0967	
THOMAS SHARP		Address on File						
Thomas Surgent	c/o David Neier	Winston Strawn LLP	4441 Beverly Drive		Dallas	TX	75205	
Thomas Surgent	c/o David Neier, Winston Strawn LLP	200 Park Avenue			New York	NY	10166	
Thomas Surgent		Address on File						

004214

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Thomas White	c/o KGen Power Corp	9337 Spring Cypress Rd, #2114			Spring	TX	77379	
Thompson & Knight		PO Box 660684			Dallas	TX	75266-0684	
Thompson & Knight		Dept 70 PO Box 4346			Houston	TX	77210-4346	
THOMPSON & KNIGHT LLP			1722 ROUTH STREET		Dallas	TX	75201-2533	
Thompson Coe Cousins & Irons LLP		700 N. Pearl Street	Twenty Fifth Floor		Dallas	TX	75201	
Thompson Reuters		610 Opperman Drive	PO Box 64833		Eagan	MN	55123-0000	
THOMPSON, DAVISON R.		Address on File						
Thompson, Jordan		Address on File						
THOMPSON, ROBIN		Address on File						
Thomson		PO Box 4634			Chicago	IL	60680-9598	
Thomson Financial		195 Broadway	7th floor		New York	NY	10007	
Thomson Financial		PO Box 360301			Pittsburgh	PA	15251-6301	
Thomson Financial		PO Box 5136			Carol Stream	IL	60197-5136	
Thomson Financial		PO Box 95512			Chicago	IL	60690-5512	
THOMSON REUTERS	Attn Greg Winterton	3 Times Square, 18th Floor			New York	NY	10036	United Kingdom
THOMSON REUTERS		PO BOX 55743	The Thomson Reuters Building		London		E14 10B	
THOMSON REUTERS		PO Box 95512			Chicago	IL	95512	
THOMSON REUTERS		TAX & ACCOUNTING- R&G	PO BOX 71687		Chicago	IL	60694-1687	
Thomson Reuters (Markets) LLC		PO Box 415983			Boston	MA	02241	
Thomson Reuters (Markets) LLC		GPO BOX 10410			Newark	NJ	07193-0410	
Thomson Reuters (Tax & Accounting) Inc.		PO Box 71687			Chicago	IL	60694-1687	
Thomson Reuters Corporation		17400 Medline Road	Suite 850		Plymouth	MN	55447	
Thomson Reuters Tax & Accounting - Check		PO Box 71687			Chicago	IL	60694-0000	
thomson RIA		PO Box 6159			Carol Stream	IL	60197-6159	
Thomson West		PO Box 64833			Saint Paul	MN	55164-0833	
Thomson West		PO Box 6292			Carol Stream	IL	60197-6292	
Thornton-Tomasetti Group, Inc.		PO Box 826203			Philadelphia	PA	19182-6203	
Throckmorton, Michael		Address on File						
Thuzio, Inc.		267 Fifth Avenue	Seventh Floor		New York	NY	10016	
TIAMPO, SAUKOK		Address on File						
TIBCO Software, Inc.		Lockbox No 7514	PO Box 7247		Philadelphia	PA	19170-7514	
Tiffs Treats		Address on File						
Tim Dalton		Address on File						
TIM LAWLER		Address on File						
Tim Symington		Address on File						
Timber Mart-South	Center for Forest Business	Daniel B. Warnell School of Forestry	The University of Georgia		Athens	GA	30602-2152	
Timberhorn, LLC		127 W Worthington Ave Ste 100			Charlotte	NC	28203-0064	
Time Value Software		22 Mauchly			Irvine	CA	92618	

004215



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TIME WARNER CABLE		PO BOX 9227			Uniondale	NY	11555-9227	
TIME WARNER CABLE		Box 223085			Pittsburgh	PA	15251-2085	
TIME WARNER CABLE		PO BOX 742663			CINCINNATI	OH	45274-2663	
TIME WARNER CABLE		PO Box 742633			Cincinnati	OH	45274-2663	
TIME WARNER CABLE		PO Box 650063			Dallas	TX	75265-0063	
TIME WARNER CABLE		PO BOX 650210			Dallas	TX	75265-0210	
TIME WARNER CABLE		PO Box 60074			City of Industry	CA	91716-0074	
Time, Inc.		PO Box 60001			Tampa	FL	33660-0001	
Times Square Tower Associates LLC		800 Boylston Street	Suite 1900		Boston	MA	02199	
Times Square Tower Associates LLC		PO Box 415917			Boston	MA	02241-5917	
Timothy Brice		Address on File						
Timothy Hochandani		Address on File						
Timothy Lawler		Address on File						
Timothy Leung		Address on File						
Timothy Spring		Address on File						
TIPS,LLC		Department 34932	PO Box 39000		San Francisco	CA	94139	
TIPS,LLC		File 30578	PO Box 60000		San Francisco	CA	94160	
Title Partners, LLC		5501 LBJ Freeway	Ste 200		Dallas	TX	75240	
TLK Networks		PO Box 202286			Arlington	TX	76006	
TMC Communications, LLC		245 Park Ave, 24th Flr			New York	NY	10167	United Kingdom
TMF Group		400 Capability Green			Luton		LU1 3AE	United Kingdom
TNT INTERNATIONAL		PO BOX 186	RAMSBOTTOM		BURY		BL09GR	United Kingdom
Tobias Lewis		Address on File						
TOBY FELDMAN INC.		ONE PENN PLAZA			New York	NY	10119	
Todd A. Travers		Address on File						
Todd Blatterman		Address on File						
Todd Travers	c/o Jason P. Kathman	Pronske & Kathman, P.C.	2701 Dallas Parkway, Suite 590		Plano	TX	75093	
Toly Novik		Address on File						
TOM BEACH		Address on File						
TOM LOVELL		Address on File						
Tom Rigatti		Address on File						
Tomasino, Matthew		Address on File						
TOMLIN, WILLIAM		Address on File						
Tony Zaffaro		Address on File						
Total Alternatives		PO Box 5018			Brentwood	TN	37024	
Total Uptime Tech		Post Office Box 2228			Skyland	NC	28776-0000	
Touchstone Securities, Inc		303 Broadway	Suite 1100		Cincinnati	OH	45202-4203	
TOUDOUZE, KENNETH		Address on File						
Towers Watson		PO Box 8500	S-6110		Philadelphia	PA	19178-6110	
TPAC		920 Tyne Blvd			Nashville	TN	37220	
TQ,ESI, LLC		400 N. St Paul	STE 1230		Dallas	TX	75201	
Tracey Ivey		Address on File						
TradeStation Securities, Inc.	Aftn Account Department	8050 SW 10th St -- Ste 2000			Plantation	FL	33324	
TRAHAN, MICHAEL		Address on File						



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
TransPerfect Legal Solutions	Attn Accounts Receivable	1250 Broadway Fl 7			New York	NY	10001-3749	
TRANSWESTERN		5001 SPRING VALLEY RD	STE 600W		Dallas	TX	75244	
TRANSTHAM, AUSTIN	Address on File							
Travel Search Network		8111 LBJ Freeway # 550			Dallas	TX	75251	
TRAVERS, TODD	Address on File							
Travis Kruger	Address on File							
TRC	PO Box 536282				Pittsburgh	PA	15253-5904	
TRC Consultants, LC	120 Dietert Ave		Suite 100		Boerne	TX	78006	
Treasurer of State of Vermont		Securities Division	89 Main Street, 2nd Floor, Drawer 20		Montpelier	VT	05620	
Treasurer of Virginia		Virginia State Corporation Commission	1300 East Main Street, 9th Floor		Richmond	VA	23219	
Treasurer, State of Connecticut		Securities & Business Investment Div	260 Constitution Plaza		Hartford	CT	06103	
Treasurer, State of Maine		Office of Securities	76 Northern Avenue		Gardiner	ME	04345	
TREASURY OF THE UNITED STATES	Austin Campus Disclosure Office	Stop 7000-AUSC	PO Box 2986		Austin	TX	78768	
TREASURY OF THE UNITED STATES	INTERNAL REVENUE SERVICE	3651 SOUTH IH-35, MS 7000AUSC	DISCLOSURE OFFICE		Austin	TX	78741	
TREMOR, LAUREN E.	Address on File							
Trend Macrolitics LLC	680 N. Lake Shore Drive		#1412		Chicago	IL	60611	
Trenkner, Jamie	Address on File							
Trepp, LLC	477 Madison Ave 18th Flr				New York	NY	10022	
Triad Security Systems	971 Lehigh Avenue				Union	NJ	07083	
Trial Arts Professional Copy Service								
Tricor Evatthouse Corporate Services	1500 Dragon St, Ste C				Dallas	TX	75207	
Tricor Singapore Pte Ltd	8 Cross Street		#11-00 PWC Building		Singapore		048424	SINGAPORE
Trinity River Mission	8 Cross Street		#11-00 PWC Building		Singapore		048424	SINGAPORE
Triple Threat Cowboy	2060 Singleton Blvd, Ste 104				Dallas	TX	75212	
TRI-RIVER CAPITAL	1430 Regal Row		Suite 320		Dallas	TX	75247	
Tritech Communications, Inc.	C/O BEUTEL & JOYCE, LP	ATTN MILTON WALTERS	555 FIFTH AVE - 15TH FLR		New York	NY	10017	
Troutman Sanders LLP	625 Locust St.				Garden City	NY	11530	
TROY BARNETTE	P.O. Box 933652				Atlanta	GA	31193-3652	
Trump International Hotel & Tower CH	Address on File							
Trussway Holdings, Inc.	401 North Wabash Ave				Chicago	IL	60611	
Trussway Holdings, LLC	9411 Alcorn				Houston	TX	77093-6753	
Trustees of Boston University	7001 Enterprise Ave				Fort Worth	TX	76118	
Trustwave	1 Silber Way				Boston	MA	02215	
TSCM AMERICA	70 W Madison St		Ste. 1050		Chicago	IL	60602	
TSCPA	PO Box 6743				McKinney	TX	75071	
TSG Reporting, Inc	PO Box 797488				Dallas	TX	75379	
TSX INC	747 Third Ave, Suite 10A				New York	NY	10017	
TTA Research & Guidance	The Exchange Tower		PO Box 421, 130 King Street West		Toronto	ON	M5X 1E1	CANADA
Tuan Olona, LLP	PO Box 71687				Chicago	IL	60694	
Turf Scapes	One Rockefeller Plaza		Eleventh Floor		New York	NY	10020	
	368 National Drive				Rockwall	TX	75032-6531	

004217

Exhibit C

Creditor Matrix  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Turing Experts		Birchin Court	20 Birchin Lane		London		EC3V 9DU	United Kingdom
Turtle Bay Resort	Attn Finance Department	57-091 Kamehameha Highway PO Box 910182			Kahuku	HI	96731	
TW Telecom Holdings, llc					Denver	CO	80291-0182	
Twenty-First Securities Corporation		780 Third Avenue PO BOX 650638	24th Floor		New York	NY	10017	
TXU ENERGY		PO BOX 660409			Dallas	TX	75266-0638	
TXU ENERGY		PO Box 371967			Dallas	TX	75266-0409	
Tyco Integrated Security		Address on File			Pittsburg	PA	15250-7967	
Tyler Kemp								
TYRA GILB TRUST		325M SHARON PARK DR #207			Menlo Park	CA	94025-6804	
U.D.S.TX., LLC		1401 Elm, Suite 4567			Dallas	TX	75202	
U.S. - Japan Council	Attn Dana Fager, Develop. Coordinator	1819 L Street, NW, Suite 800			Washington	DC	20036	
U.S. Bancorp Equipment Finance, Inc.		PO Box 790448			Saint Louis	MO	63179-0448	
U.S. Bank		CM-9690	PO Box 70870		Saint Paul	MN	55170-9690	
U.S. Bank National Association	Attn CDO Unit	One Federal Street 520 Post Oak Blvd	3rd Floor Suite 280	Mail Code EX-MA-FED	Boston	MA	02110	
U.S. Fund for UNICEF					Houston	TX	77027	
U.S. Securities and Exchange Commission	Fort Worth Regional Office	Burnett Plaza, 19th Floor	801 Cherry Street, Unit 18		Fort Worth	TX	76102	
UBS AG, London Branch	Attn Suzanne Forster, John Lantz	UBS Securities LLC, Jeffrey E. Bjork, Kimberly A. Posin	1285 Avenue of the Americas		New York	NY	10019	
UBS AG, London Branch	Latham & Watkins LLP	Asif Attarwala	330 North Wabash Ave. Suite 2800		Los Angeles	CA	90071	
UBS AG, London Branch	Latham and Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000		Chicago	IL	60611	
UBS AG, London Branch	Latham and Watkins LLP	Attn Suzanne Forster, John Lantz	1285 Avenue of the Americas		Washington	DC	20004-1304	
UBS AG, London Branch	UBS Securities LLC	Latham & Watkins LLP	555 Eleventh Street NW Suite 1000		New York	NY	10019	
UBS AG, London Branch UBS Securities LLC	c/o Andrew Clubok, Esq. Attn Suzanne Forster, John Lantz	Latham & Watkins LLP			Washington	DC	20004	
UBS Securities LLC		1285 Avenue of the Americas			New York	NY	10019	
UBS Securities LLC	c/o Andrew Clubok	Latham & Watkins LLP	555 11th Street NW #1000		Washington	DC	20004	
UBS Securities LLC	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100		Los Angeles	CA	90071	
UBS Securities LLC	Latham and Watkins LLP	Asif Attarwala	330 North Wabash Ave. Suite 2800		Chicago	IL	60611	
UBS Securities LLC	UCG	11300 Rockville Pike	Ste 1100		Rockville	MD	20852-3030	
Uchi Dallas, LLC		701 S. Lamar Blvd	Suite C		Austin	TX	78704	
UDAI DHAWAN		28 SPRAIN VALLEY RD			Scarsdale	NY	10583	
UERM/MC-MAAAI	Dr. Audrey Coe, Treasurer	PO Box 2153			Bedford Park	IL	60499-2153	
Ulf Nofelt		Address on File						
Ulicny, Inc.		92 Amity Drive			Wayne	PA	19087	

004218

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Umar Zugaro, PLLC	Basil A. Umari	1403 Eberhard			Houston	TX	77019	
UMB Bank, N.A.	Attn Trust Fees Dept	PO Box 414589			Kansas City	MO	64141-4589	
UNICOM TECHNOLOGIES, INC		1011 HWY 6 S	STE 200		Houston	TX	77077	
Unimerica Insurance Company	Administrative Office	6300 Olson Memorial Highway			Golden Valley	MN	55427	
Unishippers		800 W Airport Fwy Ste 611 LB 6065			Irving	TX	75062	
Unishippers		800 W Airport Fwy Ste 611 LB 6065			Irving	TX	75062-6294	
United American Reporting Services		1201 Elm Street	Suite 5220		Dallas	TX	75270	
United Capital		5655 S. Yosemite St.	Suite 450		Greenwood Village	CO	80111	
United Carpet Cleaning Systems, Inc.		PO Box 1625			Hurst	TX	76053	
UNITED HEALTHCARE INSURANCE COMPANY	ATTN LISA CARRILLO	5800 GRANITE PKWY, STE 700			Plano	TX	75024	
UNITED HEALTHCARE INSURANCE COMPANY		22561 NETWORK PLACE			Chicago	IL	60673-1225	
United Mechanical		11540 Plano Road	PO Box 551206		Dallas	TX	75355-1206	
United Parcel Service, Inc		55 Glenlake Parkway			Atlanta	GA	30328-0000	
United States Treasury		INTERNAL REVENUE SVC	PO BOX 69		Memphis	TN	38101-0069	
United States Treasury		SERVICE			Cincinnati	OH	45999-0039	
United States Treasury		INTERNAL REVENUE			Kansas City	MO	64999-0202	
United States Treasury		SERVICE			Farmers Branch	TX	75244-4201	
United States Treasury		STOP 5107 NWSAT	4050 ALPHA RD		Dallas	TX	75266-0443	
United States Treasury		PO Box 660443			Ogden	UT	84201-0039	
UNITED VAN LINES		SERVICE			Fenton	MO	63026-1350	
United Way of Mass. Bay & Merrimack Vily		ONE UNITED DRIVE			Boston	MA	02205-1381	
Universal Printing Solutions, Inc.	Attn AVR- Barbara Alexander	PO Box 51381			Los Angeles	CA	90064-2438	
University of Michigan		10573 West Pico Blvd. #610			Ann Arbor	MI	48109-1288	
University of Pennsylvania		3003 S. State Street, Suite 8000			Philadelphia	PA	19104-6285	
University Pk Sch Parent/Teacher Assoc		433 Franklin Building	3451 Walnut Street		Dallas	TX	75225	
Unum Life Insurance Company of America		3505 Amherst			Atlanta	GA	30384-6834	
Unum Life Insurance Company of America		PO BOX 406834			Atlanta	GA	30384-9548	
Update Legal		PO Box 409548			New York	NY	10036	
Uplift Education		1140 Avenue of the Americas			Dallas	TX	75207	
UPMC HEALTH SYSTEM PENSION TRUST	c/o David Jackson	1825 Market Center Blvd, Ste 500			Pittsburgh	PA	15258	
		1 MELLON BANK CTR						

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
UPS Freight		PO Box 730900			Dallas	TX	75373-0900	
UPS Supply Chain Solutions		PO BOX 7247-0244			Philadelphia	PA	19170-0001	
UPS Supply Chain Solutions		28013 Network Place			Chicago	IL	60673-1280	
UPS Supply Chain Solutions		PO Box 730900			Dallas	TX	75373-0900	
UpSwing Performance Improvement, Inc.		PO Box 738			Manchester	MO	63011	
Uptown Energy Partners		2602 McKinney Ave	Suite 330		Dallas	TX	75204	
Urano, Cameron		Address on File						
URBAN, ASHLEY		Address on File						
URBAN, JOHN		Address on File						
URBANIC, MATTHEW		Address on File						
URECH, DANIELLE		Address on File						
URS CORPORATION		PO BOX 121028	DEPT 1028		Dallas	TX	75312-1028	
US Attorneys Office for the Northern District of Texas	Erin Neary Cox, Donna K. Webb	1100 Commerce St. Suite 300			Dallas	TX	75242	
US Bank		1555 N Rivercenter Dr, Ste 302			Milwaukee	WI	53212	
US BANK NA	ATTN THOMAS BELCHER	ONE FEDERAL STREET	THIRD FLOOR		Boston	MA	02110	
US Foods, Inc.		Box 843202			Dallas	TX	75284-3202	
US Legal Support		Texas Records & Reporting	PO BOX 952172		Dallas	TX	75395-2172	
US Legal Support		Chicago, IL Reporting	PO Box 4772-11		Houston	TX	77210-4772	
US Markets		10 W. 37th St	7th FL		New York	NY	10018	
US Policy Metrics LLC		2001 K St NW F1 8-11			Washington	DC	20006-1042	
US Postage Meter Center		PO Box 800848			Santa Clarita	CA	91380	
US Securities & Exchange Commission	FOIA Officer & Privacy Act Officer	100 F Street, NE	Mail Stop 2736		WASHINGTON	DC	20549-2000	
US Ski and Snowboard Team Foundation		1 Victory Lane	Box 100		Park City	UT	84060	
USA Shooting	Aftn Rob Weekes	1 Olympic Plaza			Colorado Springs	CO	80909	
usfi marketing communications								
USTMAAM		12100 Ford Rd Ste 100			Dallas	TX	75234	
USW LOCAL 870	C/O MARC VILLAFANIA	104 BIG OAKS RD			STREAMWOOD	IL	60107-1320	
Utah Division of Securities		94 WASHINGTON PLACE	160 East 300 South, 2nd Floor		Totwa	NJ	07512	
UTAH STATE TAX COMMISSION		Securities Division			Salt Lake City	UT	84111	
Valhalla CLO, Ltd.	c/o Intertrust SPV (Cayman) Limited	210 N 1950 W			Salt Lake City	UT	84134	
Valhalla CLO, Ltd. JPMorgan Chase Bank	JPMorgan Chase Bank	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Valhalla CLO, Ltd. JPMorgan Chase Bank	Valhalla CLO, Ltd. c/o Walkers SPY Limited	390 Greenwich Street, 4th Floor	Institutional Trust Services	Valhalla CLO, Ltd.	New York	NY	10013	Cayman Islands
VALIANT MEDIA		Walker House, PO Box 908GT, Mary Street	George Town, Grand Cayman	The Directors	Grand Cayman			Cayman Islands
Validity, Inc.		3116-D COMMERCE ST	22nd Floor		Dallas	TX	75226	
Value Line Publishing	ATTN Matt Jamison	200 Clarendon St	220 East 42nd Street 6th floor		Boston	MA	02116	
ValueScope, Inc.		Value Line Publishing, Inc			New York	NY	10017	
VAN HOEF, ASHLEY		1400 Theiford Ct.			Southlake	TX	76092	
VANACOUR, JASON		Address on File						

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Vanessa Sea		Address on File						
Vanguard Brokerage Services	Attn Securities Receipt & Transfer	PO Box 1170			Valley Forge	PA	19482-1170	
Vector One Management		113 E 55th St			New York	NY	10022	
Vela Wood PC	Attention Kevin Vela	5307 E. Mockingbird Lane, Suite 802			Dallas	TX	75206	
Venable LLP		PO Box 630798			Baltimore	MD	21263-0798	
Venable LLP		PO Box 62727			Baltimore	MD	21264-2727	
Vengroff Williams, Inc c/o American Arbitration Association	Vengroff Williams, Inc c/s American Arbitration	2211 Fruitville Rd			Sarasota	FL	34237	
Venture Mechanical, Inc.		1644 W Crosby Rd			Carrollton	TX	75006-6628	
Veritas Backup Exec		2625 Augustine Drive			Santa Clara	CA	95054-0000	
Veritas Enterprise Vault		2625 Augustine Drive			Santa Clara	CA	95054-0000	
Veritas Software Global LLC		PO Box 60000			San Francisco	CA	94160-3667	
Veritext Corp.		3090 Bristol Street	Suite 190		Costa Mesa	CA	92626	
Veritext Los Angeles Reporting Co		3090 Bristol St	Suite 190		Costa Mesa	CA	92626	
Veritext Mid-Atlantic		1801 Market Street	Suite 1800		Philadelphia	PA	19103	
Veritext New York Reporting Co								
Veritext New York Reporting Co		330 Old Country Rd	Suite 300		Mineola	NY	11501	
Verity Group		PO Box 71303			Chicago	IL	60694-1303	
Verity Group		885 E Collins Blvd	Ste. 102		Richardson	TX	75081-0000	
VERIZON		PO Box 940361			Plano	TX	75094-0361	
VERIZON		PO BOX 15124			Albany	NY	12212-5124	
Verizon Wireless		PO BOX 1100			Albany	NY	12250-0001	
Verizon Wireless		PO Box 489			Newark	NJ	07101-0489	
Verizon Wireless		PO Box 790406			Saint Louis	MO	63179-0406	
Verizon Wireless		PO Box 660108			Dallas	TX	75266-0108	
Verizon Wireless		PO Box 4001			Inglewood	CA	90313-4001	
Vermont Department of Taxes		PO Box 588			Montpelier	VT	05601	
Vermont Dept of Financial Regulation		Dept of Banking, Insurance & Securities	89 Main Street, 2nd Floor, Drawer 20		Montpelier	VT	05620	
Verrill Dana LLP		One Portland Square	P.O. Box 586		Portland	ME	04112	
VFG Securities, Inc.	Attn Jana Oledzki	100 Corporate Pointe	Suite 382		Culver City	CA	90230-7612	
ViaWest, Inc.	Attn John Greenwood	1200 17th Street, Suite 1150			Denver	CO	80202	
ViaWest, Inc.		PO Box 732368			Dallas	TX	75373-2368	
ViaWest, Inc.		PO Box 912362			Denver	CO	80291-2362	
Vibrancy21		1133 South Clinton Street			Baltimore	MD	21224	
Vickery Meadow Learning Center		6329 Ridgecrest			Dallas	TX	75231	
Victor Chang		Address on File						
Victor Chong		Address on File						
Vigilant Resources		45 Rockefeller Plaza, 20th Floor			New York	NY	10111	
VILLA VERONA, LTD		13330 NOEL RD			Dallas	TX	75240	
Village on the Green		5301 Alpha Road, Suite 44			Dallas	TX	75240	
Vin Thompson		Address on File						

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Vincent Lopez Seratino & Jenevein, PC		2001 Bryan St	Suite 2000		Dallas	TX	75201	
VINSON & ELKINS, LLP		A1001 FANNIN ST, STE 2300	FIRST CITY TOWER		Houston	TX	77002-6760	
Vintage Filings		350 Hudson Street, Suite 300			New York	NY	10014	
Vintage Filings		350 Hundson Street			New York	NY	10014	
Vintage Filings		PO Box 30719	Suite 300		New York	NY	10087-0719	
Virra, Sagor		Address on File						
VIRGINIA DEPARTMENT OF TAXATION		PO BOX 1500			Richmond	VA	23218-1500	
VIRGINIA DEPARTMENT OF TAXATION		PO BOX 1777			Richmond	VA	23218-1777	
Virginia Retirement System	Attn Control	PO Box 361			Richmond	VA	23218	
Virginia Retirement Systems	Attn Control	PO Box 361			Richmond	VA	23218	
Vishnu Gogineni		Address on File						
Visix, Inc.		230 Scientific Drive	Suite 800		Norcross	GA	30092	
Vitae Search Group, LLC		6009 Mariposa Drive			McKinney	TX	75070	
Vitiello, Stephanie		Address on File						
Vlahakis, Eleni		Address on File						
VODAFONE		PO BOX 549			London		OX17 3ZJ	United Kingdom
Vogel Alcove		200 Crescent Court	Ste 300		Dallas	TX	75201	
Voice of Hope	Attn Ruth Hardesty	PO Box 224845			Dallas	TX	75222-4845	
Volunteers for Youth, Inc.		205 Lloyd Street	Suite 103		Carrboro	NC	27510	
Voya Financial Advisors	Attn-Adriana Mardarie Gagov	909 Locust Street			Des Moines	IA	50309	
Voya Financial Advisors		5780 Powers Ferry Road, NW			Atlanta	GA	30327	
VSI Solutions		203 Dumont ct			Fairview	TX	75069	
VTB Capital plc		14 Cornhill			London		EC3V3ND	United Kingdom
W San Diego		421 West B St			San Deigo	CA	92101	
W. Andrew Hodge Consulting, PA		PO Box 11417			Glendale	AZ	85318	
W.B. Mason Co., Inc.		59 Centre St			Brockton	MA	02301	
Wachovia Insurance Services		5956 Sherry Lane	Suite 2000		Dallas	TX	75225-6531	
Wachovia Secuties LLC		Relationship Management Group-MO1400						
Wachtell, Lipton, Rosen & Kaiz Wagner, Grace		51 West 52nd Street	1 North Jefferson St		Saint Louis	MO	63103	
Wake2O		Address on File			New York	NY	10019	
Wakefield Quin		Rue du Mont Blanc 3			Geneva		01201	SWITZERLAN D
Wakefield Quinn		Victoria Place	31 Victoria St		Hamilton		0HM10	Bermuda
Walek & Associates, Inc.		PO BOX HM 809			Hamilton		0HMCX	BERMUDA
WALLIA, AMIT		317 Madison Avenue Suite 2300			New York	NY	10017	
Walker Dunlop		Address on File						
Walker Kobelan		Address on File						

004222

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Walkers		PO Box 265GT, Walker House	87 Mry Street		George Town		KY1-9001	Cayman Islands
Walkers - Ireland		The Exchange, Georges Dock, IFSC			Dublin		1	Ireland
Walkers Fund Services Limited	c/o Intertrust Cayman c/o OConnor Davies Mumms & Dobbins LLP	190 Elgin Avenue	George Town		Grand Cayman		KY1-9005	Cayman Islands
Wall Street Tax Association		60 East 42nd Street			New York	NY	10165	
WALLS, DAVID		Address on File						
WALTER JARMAN		Address on File						
WAN, QIAN		Address on File						
WANG, ALICE		Address on File						
WANG, CHEN-HAN		Address on File						
Wang, Ruozhou		Address on File						
Warehouse Store Fixture Co.		84 Progress Lane			Watebury	CT	06705	
Warner Stevens LLP		1700 City Center Tower II	301 Commerce Street		Fort Worth	TX	76102	
Warren Posner		Address on File						
Washington Speakers Bureau Inc.		1663 Prince Street			Alexandria	VA	22314	
Washington State Treasurer		WA Dept of Finan Inst. Securities Div	150 Israel Road SW		Tumwater	WA	98501	
Waterhouse, Frank		Plaza of the Americas	700 N Pearl Street, Suite 1610		Dallas	TX	75201	
WATERHOUSE, FRANK	Ross & Smith, PC	Address on File						
Waterview Advisors		14800 Quorum Dr Ste 450			Dallas	TX	75254-7531	
Watson Wyatt & Co		PO Box 277665			Atlanta	GA	30384	
WATSON, ERIN		Address on File						
Watts, Andrew		Address on File						
WATTS, KEITH R		Address on File						
Wayne Bell		Address on File						
WC 4641 Production, LLC	C/o Great Value Storage	4641 Production Drive			Dallas	TX	75235	
WCDABG	Attn Sharon Popham, Reservations Chair	3 Carmarthen Court			Dallas	TX	75225	
Wealthforge Securities, LLC		6800 Paragon Place	Ste 200		Richmond	VA	23230	
Wealthmaster Group, LLC		18881 Von Karman Ave	Suite 720		Irvine	CA	92612	
Weatherly, Brian		Address on File						
Weaver and Tidwell, LLP		2821 West 7th Street	Suite 700		Fort Worth	TX	76107	
Webb, Justin		Address on File						
WebsiteBackup Company		2375 E. Camelback Rd	Suite 600		Phoenix	AZ	85016	
WEBSTER, GREGORY W		Address on File						
WEIJUN ZANG		Address on File						
Weinstein, Clower & Associates		PO Box 795001			Dallas	TX	75379	
Weich Consulting Ltd		1716 Briarcrest Drive #700			Bryan	TX	77802-2760	
Wells Fargo Advisors FBO Bezilla	Attn Alan Kinney	200 Stephenson Ave, Suite 301			Savannah	GA	31405	
Wells Fargo Advisors, LLC	Attn Andrew Black	280 Park Avenue, FL 29W			New York	NY	10017	
Wells Fargo Advisors, LLC	Attn April Johnson	10900 Wilshire Blvd, 11th Floor			Los Angeles	CA	90024	

004223



Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Wells Fargo Advisors, LLC	Attn Dan Racicot WF - Finet	4275 Executive Square, Ste 910			Lajolla	CA	92037	
Wells Fargo Advisors, LLC	Attn Denise Bare	9665 Wilshire Blvd, Ste 100			Beverly Hills	CA	90212	
Wells Fargo Advisors, LLC	Attn Greg Shumaker	700 Ackerman Rd, Ste 400			Columbus	OH	43202	
Wells Fargo Advisors, LLC	Attn Kathy Buckley	6060 South American Plaza St East			Tulsa	OK	74135	
Wells Fargo Advisors, LLC	Attn Kevin Dailey	100 East Wisconsin Ave, 12th Floor			Milwaukee	WI	53202	
Wells Fargo Advisors, LLC	Attn Mike McChesney	2500 Legacy Dr, Ste 200			Frisco	TX	75034	
Wells Fargo Advisors, LLC	Attn Nicole Stenquist	450 Post Road East			Westport	CT	06880	
Wells Fargo Advisors, LLC	Attn Operations Manager	20 William Street, Ste 300			Wellesley	MA	02481	
Wells Fargo Advisors, LLC	Attn Operations Manager	331 Newman Springs Rd, Ste 230			Red Bank	NJ	07701	
Wells Fargo Advisors, LLC	Attn Operations Manager	222 East Main St, Ste 106			Smithtown	NY	11787	
Wells Fargo Advisors, LLC	Attn Operations Manager	13621 University Ave			Clive	IA	50325	
Wells Fargo Advisors, LLC	Attn Operations Manager	909 Fannin St, Suite 1200			Houston	TX	77010	
Wells Fargo Advisors, LLC	Attn Operations Manager	1200 17th St, Ste 2000			Denver	CO	80202	
Wells Fargo Advisors, LLC	Attn Operations Mgr Garner Mabry	6400 South Fiddlers Green Cir, Ste 1840			Greenwood Village	CO	80111	
Wells Fargo Advisors, LLC	Attn Paula Curry, Control Specialist	2 International Place, 20th Fl			Boston	MA	02110	
Wells Fargo Advisors, LLC	Attn Rita Borchers	7400 West 130th St, Ste 200			Overland Park	KS	66213	
Wells Fargo Advisors, LLC	Attn Tracy Lusk	8115 Preston Rd, Suite 300			Dallas	TX	75225	
Wells Fargo Advisors, LLC	Attn Web Wang	5820 Canoga Ave, #100			Woodland Hills	CA	91367	
Wells Fargo Advisors, LLC	c/o David Eifenbein	1211 Avenue of the Americas, 27th Flr			New York	NY	10036	
Wells Fargo Advisors, LLC	c/o Hefter Leshem Margolis	500 Lake Cook Rd, Ste 100			Deerfield	IL	60015	
Wells Fargo Advisors, LLC	c/o Shannon Walker	695 E. Arlington Blvd., Ste 201			Greenville	NC	27858	
Wells Fargo Advisors, LLC		180 Glastonbury Blvd		Suite 301	Glastonbury	CT	06033	
Wells Fargo Advisors, LLC		1 North Jefferson Ave.			Saint Louis	MO	63103	
Wells Fargo Advisors, Westwood		3501 W Rosemont Ave			Chicago	IL	60659-2207	
WELLS FARGO BANK		10900 Wilshire Blvd		11th Floor	Los Angeles	CA	90024	
Wemple, Stefanie		WF 8113		PO BOX 1450	Minneapolis	MN	55485-8113	
WEN, JING		Address on File						
WENDELL, MORTON		Address on File						
Wendy Harper		Address on File						
WENTWORTH, KEVIN J.		Address on File						
Wesley Gollie		Address on File						
West Court Reporting Services		West Payment Center		P.O. Box 6292	Carol Stream	IL	60197-6292	
West Payment Center		PO Box 6292			Carol Stream	IL	60197-6292	
West Publishing Corporation		P.O. Box 12421			Newark	NJ	07101	
West Virginia State Auditor Office	Securities Division	1900 Kanawha Blvd. E		State Capital Building 1, Room W-100	Charleston	WV	25305-0230	Cayman Islands
Westchester CLO, Ltd.	The Directors	PO Box 1093 GT, Queensgate House		South Church Street	George Town		KY 1-1108	

004224



Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Westchester CLO, Ltd.		P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town			Cayman Islands
Westchester CLO, Ltd.			COO Services Group Ref Westchester CLO, Ltd.		Boston	MA	02116	
Investors Bank & Trust Company	Investors Bank & Trust Company	200 Claredon Street						
Western International Securities, Inc.		70 S. Lake Ave 49 Chetwynd Road	Ste 700		Pasadena Somerville	CA MA	91101 02144	
WESTMINSTER CITY COUNCIL		PO BOX 397			London		WA55 1GG	United Kingdom
WestPark Capital, Inc.		1900 Avenue of the Stars	Suite 310		Los Angeles	CA	90067	
Westwood Professional Services, Inc.		7699 Anagram Drive			Eden Prairie	MN	55334	
WHARF, PAUL		Address on File						
WHARF, PAUL C.		Address on File						
Whatley, David		Address on File						
WHERRY, SHANNON M.		Address on File						
Whetstone, Laurie		Address on File						
Whitaker, Chalk, Swindler, & Sawyer		Address on File						
White & Case LLP		301 Commerce St. Suite 3500			Ft. Worth	TX	76102	
White & Williams LLP		1155 Avenue of the Americas			New York	NY	10036-2787	
White, Jeremy		1800 One Liberty Place			Philadelphia	PA	19103-7395	
White, Kelly		Address on File						
WhiteGlove House Call Health, Inc.		Address on File						
WhiteGlove House Call Health, Inc.		5300 Bee Cave Rd, Bldg One	Ste 100		Austin	TX	78746	
Whitehall-Parker Securities, Inc.		PO Box 845720			Dallas	TX	75284-5720	
Whitney Smith Co		477 Pacific Ave, 2nd Floor			San Francisco	CA	94133	
WhitneySmith Company		301 Commerce St	Suite 1950		Fort Worth	TX	76102	
WICK PHILLIPS LLP		301 Commerce Street, Suite 1950			Fort Worth	TX	76102	
Wick Phillips Gould & Martin, LLP	Jason M. Rudd. Lauren K. Drawhorn	500 North Akward Street	Suite 2100		Dallas	TX	75201	
Wicks Business Information		3131 McKinney Avenue, Suite 500			Dallas	TX	75204	
Wild Rose Floral Design Studio		1375 Kings Highway East Ste 450			Fairfield	CT	06824	
Wild Rose Floral Design Studio		PO Box 541			Rockwall	TX	75087	
Wilentz Goldman & Spitzer		720 E Lamar St			Royse City	TX	75189	
Wiley, Grant		90 Woodbridge Center Dr.			Woodbridge	NJ	07095	
Wilkinson Center	Attn Andrea Jones	Address on File						
Wilkinson Center	Attn Cathy Rosson	PO Box 720248			Dallas	TX	75372	
Wilks, Lukoff & Bracegirdle, LLC		PO Box 720248			Dallas	TX	75372	
Will Pryor Mediation & Arbitration	Thad J. Bracegirdle	4250 Lancaster Pike, Suite 200			Wilmington	DE	19805	
		5420 LBJ Frwy Ste 626			Dallas	TX	75240	

004225

Exhibit C  
 Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
WILLIAM CORNELIUS		Address on File						
William Gosserand	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
William Ikard		Address on File						
William Keeney		Address on File						
William M. Cobb & Associates, Inc.		12770 Coit Rd, Ste 907			Dallas	TX	75251	
William Mabry	Michael P. Hutchens, Esq.	Whitaker Chalk Swindle & Schwartz PLLC	301 Commerce Street, Suite 3500		Fort Worth	TX	76102-4135	
William Oliveira		Address on File						
William R. Welch		Address on File						
William Todd Westerburg		Address on File						
Williams, Andrew		Address on File						
WILLIAMS, MEREDITH		Address on File						
Willis of New York, Inc.		PO Box 4557			New York	NY	10249-4557	
Willis of Texas, Inc.		Dallas/Ft. Worth Division	PO Box 730310		Dallas	TX	75373-0310	
Willis of Texas, Inc.		PO Box 731739			Dallas	TX	75373-1739	
Willkie Farr & Gallagher LLP		787 Seventh AVE			New York	NY	10019-6099	
WILLMORE, DAVID		Address on File						
Willoughby McCabe Agents Co		3409 Rosedale Avenue			Dallas	TX	75205	
WILLOUGHBY-MCCABE, PATRICK		Address on File						
Wilmer Cutler Pickering Hale and Dorr LLP	Timothy F. Silva	60 State Street			Boston	MA	02109	
Wilmer Cutler Pickering Hale Dorr LLP		1875 Pennsylvania Avenue NW			Washington	DC	20006	
Wilmer Cutler Pickering Hale Dorr LLP		PO Box 7247-8760			Philadelphia	PA	19170-8760	
Wilmington Trust Company		Rodney Square North	1100 North Market St		Wilmington	DE	19890-0001	
Wilshire Associates Incorporated	Attn Accounts Receivable	1299 Ocean Avenue, Suite 700			Santa Monica	CA	90401-1085	
WILSON SMITH		Address on File						
WILSON, ANDREW		Address on File						
WILSON, ANTHONY		Address on File						
Wilson, Owen		Address on File						
WILSON, SCOTT		Address on File						
Wilson, Sonsini, Goodrich, & Rosati		PO Box 742866			Los Angeles	CA	90074-2866	
Wilson, Sonsini, Goodrich, & Rosati		File # 73672	PO Box 60000		San Francisco	CA	94160-3672	
WILSON, STEVE L.		Address on File						
Wilton, William		Address on File						
WINGS Ventures LLC		172304 Preston Rd	Ste 800		Dallas	TX	75252	
Winn Media		Address on File						
WINSTEAD P.C.		5400 RENAISSANCE TOWER	1201 ELM ST		Dallas	TX	75270	
WINSTEAD P.C.		2728 N Harwood Street	Suite 500		Dallas	TX	75201-1743	
Winston & Strawn LLP		2121 North Pearl Street	Suite 900		Dallas	TX	75201	
Wired		PO Box 37704			Boone	IA	50037-0704	

004226

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Wisconsin Office of Comm of Securities	Division of Securities	201 West Washington Avenue, Suite 300			Madison	WI	53703	
WISE, CHRIS		Address on File						
Wiseman & Hoffman		460 Park Ave South, 4th Flr			New York	NY	10016	
WISER, JASON		Address on File						
Withers Bergman LLP		157 Church Street, 12th Floor	PO Box 426		New Haven	CT	06502	
Withers Bergman LLP		PO Box 1685			New Haven	CT	06507	
WMI Fund Associates Co., Ltd.		Kakimi Kojimachi Annex Bldg 6F	3-2 Kojimachi, Chiyoda-ku		Tokyo	TX	102-0083	JAPAN
Wolters Kluwer		1999 Bryan Street	Ste 900		Dallas	TX	75201-0000	
Wolters Kluwer Legal & Regulatory US		PO Box 71882			Chicago	IL	60694-1882	
Wombat Security Technologies		3030 Penn Avenue	Suite 200		Pittsburgh	PA	15201	
Womens Auxiliary Childrens-Six Flags	Attn Jenny Garberding	7315 Centenary Ave			Dallas	TX	75225	
Womens Auxiliary Childrens-Six Flags	Attn Robin Wilson, Treasurer	7506 Greenbrier			Dallas	TX	75225	
Wonderlic		1795 N. Butterfield Rd			Libertyville	IL	60048-1212	
WOOD, HANNAH		Address on File						
Woodall Rodgers Park Foundation	Attn Erika White	1909 Woodall Rodgers Fwy	Suite 403		Dallas	TX	75201	
Woodbury Financial Services, Inc.	ATTN Reimb Processing	PO Box 64284			Saint Paul	MN	55164	
Woodruff-Sawyer & Co.		PO Box 45057			San Francisco	CA	94145-9950	
WOOTTON, JENNIFER		Address on File						
World Affairs Council		325 N. St. Paul St.	Suite 4200		Dallas	TX	75201	
World Data Products		M & I 196 PO Box 1414			Minneapolis	MN	55480-1414	
Worldwide Financial Solutions		16140 Northcross Drive			Huntersville	NC	28078	
Worldwide Insurance Services WP Engine	ATTN INDIVIDUAL UNDERWRITING DEPT	100 MATSONFORD RD	STE 100		Radnor	PA	19087	
		504 Lavaca Street	Suite 1000		Austin	TX	78701-0000	
WQ International Ltd.		Victoria Place, 31 Victoria Street			Hamilton		0HM10	BERMUDA
Wright Wealth Management		3181 Clearwater Dr.	Ste A		Prescott	AZ	86305	
Wrights Media		2407 Timberloch Place	Suite B		The Woodlands	TX	77380-1039	
Wurz, Brandon		Address on File						
Wyoming Secretary of State		Securities Division, State Capitol Bldg	2020 Carey Avenue, Suite 700		Cheyenne	WY	82001	
Xact Data Discovery -DATX		5800 Foxridge Dr	Suite 406		Mission	KS	66202	
Xerox		45 Glover Ave			Norwalk	CT	06856-0000	
Xerox Corporation		2553 Collections Center Dr.			Chicago	IL	60693	
Xerox Corporation		PO Box 650361			Dallas	TX	75265	
Xerox Corporation		PO Box 827598			Philadelphia	PA	19182-7598	
Xerox Corporation		PO Box 802555			Chicago	IL	60680-2555	
Xerox Corporation		PO Box 7405			Pasadena	CA	91109-7405	
Xignite, Inc		1825 South Grant St	Suite 100		San Mateo	CA	94404	
Xignite, Inc		Dept 3344	PO Box 123344		Dallas	TX	75312-3344	

004227

Exhibit C

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
XIOTECH CORPORATION		DEPT CH 17326			Patentine	IL	60055-7326	
XO Communications		PO Box 530471			Atlanta	GA	30353-0471	
XPISTI LLC		2807 Allen Street # 382			Dallas	TX	75204	
Xtract Research		330 Hudson Street		4th Floor	New York	NY	10013	
YAGNISIS, AIRLIA		Address on File						
YANG, JOHN		Address on File						
YAROSLAV JERRY LVOVICH		Address on File						
Yehia, Josef		Address on File						
Yelibelly, Inc.		2364 Northwest Pkwy			Southlake	TX	76092	
YINGHUI HE		Address on File						
YMCA of Metropolitan Dallas		5101 Tennyson Pkwy.			Plano	TX	75024	
YOON, CHRISTOPHER K.		Address on File						
York & Chapel, Corp.		2 Trap Falls Road		Suite 410	Shelton	CT	06484	
YOUNG CONAWAY								
STARGATT & TAYLOR, LLP	Bruce L. Silverstein	Elena C. Norman	1000 North King Street		Wilmington	DE	19801	
Young Life	C/O Lee Anne Bingham	3304 Beckham Ct			Plano	TX	75075	
YOUNG LIFE ALBUQUERQUE								
YOUNG LIFE, NORTH CENTRAL TEXAS		PO BOX 91894			Albuquerque	NM	87199-1894	
Young Womens Preparatory Network		11300 N CENTRAL EXPWY		STE 600	Dallas	TX	75243	
Young, Priya		1722 Routh Street		Suite 720	Dallas	TX	75201	
YTAC-Dallas		Address on File						
Zacks Investment Research, Inc.		2807 Allen St., Box 347			Dallas	TX	75204	
ZANG, WEIJUN		111 North Canal Street		Suite 1101	Chicago	IL	60606	
ZANG, WEIJUN		Address on File						
ZANG, WEIJUN		Address on File						
ZARIN, GREGORY		Address on File						
Zayo Group		1821 30th Street		Unit A	Boulder	CO	80301-0000	
Zayo Group, LLC		PO Box 952136			Dallas	TX	75395-2136	
Zendesk		1019 Market St			San Francisco	CA	94103-0000	
Zenprise Inc		6120 Stevenson Blvd			Fremont	CA	94538	
ZEPHYR ASSOCIATES		4 Westchester Park Dr		2nd Floor	White Plains	NY	10604	
ZEPHYR ASSOCIATES		Dept 2215		PO Box 2121	Memphis	TN	38159	
ZEPHYR ASSOCIATES		PO Box 12368		312 Dorla Court	Zephyr Cove	NV	89448	
ZEPHYR ASSOCIATES		PO Box 416014		Suite 204	Boston	MA	02241-6014	
ZEPHYR ASSOCIATES		P.O. Box 2153		Dept. 1899	Birmingham	AL	35287-1899	
ZIEGENHAGEN, RANDALL		Address on File						
ZIEGLER, JASON		Address on File						
ZIMMERMANN, JOHN		Address on File						
ZOHO Corporation		File No #31469		PO Box 60000	San Francisco	CA	94160	
ZOHO Corporation		PO Box 742760			Los Angeles	CA	90074-2760	
ZOHO Corporation		4900 Hopyard Road		Suite 310	Pleasanton	CA	94588-7100	
Zosel, August		Address on File						
Zscaler		110 Rose Orchard Way			San Jose	CA	95134-0000	
Zuckerman Spaeder LLP		1800 M Street NW			Washington	DC	20036-5802	
Zuluaga, Juan Camilo		Address on File						
Zurich North America		ATTN HOWARD BULGATZ			Chicago	IL	60674	

004228

**Exhibit C**

Creditor Matrix  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Zurich North America		8712 Innovation Way			Chicago	IL	60682-0087	
Zyrka		1408 N. Riverfront Blvd. #106			Dallas	TX	75207	

004229

# EXHIBIT D

## Exhibit D

Multiple Party Address Packages  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Advisors Equity Group, LLC		300 Crescent Court, Ste. 700		Dallas	TX	75201
Canis Major Trust		300 Crescent Ct	Ste 700	Dallas	TX	75201
DONDERO, JAMES		300 Crescent Ct, Suite 700		DALLAS	TX	75201
Eagle Equity Advisors, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
ELLINGTON, SCOTT		300 Crescent Ct, Suite 700		DALLAS	TX	75201
Fanshaw Bay, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Four Rivers Co-Invest, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
Gunwale, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
HCRE Partner, LLC		300 Crescent Court Ste 700		Dallas	TX	75201
	Attn Highland Capital Management, L.P. as sole member					
HFP GP, LLC		300 Crescent Court Ste 700		Dallas	TX	75201
Highland HCF Advisor, Ltd.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Acquisition Corporation		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Funds Distributor, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Insurance Solutions, L.P.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Management (Singapore)		300 Crescent Ct.	Suite 700	Dallas	TX	75201
Highland Capital Management Fund Advisors, L.P.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Management Fund Advisors, L.P.	Attn General Counsel	300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Capital Management Services, Inc.		300 Crescent Court Suite 700		Dallas	TX	75201
HIGHLAND CAPITAL MANAGEMENT, LP		300 Crescent Court, Suite 700		Dallas	TX	75201
Highland Capital Mgmt Fund Advisors		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland CLO Funding, Ltd.		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland CLO Management, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Energy MLP Fund		300 Crescent Court, Ste 700		Dallas	TX	75201
Highland First Foundation Income Fund		300 Crescent Court	Suite 700	Dallas	TX	75201

## Exhibit D

Multiple Party Address Packages  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Highland Fixed Income Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Floating Rate Fund		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Funds I		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Funds II		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Global Allocation Fund		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Healthcare Opportunities Fund						
Highland Income Fund HFRO		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Latin America Consulting, LTD		300 Crescent Court, Ste. 700		Dallas	TX	75201
		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Long/Short Equity Fund						
Highland Merger Arbitrage Fund		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland Opportunistic Credit Fund		300 Crescent Court	Suite 700	Dallas	TX	75201
Highland Prometheus						
Highland RCP Offshore, LP		300 Crescent Court, Ste. 700		Dallas	TX	75201
Highland RCP, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
		300 Crescent Ct.	Suite 700	Dallas	TX	75201
		300 Crescent Ct.	Suite 700	Dallas	TX	75201
Highland Small-Cap Equity Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Socially Responsible Equity Fund						
Highland Tax-Exempt Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
Highland Tax-Exempt Fund	Highland Energy MLP Fund	300 Crescent Court Suite 700		Dallas	TX	75201
Highland Total Return Fund	Highland Energy MLP Fund	300 Crescent Court	Suite 700	Dallas	TX	75201
		300 Crescent Court Ste 700		Dallas	TX	75201
Highland/iBoxx Senior Loan ETF						
Honis, Trevor		300 Crescent Court	Suite 700	Dallas	TX	75201
James D. Dondero		300 Crescent Ct.	Ste. 700	Dallas	TX	75201
James D. Dondero		300 Crescent Court Ste 700		Dallas	TX	75201
James Dondero, as the successor-in-interest to the Canis Major Trust		300 Crescent Court Ste 700		Dallas	TX	75201
LEE BLACKWELL PARKER, III						
Mark K. Okada	Attn Melissa Schroth	300 Crescent Court Ste 700		Dallas	TX	75201
Mark K. Okada		300 Crescent Court	Suite 700	Dallas	TX	75201
NexBank Advisors, L.P		300 Crescent Ct, Suite 700		Dallas	TX	75201



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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 21**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>	<p>3</p> <p>4</p>	<p>5/25/22 (10/5/21)</p> <p>5/25/22 (10/5/21)</p>	<p>9</p> <p>10</p>	<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>(15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>(1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>	<p>5</p> <p>6</p> <p>7</p>	<p>5/25/22 (10/5/21)</p> <p>5/25/22 (10/5/21)</p> <p>5/25/22 (10/5/21)</p>	<p>11</p> <p>12</p> <p>13</p>	<p>(8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>(10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

Vol. 8			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001349	8 5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001352	9 5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001359	10 5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
001361	11 5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
001369	12 5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
001381	13 5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Thru Vol. 10

				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				



001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti



## Exhibit D

Multiple Party Address Packages  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
NexBank Capital, Inc		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank Securities, Inc		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank SSB		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexBank Title, Inc.		300 Crescent Ct, Suite 700		Dallas	TX	75201
NexPoint Advisors, L.P.		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Cap Escrow		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Capital, Inc.		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Discount Strategies Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Energy and Material Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Event-Driven Fund	Highland Energy MLP Fund	300 Crescent Court Ste 700		Dallas	TX	75201
NexPoint Healthcare Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Healthcare Opportunities Fund		300 Crescent Court	Suite 700	Dallas	TX	75201
NexPoint Latin America Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
NexPoint Real Estate Strategies Fund	Highland Energy MLP Fund	300 Crescent Court Ste 700		Dallas	TX	75201
NexPoint Strategic Opportunities Fund	Highland Energy MLP Fund	300 Crescent Court, Ste 700		Dallas	TX	75201
OKADA, MARK		300 Crescent Ct. Suite 700		DALLAS	TX	75201
PARKER, LEE		300 Crescent Ct. Suite 700		DALLAS	TX	75201
Penant Management GP, LLC	c/o Highland Capital Management, L.P.	300 Crescent Court Ste 700		Dallas	TX	75201
PetroCap Operating, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
PetroCap Partners II, LP		300 Crescent Court	Suite 700	Dallas	TX	75201
PRILICK, GUSTAVO		300 Crescent Court	STE 700	Dallas	TX	75201
Ragen, Spencer		300 Crescent Ct.	Ste. 700	Dallas	TX	75201
SE Multifamily Holdings, LLC		300 Crescent Court	Suite 700	Dallas	TX	75201
Strand Advisors Inc.		300 Crescent Court		Dallas	TX	75201
Strand Advisors, Inc.	Attn Isaac Leventon	300 Crescent Court, Suite 700		Dallas	TX	75201
Strand Advisors, Inc.		300 Crescent Court		Dallas	TX	75201
The Dugaboy Investment Trust		300 Crescent Court Suite 700		Dallas	TX	75201

**Exhibit D**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
The Dugaboy Investment Trust, as successor-in-interest to the Canis Major Trust		300 Crescent Court Ste 700		Dallas	TX	75201
The Get Good Non-Exempt Trust No. 1		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Get Good Non-Exempt Trust No. 1, Individually and as Successor-In-Interest of the Canis Minor Trust		300 Crescent Court, Ste. 700		Dallas	TX	75201
The Get Good Non-Exempt Trust No. 2		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Get Good Non-Exempt Trust No. 2, Individually and as Successor-In-Interest of the Canis Minor Trust		300 Crescent Court, Ste. 700		Dallas	TX	75201
The Get Good Trust		300 Crescent Ct	Ste 700	Dallas	TX	75201
The Mark and Pamela Okada Family Exempt Trust #1	Attn Melissa Schroth	300 Crescent Court Suite 700		Dallas	TX	75201
The Mark and Pamela Okada Family Exempt Trust #2	Attn Melissa Schroth	300 Crescent Court Suite 700		Dallas	TX	75201
The Mark and Pamela Okada Family Trust	Exempt Trust #1	300 Crescent Court	Suite 700	Dallas	TX	75201
The Mark and Pamela Okada Family Trust	Exempt Trust #2	300 Crescent Court	Suite 700	Dallas	TX	75201
The Mark and Pamela Okada Family Trust - Exempt Descendants Trust #1		300 Crescent Court		Dallas	TX	75201
The Mark and Pamela Okada Family Trust - Exempt Descendants Trust #2		300 Crescent Court	Suite 700	Dallas	TX	75201

004234

# EXHIBIT E

**Exhibit E**

Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	Address1	Address2	City	State	Zip
AMY JENKINS	13455 NOEL RD	STE 800	Dallas	TX	75240
Amy Mitts	13455 Noel Rd	Suite 800	Dallas	TX	75240
BENTLEY CALLAN	13455 NOEL RD	STE 800	Dallas	TX	75240
BILL CORNELIUS	13455 NOEL RD	STE 800	Dallas	TX	75240
BOYD GOSSERAND	13455 NOEL RD	STE 800	Dallas	TX	75240
CLINT GILCHRIST	13455 NOEL RD	STE 800	Dallas	TX	75240
COURTNEY ORENT	13455 NOEL RD	STE 800	Dallas	TX	75240
Cummings Bay Capital Management, LP	13455 Noel Rd, Ste 800		Dallas	TX	75240
DAVID CRULL	13455 NOEL RD	STE 800	Dallas	TX	75240
DAVID SMITH	13455 Noel Rd	Ste 800	Dallas	TX	75240
EMERALD ORCHARD	13455 NOEL RD	STE 800	Dallas	TX	75240
GUSTAVO PRILICK	13455 Noel Rd, Ste 800		Dalals	TX	75240
HCM ACQUISITION COMPANY	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND ALL CAP EQUITY VALUE FUND	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CAPITAL REAL ESTATE ADVISORS	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CDO HOLDING COMPANY	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND CDO OPPORTUNITY FUND	13455 NOEL RD	STE 800	Dallas	TX	75240
HIGHLAND CREDIT OPPORTUNITIES FUND	13455 NOEL RD		Dallas	TX	75240
HIGHLAND CREDIT STRATEGIES FUND RIC	13455 NOEL RD STE 800		Dallas	TX	75240
HIGHLAND CRUSADER FUND	13455 NOEL RD	STE 800	Dallas	TX	75240
Highland Employee Retention Assets LLC	13455 Noel Rd	Ste 800	Dallas	TX	75240
HIGHLAND FINANCIAL CORP	13455 NOEL RD		Dallas	TX	75240
HIGHLAND FINANCIAL REAL ESTATE CORP	13455 NOEL RD		Dallas	TX	75240
HIGHLAND FINANCIAL TRUST	13455 NOEL RD		Dallas	TX	75240
Highland Funds Asset Management	13455 Noel Rd	Ste 800	Dallas	TX	75240
HIGHLAND LOAN FUNDING V	13455 NOEL RD	STE 800	Dallas	TX	75240

004236

Case 19-34054-sgj11 Doc 2747 Filed 08/19/21 Entered 08/19/21 16:03:15 Page 175 of 175  
**Exhibit E**  
 Multiple Party Address Packages  
 Served via First Class Mail

CreditorName	Address1	Address2	City	State	Zip
HIGHLAND SELECT EQUITY FUND	13455 NOEL RD		Dallas	TX	75240
Highland Special Situations Fund	13455 Noel Rd		Dallas	TX	75204
JASON GREEN	13455 NOEL RD	STE 800	Dallas	TX	75240
JENNIFER JURRIUS	13455 NOEL RD	STE 800	Dallas	TX	75240
KEN KAPADIA	13455 NOEL RD	STE 800	Dallas	TX	75240
LARRY LINDSEY	13455 NOEL RD	STE 800	Dallas	TX	75240
LAURA KNIPP	13455 NOEL RD	STE 800	Dallas	TX	75240
Lauren Okada	13455 Noel Rd	suite 800	Dallas	TX	75240
LESLIE HARRIS	13455 NOEL RD	STE 800	Dallas	TX	75240
LINDY HEATHERINGTON	13455 NOELRD	STE 800	Dallas	TX	75240
Lisa Miller	13455 Noel Rd		Dallas	TX	75240
Luke Okada	13455 Noel St	Suite 800	Dallas	TX	75240
Michael Hasenauer	13455 Noel Rd	Suite 800	Dallas	TX	75240
Michael McLochlin	13455 Noel Rd. Ste 800		Dallas	TX	75240
MICKEY MINCES	13455 NOEL RD	STE 800	Dallas	TX	75240
MULTI-STRATEGY SUB FUND	13455 NOEL RD		Dallas	TX	75240
NATALIE HARALSON	13455 NOEL RD	STE 800	Dallas	TX	75240
NGUYEN, TIFFANY	13455 NOEL RD #800		DALLAS	TX	75240
REAL ESTATE FUND 2002-A	13455 NOEL RD	STE 800	Dallas	TX	75240
SCOTT BASHRUM	13455 NOEL RD	STE 800	Dallas	TX	75240
Scott Groff	13455 Noel Rd Suite 800		Dallas	TX	75240
SCOTT WILSON	13455 NOEL RD		Dallas	TX	75240
SHELBY NOBLE	13455 NOEL RD		Dallas	TX	75240
TAMRA APPELEGATE	13455 NOEL RD		Dallas	TX	75240
WILLIAM SMITH	13455 NOEL RD	STE 800	Dallas	TX	75240

004237

**EXHIBIT 9**

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

THE CHARITABLE DAF FUND, LP.,

*Plaintiff,*

v.

HIGHLAND CAPITAL MANAGEMENT,  
L.P.,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Cause No. 3:21-cv-01710-N

**PLAINTIFF’S MOTION TO STAY ALL PROCEEDINGS**

I.

**NECESSITY OF MOTION**

Plaintiff submits this Motion as a result of the effective date, August 11, 2021, of Defendant Highland Capital Management L.P.’s Chapter 11 plan of reorganization (the “Plan”). The Plan purports to exculpate Defendant from liability and enjoin Plaintiff from pursuing actions against them. It also contains an assertion of exclusive jurisdiction by the bankruptcy court.

An appeal of the Plan, which the Fifth Circuit certified for direct appeal under 28 U.S.C. § 158(d), is now before the Court of Appeals and captioned *In re Highland Capital Management, L.P.*, No. 21-10449 (the “Fifth Circuit Appeal”). Each of the issues noted above is raised in the appeal. If successful, the appeal will overturn the exculpation, injunction, and assertion of exclusive jurisdiction in the Plan, allowing Plaintiff to proceed with this action in this Court.

In the meantime, however, Plaintiff is enjoined from participating further in this pending case and therefore asks that it be stayed pending the outcome of the Fifth Circuit Appeal.

## II.

### BACKGROUND

On August 9, 2021, Plaintiff received notice that the Plan was now effective. *In re Highland Capital Management, L.P.*, No. 19-34054, Doc. 2700. Although one condition precedent to the effectiveness of the Plan is finality of the confirmation order, which can only happen once all appeals are resolved, that and all other conditions are waivable by the Debtor. *Id.*, Doc. 1943 at pdf 142-43 (Art. VIII at pp. 45-46). The Debtor's notice, which waived finality and any other unsatisfied conditions, makes the Plan's exculpation provisions and injunctions immediately effective.

As to exculpation, the Plan states,

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.



*Id.* at pdf 144-45 (Art. IX.C at pp. 47-48 (emphasis added)). “Exculpated Parties” is a defined term in the Plan that includes the Defendant in this action. *Id.* at pdf 106 (Art. I at p. 9).

As to the injunction, the Plan states,

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation SubTrust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; provided, however, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the

date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

*Id.* at pdf 147-48 (Art. IX.F at pp. 50-51 (emphasis added)). “Enjoined Parties” is a defined term in the Plan that includes Plaintiff. *Id.* at pdf 105 (Art. I; ¶ 56 at p.8).

Because these provisions are currently in force and prohibits Plaintiff from continuing this action, and because the Fifth Circuit Appeal includes direct challenges to the validity of these very provisions, Plaintiff respectfully submits that the most efficient course of action is for this Court to stay this action until the Fifth Circuit Appeal is resolved. Plaintiff expects that any resolution of the Fifth Circuit Appeal will necessarily determine that the Plan’s exculpation and injunction provisions absolves Defendant of any liability or, alternatively, that this action can proceed.

### III.

#### ARGUMENT

This Court should exercise its inherent powers to stay all proceedings in the case until the Fifth Circuit Appeal is decided.

The Fifth Circuit has long held that “[t]he district court possesses the inherent power to control its docket.” *Marine Chance Shipping v. Sebastian*, 143 F.3d 216, 218 (5th Cir. 1998). The exercise of that power is a discretionary one. *E.g.*, *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) (“A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined.”)

Here, Plaintiff asks this Court to exercise discretion in favor of efficiency and to stay all proceedings. Plaintiff respectfully submits that, until the appeal is resolved, many complex legal questions exist that may affect the viability of this action or the forum in which it should be

litigated. Those questions—including the validity of the exculpation and injunction provisions quoted above—will likely be resolved by the Fifth Circuit Appeal. And therefore, Plaintiff submits, judicial economy may be gained by staying all proceedings in this action pending that appeal.

#### IV.

#### CONCLUSION

Plaintiff appears to be wholly prohibited from participating further in this action by the now-effective terms of the Plan that purport to enjoin Plaintiff and exculpates Defendant. In light of its inability to conduct the litigation and the pending Fifth Circuit Appeal, which that court has certified for direct appeal, Plaintiff respectfully submits that the most appropriate course for this Court is to stay all proceedings until the appeal is decided. Plaintiff therefore respectfully requests a stay and all further relief to which it may be entitled.

Dated: August 26, 2021

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Jonathan Bridges*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: [mas@sbaitilaw.com](mailto:mas@sbaitilaw.com)

[jeb@sbaitilaw.com](mailto:jeb@sbaitilaw.com)

**Counsel for Plaintiffs**



**EXHIBIT 10**

DOCKET TEXT:7 ELECTRONIC ORDER granting 6 Motion to Stay. (Ordered by Judge David C Godbey on 9/7/2021) (chmb) [ORIGINALLY FILED IN 21-CV-1710 AS #7 ON 09/7/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)

**EXHIBIT 11**





**HIGHLAND CAPITAL MANAGEMENT, L.P.’S MOTION FOR  
RECONSIDERATION OF STAY ORDER**

Highland Capital Management, L.P., a defendant in the above-captioned case (the “Debtor” or “Highland”), by and through its undersigned counsel, files this motion (the “Motion”) seeking reconsideration of the Stay Order (as defined below) that was recently entered by the Court without notice to, or opposition by, Highland. In support of its Motion, Highland states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), and Rule 59(a) of the Federal Rules of Civil Procedure.

**RELIEF REQUESTED**

4. Through this Motion, Highland requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Motion for Reconsideration of Stay Order* (the “Memorandum of Law”) filed contemporaneously with this Motion, Highland requests that the Court: (a) re-open the Stay Order, amend the findings and conclusions, and issue a new order denying the Stay Motion, and (b) grant such other and further relief as the Court deems just and proper.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of the Motion Highland is filing: (a) its Memorandum of Law, and (b) the *Appendix in*

*Support of Motion for Reconsideration of Stay Order* (the “Appendix”), together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Appendix and the arguments contained in the Memorandum of Law, Highland is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. Highland submits that no other or further notice need be provided.

WHEREFORE, Highland respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Highland such other and further relief as the Court may deem proper.

*[Remainder of Page Intentionally Blank]*

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

---

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Motion was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*

\_\_\_\_\_  
Zachery Z. Annable

**EXHIBIT A**



the Court finds and determines that Plaintiff has not met its burden of proving that a stay of the Action is warranted; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. Pursuant to Rule 59, the Court re-opens and vacates the Stay Order and enters this new Order **DENYING** the Stay Motion.

**It is so ordered** this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

The Honorable David C. Godbey  
United States District Judge

**EXHIBIT 12**





Highland Capital Management, L.P. (“Highland”), the putative defendant in the above-captioned case (the “Action”), by and through its undersigned counsel, files this motion (the “Motion”) to dismiss the Action. In support of its Motion, Highland states as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Motion pursuant to section 1334(a) and (b) of title 11 of the United States Code (the “Bankruptcy Code”).
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409.
3. The predicates for the relief requested in the Motion are 28 U.S.C. § 157(a), Rule 9019 of the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), and Rules 12(b)(1), (3), (4), and (6) of the Federal Rules of Civil Procedure, made applicable in this Action pursuant to Bankruptcy Rule 7012.

### **RELIEF REQUESTED**

4. Through this Motion, Highland requests that this Court issue the proposed form of order attached as **Exhibit A** (the “Proposed Order”) pursuant to 28 U.S.C. § 157(a).
5. For the reasons set forth more fully in *Highland Capital Management, L.P.’s Memorandum of Law in Support of Its Motion to Dismiss* (the “Memorandum of Law”) filed contemporaneously with this Motion, Highland requests that the Court: (a) dismiss the Action with prejudice, and (b) grant such other and further relief as the Court deems just and proper.
6. In accordance with Rule 7.1 of the *Local Civil Rules of the United States District Court for the Northern District of Texas* (the “Local Rules”), contemporaneously herewith and in support of the Motion Highland is filing: (a) its Memorandum of Law, and (b) the *Appendix in Support of Motion to Dismiss* (the “Appendix”), together with the exhibits annexed thereto.

7. Based on the exhibits annexed to the Appendix and the arguments contained in the Memorandum of Law, Highland is entitled to the relief requested herein as set forth in the Proposed Order.

8. Notice of this Motion has been provided to all parties. Highland submits that no other or further notice need be provided.

WHEREFORE, Highland respectfully requests that the Court (i) enter the Proposed Order substantially in the formed annexed hereto as **Exhibit A** granting the relief requested herein, and (ii) grant Highland such other and further relief as the Court may deem proper.

*[Remainder of Page Intentionally Blank]*

Dated: October 5, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Email: jpomerantz@pszjlaw.com  
rfeinstein@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com  
hwinograd@pszjlaw.com

-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

---

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on October 5, 2021, a true and correct copy of the foregoing Motion was served electronically upon all parties registered to receive electronic notice in this case via the Court's CM/ECF system.

*/s/ Zachery Z. Annable*

\_\_\_\_\_  
Zachery Z. Annable

**EXHIBIT A**



valid, would constitute post-petition administrative claims; (e) the Plan provides a specific procedure through which holders of purported administrative claims, such as Plaintiff, can file an application with the Bankruptcy Court for allowance of its administrative expense claims; and (f) based on the foregoing, under the Confirmation Order and Plan, this Court is not the appropriate venue for this Action; and this Court having found that Highland's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED**.
2. The Action is **DISMISSED** with prejudice.

It is so ordered this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

The Honorable David C. Godbey  
United States District Judge



**EXHIBIT 13**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CHARITABLE DAF FUND, L.P.,

Plaintiff,

v.

HIGHLAND CAPITAL  
MANAGEMENT, L.P.,

Defendant.

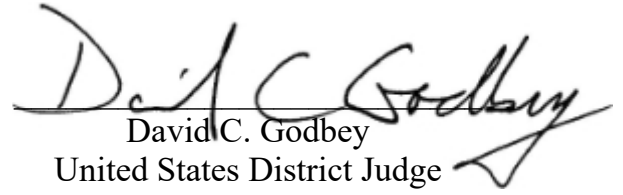
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 3:21-CV-1710-N

**ORDER**

This Order addresses Defendant Highland Capital Management, L.P.’s (“HCM”) motion for reconsideration of this Court’s earlier order staying this case [8]. This case challenges a transaction consummated in the course of a consolidated bankruptcy proceeding and names as the sole defendant the debtor in that bankruptcy. The Court therefore concludes that this case constitutes a matter “related to” a case in the bankruptcy court under the meaning of this District’s Miscellaneous Order No. 33. Accordingly, the Court grants Defendant’s motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 19-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case.

Signed May 19, 2022.

  
David C. Godbey  
United States District Judge

**EXHIBIT 14**

# **Highland Multi Strategy Credit Fund, L.P.**

A Delaware Limited Partnership

**Fourth Amended and Restated  
Limited Partnership Agreement**

November 1, 2014

---

004269

## TABLE OF CONTENTS

	<b>Page</b>
Article I DEFINITIONS .....	1
Article II ORGANIZATION.....	10
2.1 Continuation of Limited Partnership .....	10
2.2 Name of Partnership .....	11
2.3 Principal Office; Registered Office.....	11
2.4 Term of Partnership.....	11
2.5 Object and Powers of Partnership.....	11
2.6 Liability of Partners .....	12
2.7 Actions by Partnership.....	12
2.8 Reliance by Third Parties.....	12
2.9 UCC Status of Limited Partner Interests .....	12
2.10 Series of Interests.....	12
Article III CAPITAL.....	13
3.1 Contributions to Capital.....	13
3.2 Rights of Partners in Capital.....	14
3.3 Capital Accounts .....	14
3.4 Allocations of Net Profit and Net Loss.....	15
3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures .....	15
3.6 Reserves; Adjustments for Certain Future Events .....	16
3.7 Performance Allocation .....	17
3.8 Limited Participation Investments and New Issues .....	17
3.9 Allocation to Avoid Capital Account Deficits .....	18
3.10 Regulatory Allocations.....	18
3.11 Allocations for Income Tax Purposes.....	19
3.12 Individual Partner’s Tax Treatment.....	21
3.13 Distributions.....	21
Article IV MANAGEMENT .....	22
4.1 Duties and Powers of the General Partner .....	22
4.2 Expenses .....	23
4.3 Rights of Limited Partners.....	25
4.4 Other Activities of Partners.....	25
4.5 Exculpation; Indemnification.....	26
4.6 Advisory Committee.....	28
4.7 Alternative Investment Vehicles .....	29
Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS .....	29
5.1 Admission of Limited Partners .....	29
5.2 Admission of Additional General Partners .....	29
5.3 Transfer of Interests of Limited Partners .....	30
5.4 Transfer of Interest of the General Partner .....	30
5.5 Withdrawal of Interests of Partners .....	31

Article VI SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION.....	35
6.1 Soft Wind Down .....	35
6.2 Dissolution of Partnership.....	36
6.3 Liquidation of Assets .....	36
Article VII ACCOUNTING AND VALUATION; BOOKS AND RECORDS .....	37
7.1 Accounting and Reports.....	37
7.2 Valuation of Partnership Assets and Interests .....	38
7.3 Determinations by the General Partner .....	38
7.4 Books and Records .....	39
7.5 Confidentiality .....	39
Article VIII GENERAL PROVISIONS.....	41
8.1 Amendment of Partnership Agreement.....	41
8.2 Special Power-of-Attorney .....	43
8.3 Notices .....	44
8.4 Agreement Binding Upon Successors and Assigns; Delegation .....	44
8.5 Governing Law .....	44
8.6 Not for Benefit of Creditors.....	45
8.7 Dispute Resolution.....	45
8.8 Consents and Voting.....	47
8.9 Merger and Consolidation.....	48
8.10 Miscellaneous .....	48
8.11 BHCA Subject Persons .....	48
8.12 RIC Limited Partners .....	49
8.13 Bad Actor Limited Partners .....	50
8.14 Entire Agreement .....	50

THIS FOURTH AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of Highland Multi Strategy Credit Fund, L.P., dated effective as of November 1, 2014, is by and among Highland Multi Strategy Credit Fund GP, L.P., as General Partner, and certain Persons who were admitted as Limited Partners in accordance with the Prior Agreement and those Persons who are hereafter admitted as additional Limited Partners in accordance with this Agreement. Capitalized terms have the meanings set forth in Article I below.

#### PRELIMINARY STATEMENTS

- (A) The General Partner and certain of the Limited Partners have heretofore formed a limited partnership pursuant to the Act (as defined herein) by filing a Certificate of Limited Partnership with the office of the Secretary of State of the State of Delaware on December 1, 2005, and previously entered into a Limited Partnership Agreement, dated effective as of December 1, 2005, as last amended and restated by the Third Amended and Restated Limited Partnership Agreement dated as of December 31, 2007 (the “*Prior Agreement*”).
- (B) The General Partner filed an amendment to the Certificate of Limited Partnership of the Fund on August 26, 2014, changing the name of the Fund to “Highland Multi Strategy Credit Fund, L.P.”
- (C) The parties hereto desire to continue the Partnership as a limited partnership under the Act and to make certain modifications to the Prior Agreement, as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Prior Agreement is amended and restated in its entirety to read as follows:

#### Article I DEFINITIONS

For purposes of this Agreement:

“*Act*” means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17-101, et seq., as in effect on the date hereof and as amended from time to time, or any successor law.

“*Accounting Period*” means each period that starts on the day immediately following the last day of the preceding Accounting Period, and that ends on the earliest of the following dates:

- (a) the last day of a calendar month;
- (b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;



(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

“*Advisers Act*” means the U.S. Investment Advisers Act of 1940, as amended, and the rules promulgated thereunder.

“*Advisory Committee*” has the meaning set forth in Section 4.6.

“*Affiliate*” means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, “control” (including “controlled by” and “under common control”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“*Affiliated Investor*” means any Limited Partner that is an Affiliate of the General Partner or the Investment Manager, including their respective employees, members or partners and their respective immediate family members.

“*Agreement*” means this Fourth Amended and Restated Limited Partnership Agreement of the Partnership, as amended from time to time.

“*Alternative Investment Vehicle*” has the meaning set forth in Section 4.7.

“*Arbitration Rules*” has the meaning set forth in Section 8.7(b)(i).

“*Authorized Representative*” has the meaning set forth in Section 7.5(a).

“*Bad Actor Limited Partner*” means a Limited Partner that (i) would cause the disqualification of the Partnership from using Rule 506 under the Securities Act due to the operation of paragraph (d) thereof (or its successor) if such Limited Partner were to beneficially own 20% or more of the outstanding voting interest of all of the Partners (excluding any other Interests that are Non-Voting Interests) or (ii) the General Partner determines is likely to become subject to a conviction, order, judgment, finding or that would be likely to cause the disqualification described in clause (i).

“*BHCA*” means the U.S. Bank Holding Company Act of 1956, as amended.

“*BHCA Subject Person*” means any Limited Partner that is subject, directly or indirectly, to the provisions of Section 4 of the BHCA and the regulations of the Board of Governors of the Federal Reserve System promulgated thereunder.

“*Business Day*” means any day other than (a) Saturday and Sunday and (b) any other day on which banks located in New York, New York are required or authorized by law to be closed.

“*Calculation Period*” means, with respect to each Capital Account, the period commencing as of the date of the establishment of the Capital Account (in the case of the initial Calculation

Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period with respect to such Capital Account, and ending as of the close of business on the first to occur of the following:

- (a) the last day of a calendar year;
- (b) the withdrawal of all or a portion of the Interest attributable to such Capital Account (but only with respect to such withdrawn amount);
- (c) the permitted Transfer of all or any portion of such Limited Partner's Interest; or
- (d) the final distribution to such Limited Partner following the dissolution of the Partnership.

“*Capital Account*” means, with respect to each Partner, the capital account established and maintained on behalf of such Partner as described in Section 3.3.

“*Carryforward Account*” means a memorandum account to be recorded in the books and records of the Partnership with respect to each Capital Account that has an initial balance of zero and that is adjusted as follows:

(a) As of the first day after the close of each Calculation Period for such Capital Account, the balance of the Carryforward Account is (i) increased by the amount, if any, of such the Negative Performance Change with respect to such Capital Account for such Calculation Period and (ii) reduced (but not below zero) by the amount, if any, of the Positive Performance Change with respect to such Capital Account for such Calculation Period.

(b) As of the close of the Calculation Period, any positive balance of the Carryforward Account is further adjusted if such Capital Account has been reduced during such Calculation Period as a result of a distribution or withdrawal, by reducing such positive balance (but not below zero) by an amount determined by multiplying (i) such positive balance by (ii) a fraction, of which (A) the numerator is equal to the amount so distributed or withdrawn, and (B) the denominator is equal to the balance of such Capital Account immediately before giving effect to such distribution or withdrawal.

The Carryforward Account attributable to each Series A Capital Account shall be reset to zero on the Effective Date. For the avoidance of doubt, any gains or losses allocated by the Partnership to any Capital Account of a Limited Partner prior to the Effective Date will be inapplicable in the calculation of the Carryforward Account following the Effective Date.

“*Certificate*” means the Certificate of Limited Partnership of the Partnership referred to in Section 2.1(b).

“*Code*” means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

“**Dispute**” has the meaning set forth in Section 8.7.

“**Effective Date**” means the date set forth above as the effective date of this Agreement.

“**Election Notice**” has the meaning set forth in Section 8.11(c).

“**FAA**” has the meaning set forth in Section 8.7(b)(ii)

“**FATCA**” means Sections 1471 through 1474 of the Code, as amended, and any Regulations thereunder or official interpretations thereof, including any successor Regulations or interpretations, and any intergovernmental agreement implementing the foregoing.

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

“**Fiscal Year**” means each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner elects another fiscal year; provided that any such other fiscal year is permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, “**Fiscal Year**” means the portion of the calendar year ending on the date on which the Partnership is terminated.

“**GAAP**” means generally accepted accounting principles in the United States, as amended.

“**General Partner**” means Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership, any successor thereto, and any Person hereafter admitted as an additional general partner, in its capacity as general partner of the Partnership.

“**Indemnified Person**” has the meaning set forth in Section 4.5(a).

“**Interest**” means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

“**Investment Company Act**” means the U.S. Investment Company Act of 1940, as amended, and the regulations promulgated thereunder.

“**Investment Management Agreement**” means the investment management agreement between the Investment Manager, the General Partner, the Offshore Fund and the Partnership.

“**Investment Manager**” means Highland Capital Management, L.P., a Delaware limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership in accordance with the Investment Management Agreement.

“**Investments**” means investment in securities, assets and other financial or intangible investment instruments, contracts or products made as described in the Partnership’s offering memorandum.

“**Limited Partners**” means any Person who is a limited partner of the Partnership (which, except as otherwise indicated, will include a substituted Limited Partner) at the time of reference thereto, in such Person’s capacity as a limited partner of the Partnership. For all purposes of the Act, the Limited Partners of the Partnership will constitute a single class or group of limited partners.

“**Majority-in-Interest of Limited Partners**” means Limited Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all Limited Partners.

“**Management Fee**” means, with respect to each Capital Account, an amount equal to one fourth of (i) 1.5% of each Series A Capital Account balance; (ii) 1.5% of each Series B Capital Account balance; (iii) 1.0% of each Series C Capital Account balance; and (iv) 2.0% of each Series D Capital Account balance, which amounts are calculated on the first Business Day of each calendar quarter. Management Fees shall be appropriately adjusted for contributions during any partial quarter.

“**Negative Basis**” means, with respect to any Partner and as of any time of calculation, the excess of such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest) over the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership.

“**Negative Basis Partner**” means any Partner who withdraws from the Partnership and who has a Negative Basis as of the Withdrawal Date, but such Partner shall cease to be a Negative Basis Partner at such time as it has received allocations pursuant to Section 3.11(d) equal to such Partner’s Negative Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

“**Net Assets**” means the total value, as determined by the General Partner or its delegate(s) in accordance with Section 7.2, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6). Except as otherwise expressly provided herein, Net Assets as of the first day of any Accounting Period are determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Accounting Period, but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Accounting Period, and after giving effect to Management Fee charges, and Net Assets as of the last day of any Accounting Period are determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

- (a) any Performance Allocation as of the date on which such determination is made;

(b) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(c) withholding or other taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves, holdbacks or other amounts recorded pursuant to Section 3.6 and any increases or decreases in the value of any Restricted New Issues pursuant to Section 3.8(b) and other amounts specially allocated pursuant to Section 3.8 during the Accounting Period ending as of the date on which such determination is made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Accounting Period.

“**Net Loss**” means any amount by which the Net Assets as of the first day of an Accounting Period exceed the Net Assets as of the last day of the same Accounting Period.

“**Net Profit**” means any amount by which the Net Assets as of the last day of an Accounting Period exceed the Net Assets as of the first day of the same Accounting Period.

“**New Issue Rules**” has the meaning set forth in Section 3.8(b).

“**Nonrecourse Deductions**” has the meaning set forth in Regulations Section 1.704-2(b)(1) and (c).

“**Non-Voting Interest**” means an Interest, the holder of which is not entitled to vote, consent or withhold consent with respect to any Partnership matter (including but not limited to mergers, sales of substantially all assets or consolidations of the Partnership), except as otherwise expressly provided in this Agreement.

“**Offshore Fund**” means Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company and a Limited Partner of the Partnership.

“**Orderly Realization**” has the meaning set forth in Section 6.1.

“**Other Account**” means any assets or investments of the General Partner, or any assets managed by the General Partner or any Affiliate of the General Partner for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

“**Partner**” means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and “**Partners**” means the General Partner and all of the Limited Partners.

“**Partnership**” means the limited partnership governed by this Agreement.

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

“**Partnership Percentage**” means a percentage established for each Capital Account on the Partnership’s books as of the first day of each Accounting Period. The Partnership Percentage of a Capital Account for an Accounting Period is determined by dividing the amount of such Capital Account as of the beginning of the Accounting Period by the sum of the Capital Accounts of all of the Partners as of the beginning of the Accounting Period. The numerator and denominator of the above shall be calculated after crediting all capital contributions to the Capital Account or Partnership, as appropriate, which are effective as of such date, net of all deductions, including Management Fees. The sum of the Partnership Percentages of all Capital Accounts for each Accounting Period shall equal 100%.

“**Performance Allocation**” means, for each Capital Account of a Limited Partner, 20% of the amount by which (a) the Positive Performance Change for such Calculation Period for such Capital Account, if any, exceeds (b) any positive balance in the Carryforward Account for such Capital Account as of the most recent prior date as of which any adjustment has been made thereto.

“**Performance Change**” means, with respect to each Capital Account of a Limited Partner for each Calculation Period, the difference between:

(a) the sum of (i) the balance of such Capital Account as of the close of the Calculation Period (after giving effect to Management Fees and all allocations to be made to such Capital Account as of such date, including such Capital Account’s allocable share of any profits or losses pursuant to Section 3.8 and any credits or debits of any applicable carrying charge associated therewith other than any Performance Allocation to be debited against such Capital Account), plus (ii) any debits to such Capital Account during the Calculation Period to reflect any actual or deemed distributions or withdrawals with respect to such Capital Account, plus (iii) any debits to such Capital Account during the Calculation Period to reflect any items allocable to such Capital Account pursuant to Section 3.5(b) or (c); and

(b) the balance of such Capital Account as of the commencement of the Calculation Period.

If the amount specified in clause (a) exceeds the amount specified in clause (b) such difference is a “**Positive Performance Change**,” and if the amount specified in clause (b) exceeds the amount specified in clause (a), such difference is a “**Negative Performance Change**.”

The Performance Change will be computed separately for each Capital Account (and thus each separately maintained capital sub-account created to reflect an additional contribution to a Capital Account). Thus, if a Limited Partner has multiple Capital Accounts, the Performance Change will be calculated separately for each Capital Account and the resulting “Positive Performance Change” and “Negative Performance Change” shall be separately allocated to each such Capital Account and shall not be netted against each other.

“**Person**” means any individual, partnership, corporation, limited liability company, trust or other entity or any government (including a governmental agency or political subdivision thereof).



“**Positive Basis**” means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership over such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest).

“**Positive Basis Partner**” means any Partner who withdraws from the Partnership and who has a Positive Basis as of the Withdrawal Date, but such Partner ceases to be a Positive Basis Partner at such time as it has received allocations pursuant to Section 3.11(c) equal to such Partner’s Positive Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

“**Prior Agreement**” has the meaning set forth in the Preliminary Statements to this Agreement.

“**Realization Period**” has the meaning set forth in Section 6.1.

“**Recent Amendments**” means the changes to the terms of an investment in the Partnership as contemplated in this Agreement and the constituent documents related thereto, including, but not limited to, the re-designation of all Interests held by Limited Partners on the Effective Date as Series A Interests.

“**Regulations**” means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

“**Regulatory Allocations**” has the meaning set forth in Section 3.10(d).

“**Restricted Capital Accounts**” has the meaning set forth in Section 3.8(b).

“**Restricted Issues**” has the meaning set forth in Section 3.8(b).

“**Revocation Notice**” has the meaning set forth in Section 8.11(c).

“**RIC Limited Partner**” means a Limited Partner that is registered as an investment company under the Investment Company Act.

“**Schedule of Partners**” means a schedule to be maintained by the General Partner containing the following information with respect to each Partner: (a) name; (b) address; (c) date of admission; (d) amount and date of all capital contributions and withdrawals; and (e) the amount and date of any permitted Transfers.

“**Series**” means a designated series of Interests established in accordance with this Agreement and having such terms as the General Partner determines.

“**Series A Capital Account**” means the Capital Account attributable to a Limited Partner’s Series A Interest.

“**Series A Interests**” means a Series of Interests having the rights and obligations applicable to Series A Interests as set forth in this Agreement.

“**Series A Lock-Up**” has the meaning set forth in Section 5.5(c)(i).

“**Series A Withdrawal Date**” has the meaning set forth in Section 5.5(c)(i).

“**Series B Capital Account**” means the Capital Account attributable to a Limited Partner’s Series B Interest.

“**Series B Interests**” means a Series of Interests having the rights and obligations applicable to Series B Interests as set forth in this Agreement.

“**Series B Withdrawal Date**” has the meaning set forth in Section 5.5(c)(ii).

“**Series C Capital Account**” means the Capital Account attributable to a Limited Partner’s Series C Interest.

“**Series C Interests**” means a Series of Interests having the rights and obligations applicable to Series C Interests as set forth in this Agreement.

“**Series C Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iii).

“**Series D Capital Account**” means the Capital Account attributable to a Limited Partner’s Series D Interest.

“**Series D Interests**” means a Series of Interests having the rights and obligations applicable to Series D Interests as set forth in this Agreement.

“**Series D Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iv).

“**Sub-Series of Shares**” refers to sub-series of the shares of the Offshore Fund, as created from time to time, for purposes of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received from shareholders at different times.

“**Suspension**” has the meaning set forth in Section 5.5(l).

“**Super-Majority-in-Interest of Limited Partners**” means Limited Partners whose Partnership Percentages represent more than 75% of the aggregate Partnership Percentages of all Limited Partners.

“**Transfer**” means any direct, indirect or synthetic sale, exchange, transfer, assignment, pledge, encumbrance, charge, exchange, hypothecation, placing of a lien or a security interest on an Interest or any other disposition by a Partner of its Interest to or in favor of another party, whether voluntary or involuntary (including, but not limited to, being offered or listed on or through any placement agent, intermediary, online service, site, agent or similar Person).



“*Withdrawal Date*” means, as applicable, the Series A Withdrawal Date, the Series B Withdrawal Date, the Series C Withdrawal Date, and the Series D Withdrawal Date or any other effective date of withdrawal pursuant to Section 5.5.

## **Article II ORGANIZATION**

### **2.1 Continuation of Limited Partnership**

- (a) The General Partner and the Limited Partners hereby agree to continue the Partnership as a limited partnership under and pursuant to the Act and this Agreement.
- (b) The General Partner has executed and filed with the Secretary of State of the State of Delaware a Certificate, and shall execute, acknowledge and file with the Secretary any amendments thereto as may be required by the Act, and any other instruments, documents and certificates which, in the opinion of the Partnership’s legal counsel, may from time to time be required by the laws of the United States of America, the State of Delaware or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership. The General Partner shall cause any required amendment to the Certificate to be filed promptly following the event requiring such amendment. All amendments may be signed by the General Partner (as required by the Act) and may be signed either personally or by an attorney-in-fact.
- (c) The parties hereto agree to operate the Partnership as a limited partnership pursuant to the provisions of the Act and of this Agreement and agree that the rights and liabilities of the Limited Partners and the General Partner are as provided in the Act, for limited partners and the general partner except as provided herein.
- (d) The parties hereto acknowledge and agree that the Partnership shall be classified as a “partnership” and not as an association taxable as a corporation for U.S. federal income tax purposes. No election may be made by the Partners or the Partnership to treat the Partnership as other than a “partnership” for U.S. federal, state and/or local income tax purposes and, to the extent necessary, the Partners or Partnership shall make any election to treat the Partnership as a “partnership.” The Partners shall treat the Partnership consistently with its status as a “partnership” for U.S. federal income tax purposes and agree to undertake any further action which is necessary to treat the Partnership as such, and shall not undertake any action that is inconsistent with the Partnership’s status as a “partnership” for U.S. federal, state and/or local income tax purposes.
- (e) The General Partner may change the domicile of the Partnership to another state, country or other jurisdiction where advisable due to legal, tax or other

considerations; provided that no such change of domicile would reasonably be expected to have a material adverse effect on the Limited Partners.

## **2.2 Name of Partnership**

- (a) The name of the Partnership is Highland Multi Strategy Credit Fund, L.P. or such other name as the General Partner may hereafter adopt, subject to causing an amendment to the Certificate to be filed with the Secretary of State of the State of Delaware in accordance with the Act. The General Partner shall send a notice of any change of name to the Limited Partners. All business of the Partnership shall be conducted under such name or under such other name as the General Partner deems appropriate.
- (b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's termination or at such time as there ceases to be a general partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner without payment by the assignee(s) of any consideration therefor.

## **2.3 Principal Office; Registered Office**

- (a) The Partnership's principal office shall be at such location as the General Partner may designate from time to time.
- (b) The Partnership's registered office in the State of Delaware is at 1209 Orange Street, County of New Castle, Wilmington, Delaware 19801, and the registered agent of the Partnership in the State of Delaware is The Corporation Trust Company, unless a different registered office or agent is designated from time to time by the General Partner.

## **2.4 Term of Partnership**

The term of the Partnership commenced on the date on which the Certificate was filed with the Secretary of State of the State of Delaware and continues until the Partnership is dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1). The legal existence of the Partnership as a separate legal entity continues until the cancellation of the Certificate.

## **2.5 Object and Powers of Partnership**

- (a) The object and business of the Partnership is (i) to purchase, sell (including short sales), invest and trade in Investments, (ii) to engage in financial transactions, including borrowing, financing, pledging, hedging and other derivative transactions relating thereto for the benefit of the Partnership, (iii) to engage in any lawful act or activity of which limited partnerships may be formed under the Act and (iv) to engage in any and all activities necessary or incidental to the foregoing.

- (b) The Partnership possesses and may exercise all such powers and privileges as the General Partner considers necessary, convenient or incidental to the conduct, promotion or attainment of the object of the Partnership.

## **2.6 Liability of Partners**

In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any liability for the repayment or discharge of the debts and obligations of the Partnership except to the extent provided herein or as required by the Act.

## **2.7 Actions by Partnership**

The Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out its objects.

## **2.8 Reliance by Third Parties**

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

## **2.9 UCC Status of Limited Partner Interests**

- (a) For purposes of the grant, pledge, attachment or perfection of a security interest in an Interest or otherwise, the Interests are deemed to be “securities” within the meaning of Section 8-102(a)(15) and as provided by Section 8-103(c) of the Uniform Commercial Code as in effect from time to time in the State of Delaware or analogous provisions in the Uniform Commercial Code in effect in any other jurisdiction.
- (b) Any Interest may be evidenced by a certificate of partnership interest issued by the Partnership in such form as the General Partner may approve. Every certificate representing an Interest shall bear a legend substantially in the following form:

“For the purposes of Section 8-103 of the Uniform Commercial Code of the United States of America in effect in any relevant jurisdiction, the certificates representing an interest in the Limited Partnership constitute “securities” within the meaning of Section 8-102 and Section 8-103 of the Uniform Commercial Code.”

## **2.10 Series of Interests**

- (a) The General Partner, at any time, may without notification to or consent of the other Limited Partners, create and offer different Series of Interests in the Partnership with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, Management Fees, Performance Allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other

differences) as the General Partner may determine upon the issuance of such Series; provided that such Series would not reasonably be expected to have a material adverse effect on the existing Limited Partners. The terms and rights of such Series may be set forth in a supplement to the Partnership's offering memorandum or a "side letter" or other agreement, which the General Partner may incorporate by reference.

- (b) All Interests in the Partnership held by Limited Partners (including Affiliated Investors) as of the Effective Date are hereby designated as Series A Interests.

### **Article III CAPITAL**

#### **3.1 Contributions to Capital**

- (a) The minimum required initial capital contribution of each Limited Partner is the amount determined by the General Partner. The General Partner may change the required minimum initial contribution amount at any time with respect to any, all or less than all Limited Partners.
- (b) The Partnership may accept additional contributions at such times as the General Partner may permit, but no Limited Partner shall be obligated to make any additional capital contribution to the Partnership, subject to the provisions of Section 3.5(b) and any contrary provision of the Act. The minimum required additional capital contribution of any existing Limited Partner to the Partnership shall be the amount the General Partner may determine. The General Partner may change the required minimum additional contribution amount at any time with respect to any, all or less than all Limited Partners.
- (c) The General Partner or an Affiliate has made a capital contribution to the Partnership as set forth in the Schedule of Partners. Except as required by the Act, the General Partner is not required to make any additional capital contributions to the Partnership. The General Partner may, however, make capital contributions to the Partnership in such amounts and at such times as it may determine. The General Partner or any of its Affiliates have the right at any time to make additional capital contributions as a Limited Partner or General Partner. If the General Partner or any of its Affiliates (including their associated Persons, such as officers, directors, partners, members or employees or any of their family members) makes a capital contribution as a Limited Partner, the General Partner or the Investment Manager shall have authority to waive the Management Fee and/or Performance Allocation with respect to such Limited Partner.
- (d) Except as otherwise permitted by the General Partner (i) initial or additional capital contributions by each Partner shall be paid in one installment with cash and/or Investments having an aggregate value as set forth in the Partnership's books and records, and (ii) initial contributions are due as of the date of admission of such Person as a Limited Partner of the Partnership. Whether Investments may be

accepted as a contribution to the capital of the Partnership is determined by the General Partner.

### **3.2 Rights of Partners in Capital**

- (a) No Partner shall be entitled to interest on its capital contributions to the Partnership. For the avoidance of doubt, interest income, if any, earned on subscription amounts remitted to the Partnership prior to the date that an Interest is issued to a Partner shall be payable to the Partnership and not applied toward the purchase of an Interest.
- (b) No Partner shall have the right to the return of any capital contribution to the Partnership except (i) upon withdrawal of such Partner pursuant to Section 5.5 or (ii) upon the dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return is limited to the value of the Capital Account(s) of the Partner. The General Partner shall not be liable for the return of any such amounts.

### **3.3 Capital Accounts**

- (a) The Partnership shall maintain a separate Capital Account for each Partner. In the event a Limited Partner invests in more than one Series of Interests, the Partnership will maintain a separate Capital Account with respect to each Series of Interests held by such Limited Partner, with each such Capital Account being treated as if it were the Capital Account of a separate Partner for purposes of computing the Performance Allocation, the Management Fee and the withdrawal rights attributable to the Series.
- (b) The General Partner may, in its discretion, maintain a separate sub-account for such purposes as the General Partner may determine appropriate, including for recordkeeping, accounting or reporting or to otherwise give effect to the provisions of this Agreement. Each Capital Account shall reflect the aggregate sum of the balances in such Partner's Capital Account.
- (c) If a Partner makes an additional capital contribution to an existing Capital Account, the Capital Account will be sub-divided into separate capital sub-accounts attributable to each separate capital contribution, with each capital sub-account treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights and restrictions applicable to each capital sub-account. References herein to a Partner's "Capital Account" include any such separately maintained capital sub-accounts.
- (d) The Partnership will issue to the Offshore Fund an Interest and maintain capital sub-accounts that correspond to each Sub-Series of Shares and each capital sub-account is treated separately for determining Management Fees, the Performance Allocations and withdrawal rights.

- (e) Each Capital Account has an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to such Capital Account.
- (f) Each Capital Account shall be increased by such Capital Account's allocable share of the Net Profits allocated by the Partnership to such Capital Account pursuant to Section 3.4.
- (g) Each Capital Account shall be reduced by (i) the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 5.5 or 6.3, including any amount deducted from any such withdrawal or distribution pursuant to Section 5.5(h), (ii) such Capital Account's allocable share of the Net Losses allocated by the Partnership to such Capital Account pursuant to Section 3.4, (iii) such Capital Account's *pro rata* portion of the expenses allocable (or specially allocable) by the Partnership pursuant to Section 3.5, (iv) such Capital Account's allocable share of the Performance Allocation allocable pursuant to Section 3.7, and (v) such Capital Account's *pro rata* portion of the expenses payable by the Partnership pursuant to Section 4.2(b).
- (h) The Capital Account of the Investment Manager, as a special Limited Partner of the Partnership, shall be increased by the amount of the Performance Allocation allocated to such Capital Account and the investment gains therein.
- (i) Each Capital Account shall also be adjusted to reflect all other allocations and other changes in the value of such Capital Account not otherwise described in this Section 3.3 in the manner specified in the remaining provisions of this Article III.

### **3.4 Allocations of Net Profit and Net Loss**

Subject to Sections 3.5 through 3.10, as of the last day of each Accounting Period, any Net Profit or Net Loss of such Accounting Period shall be separately allocated among and credited to or debited against the Capital Accounts of the Partners in proportion to their respective Partnership Percentages for such Accounting Period.

### **3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures**

- (a) As of the first Business Day of each calendar quarter, each Capital Account's Management Fee for such calendar quarter shall be debited against such Capital Account and paid by the Partnership to the Investment Manager. Capital contributions accepted after the commencement of the calendar quarter shall be subject to a prorated Management Fee reflecting the time remaining during that quarter. The Investment Manager may reduce or eliminate the Management Fee with respect to any Partner (or Capital Account) in its sole discretion; provided that such reduction or elimination shall not increase the Management Fee payable by any other Partner (or Capital Account).
- (b) To the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely



conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments on behalf of or with respect to any Partner or Partners (including backup withholding or withholding under FATCA), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership pays or incurs any withholding tax or other tax obligation (including under FATCA) with respect to the income allocable or distributable to one or more Partners, then the amount of such withholding tax or tax obligation shall be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount shall be debited against the Capital Account(s) of such Partner or Partners as of the close of the Accounting Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors shall make a contribution to the capital of the Partnership, within 10 days following request by the General Partner, the amount of such excess. The General Partner is not obligated to apply for or obtain a reduction of or exemption from withholding tax on behalf of any Partner that may be eligible for such reduction or exemption, or be otherwise obligated to structure Investments so as to reduce or avoid any such withholding tax.

- (c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership, to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be specially allocated only to the Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such allocations shall be debited from the relevant Capital Accounts of such Partners as of the close of the Accounting Period during which any such items were accrued by the Partnership.

### **3.6 Reserves; Adjustments for Certain Future Events**

- (a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets and proportionately against the Capital Accounts for contingent liabilities or probable losses, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be debited or credited, as the General Partner deems appropriate, to the Capital Accounts of current Partners that (i) are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or (ii) were Partners, or are transferees from Persons who were Partners, at the time of the act or omission giving rise to the contingent liability for which the reserve has been established by the General Partner.

- (b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately debited or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period.

### 3.7 Performance Allocation

- (a) The Performance Allocation shall be debited against each Capital Account of each Limited Partner as of the last day of each Calculation Period with respect to such Capital Account, and the amount so debited shall simultaneously be credited to the Capital Account of the Investment Manager, as a special Limited Partner of the Partnership.
- (b) The Investment Manager may waive or alter the Performance Allocation with respect to any Limited Partner.

### 3.8 Limited Participation Investments and New Issues

- (a) If the General Partner determines that for legal, tax, regulatory or bona fide other reasons as to which the General Partner and any Partner may agree such Partner should not participate (or should receive a reduced participation) in the Net Profit or Net Loss with respect to any Investment, the General Partner may allocate Net Profit or Net Loss, if any, with respect to such Investment only to Partners to whom the restrictions on participating in that Investment do not apply. In order to allocate Net Profit or Net Loss accordingly, the General Partner may establish and maintain a memorandum account in the accounting records of the Partnership on a Partner-by-Partner basis with respect to each such Investment. The Net Profit and Net Loss and expenses relating to such Investment will be separately calculated and allocated based on each participating Partner's balance in such memorandum account for such Investment divided by the sum of the balances of all memorandum accounts for all participating Partners. In order to compensate a Limited Partner who is not participating in an Investment pursuant to this Section 3.8 for the use of such Partner's share of Partnership capital to purchase the Investment, the General Partner may credit the non-participating Partner's Capital Account (and correspondingly debit the Capital Account of the participating Partners with a carrying charge). Any distributions from the memorandum account will be based on the participating Partner's respective percentage interest in such Investment.
- (b) Pursuant to certain rules of FINRA ("*New Issue Rules*"), members of FINRA are permitted to sell to the Partnership certain publicly-offered securities ("*Restricted Issues*") only if the Capital Accounts of Partners connected with the securities industry or executive officers or directors of investment banking clients of underwriters ("*Restricted Capital Accounts*") are not restricted from sharing a beneficial interest in such Restricted Issues in accordance with the provisions of the New Issue Rules. Notwithstanding the provisions of Section 3.4, if the Partnership chooses to invest in Restricted Issues, the Partnership shall not allocate any items



of income, gain, loss, deduction and credit that relate to investments in Restricted Issues to Restricted Capital Accounts except to the extent permitted by the New Issue Rules, and shall instead allocate such items among the other Capital Accounts on a *pro rata* basis. To the extent the New Issue Rules permit certain Persons with Restricted Capital Accounts to participate in profits and losses from Restricted Issues, the General Partner shall allocate such profits and losses from Restricted Issues among such Restricted Capital Accounts on a *pro rata* basis or on such other basis that the General Partner reasonably determines ensures compliance with the New Issue Rules. To the extent consistent with the New Issue Rules, the General Partner shall determine when all Capital Accounts may participate in the Net Profit and Net Loss from any Restricted Issue. The General Partner shall value any Restricted Issue at such time at the then-current price of the security in the secondary market.

### **3.9 Allocation to Avoid Capital Account Deficits**

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Accounting Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.9 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.9 not previously recovered.

### **3.10 Regulatory Allocations**

Notwithstanding anything to the contrary in this Agreement:

- (a) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; provided that an allocation pursuant to this Section 3.10(a) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.10(a) were not in this Agreement. This Section 3.10(a) is intended to constitute a “qualified income offset” within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations and is to be interpreted consistently therewith.
- (b) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 3.10, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, the Partners shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an

amount equal to the portion of any such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Sections 1.704-2(f) and (g). This Section 3.10(b) is intended to comply with the minimum gain chargeback requirement in such Sections of the Regulations and shall be interpreted consistently therewith.

- (c) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner shall be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 3.10(c) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.10(a) and this Section 3.10(c) were not in this Agreement.
- (d) Curative Allocations. The allocations set forth this Section 3.10 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.10. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Partnership Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).
- (e) Nonrecourse Deductions. Any Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Partners in accordance with their Partnership Percentages.
- (f) Section 704(b) Compliance. The allocations provided in this Section 3.10 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith.

### **3.11 Allocations for Income Tax Purposes**

- (a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for U.S. federal

income tax purposes in each Fiscal Year shall be allocated among the Partners in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Account, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership shall establish and maintain records which shall show the extent to which the Capital Account of each Partner comprises amounts that have not been reflected in the taxable income of such Partner as of the last day of each Fiscal Year. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Foreign tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement shall be determined by the General Partner.

- (b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations; provided that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, shall be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.
- (c) Positive Basis Allocations. If the Partnership recognized gains or items of gross income (including short-term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, *pro rata* in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the

liquidating share of any Positive Basis Partner, that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), then such Positive Basis Partner may be allocated an amount of such gains or items of gross income equal to the amount, if any, by which its or its Positive Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(c).

- (d) Negative Basis Allocations. If the Partnership recognizes net losses or items of gross loss or deduction (including short-term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Negative Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, *pro rata* in proportion to the respective Negative Basis of each such Negative Basis Partner, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner has been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its or its Negative Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(d).

### **3.12 Individual Partner's Tax Treatment**

Each Partner agrees not to treat, on any U.S. federal, state, local and/or non-U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership or which would result in inconsistent treatment, and each Partner further agrees to treat, on any U.S. federal, state, local and/or non-U.S. income tax return in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner consistent with the treatment of such item by the Partnership.

### **3.13 Distributions**

- (a) The Partnership shall make distributions in respect of withdrawals in accordance with Section 5.5 and liquidation in accordance with Section 6.3. In addition, the General Partner may make other distributions at the times and in the amounts the

General Partner determines. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

- (b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner on any account of its Interest if such distribution would violate Section 17-607 of the Act or other applicable law.

#### **Article IV MANAGEMENT**

##### **4.1 Duties and Powers of the General Partner**

- (a) Subject to the terms and conditions of this Agreement, the General Partner has complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for (i) all investment and investment management decisions to be undertaken on behalf of the Partnership and (ii) managing and administering the affairs of the Partnership, and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership, whether or not such action or authority is expressly provided for in this Agreement. Without limiting the foregoing generality, the General Partner's powers include the power to borrow, obtain leverage or otherwise incur indebtedness with respect to the Partnership's capital.
- (b) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner has full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1.
- (c) The General Partner may delegate to any other Person, including the Investment Manager, any power and authority vested in the General Partner pursuant to this Agreement.
- (d) The General Partner is the "tax matters partner" for purposes of Section 6231(a)(7) of the Code. The General Partner has the exclusive authority in its determination to make any elections required or permitted to be made by the Partnership under any provisions of the Code or any other revenue laws. The General Partner shall be entitled to be reimbursed by the Partnership for all costs and expenses incurred by it in connection with any administrative or judicial proceeding affecting tax matters of the Partnership and/or the Partners in their capacity as such and to be indemnified by the Partnership (solely out of Partnership assets) with respect to any

action brought against it in connection with any judgment in or settlement of any such proceeding.

- (e) Every power vested in the General Partner pursuant to this Agreement and any decision or determination that it is permitted to make is to be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein, and the General Partner shall be entitled to consider in making such decisions or determinations only such interests and factors as it desires, including its own interests. No provision of this Agreement is to be construed to require the General Partner to violate the Act, the Advisers Act, or any other law, regulation or rule of any self-regulatory organization. Notwithstanding any other provision of this Agreement, whenever in this Agreement, the General Partner is permitted or required to make a decision in its “good faith” or under another expressed standard, the General Partner must act under such express standard and will not be subject to any other or different standards.
- (f) Each Limited Partner shall deliver to the General Partner, upon a reasonable request, (i) an affidavit or certificate in form satisfactory to the General Partner that is sufficient to establish that the applicable Partner (and its partners, members, and/or beneficial owners, as the case may be) is not subject to withholding under the provisions of any U.S. federal, state, local, non-U.S. or other tax laws, or with respect to such Partner’s tax status under such laws, and (ii) any information or documentation prescribed under FATCA or as may be necessary, as reasonably determined by the General Partner, for the Partnership to comply with its obligations under FATCA (including, but not limited to, information with respect to citizenship, residency, ownership or control of such Partner). Each Limited Partner shall reasonably cooperate with the General Partner in connection with any tax audit of the Partnership, or any existing or former Investment.

## 4.2 Expenses

- (a) Except as otherwise provided herein, and in consideration of the Management Fee, the General Partner and the Investment Manager shall each pay all of its own operating and overhead costs, without reimbursement by the Partnership.
- (b) The Partnership shall pay, or reimburse the General Partner and the Investment Manager for, all other reasonable costs, fees and expenses arising in connection with the Partnership’s operations. Such expenses payable by the Partnership include the following:
  - (i) all costs, fees and expenses directly related to Investments or prospective Investments (whether or not consummated) of the Partnership, including research and due diligence costs related to an Investment; brokerage commissions and other execution and transaction costs, interest on, and commitment fees and expenses arising out of, debit balances or borrowings; exchange, clearing and settlement charges; fees and expenses of any third-party providers of “back office” and “middle office” services relating to



trade settlement; travel expenses; appraisal fees; investment banking fees and expenses; borrowing charges on Investments sold short; custody fees; and fees of consultants and finders relating to Investments or prospective Investments of the Partnership; the costs, fees and expenses of any appraisers, accountants or other experts engaged by the General Partner or the Investment Manager as well as other expenses directly related to the Partnership's Investments;

- (ii) any withholding, transfer or other taxes imposed on the Partnership;
- (iii) the reasonable, out-of-pocket fees, costs and expenses (including legal fees and expenses) incurred to comply with any applicable law, rule or regulation (including regulatory filings or other expenses of the Partnership and the pro rata portion of any regulatory and other expenses of the General Partner or the Investment Manager, which benefit or are attributable to the Partnership);
- (iv) the reasonable, out-of-pocket costs, fees and expenses for financial and tax accounting, bookkeeping and reporting services, and administrative services performed by any Person on behalf of the Partnership (e.g., the administrator of the Partnership), including the cost of any audit of the Partnership's financial statements and the preparation of its tax returns (including with respect to FATCA compliance);
- (v) Management Fees;
- (vi) the reasonable, out-of-pocket costs, fees and expenses of legal counsel and any other litigation or investigation involving Partnership activities;
- (vii) specific expenses incurred in obtaining, maintaining or performing systems, research and other information, including information service subscriptions, utilized with respect to the Partnership's Investments including without limitation for portfolio management, valuations and accounting purposes, including the costs of statistics and pricing services, service contracts for quotation equipment and related hardware, software, phone and internet charges;
- (viii) the reasonable, out-of-pocket costs, fees and expenses associated with the Recent Amendments, including legal and accounting fees, printing costs, reporting and providing information to existing and prospective Partners, obtaining requisite consent from Limited Partners, travel fees and expenses related to the Partnership's offering, filing fees (including any "blue sky" filing fees) and other out-of-pocket expenses and compliance with any applicable federal and state laws;
- (ix) the costs and expenses associated with meetings of Partners;

- (x) the expenses of the Advisory Committee and the members thereof, including any indemnification expenses;
  - (xi) the costs associated with maintaining “directors and officers” or similar liability insurance for the benefit of the Partnership, the General Partner, the Investment Manager, or any other Indemnified Person; and
  - (xii) any costs or expenses of winding up and liquidating the Partnership and
  - (xiii) all costs, fees and expenses associated with the ongoing offering of Limited Partner Interests.
- (c) Expenses with respect to Section 4.2(b)(viii) above will be amortized by the Partnership over a period of 36 months from the Effective Date; however, the General Partner may limit the amount of expenses amortized so that the Partnership’s audited financial statements do not contain qualification.
- (d) Except as otherwise provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6, 3.8 and 5.5(i), expenses are generally borne *pro rata* by the Partners in accordance with their respective Partnership Percentages.
- (e) If the General Partner or the Investment Manager, as appropriate, incurs any Partnership expenses for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Partnership and any Other Account, the General Partner or the Investment Manager, as appropriate, shall allocate such expense among the Partnership and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.
- (f) The General Partner and the Investment Manager may, to the extent disclosed in the Partnership’s offering memorandum or otherwise disclosed to the Limited Partners, use “soft dollars” generated by the Partnership. Use of “soft dollars” by the General Partner or the Investment Manager as disclosed herein shall not constitute a breach by either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

#### **4.3 Rights of Limited Partners**

The Limited Partners may not take any part in the management, control or operation of the Partnership’s business, and have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law.

#### **4.4 Other Activities of Partners**

- (a) The General Partner is not required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs



of the Partnership as it may determine to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

- (b) Each Partner acknowledges and agrees that the General Partner, its Affiliates and their respective partners, managers, directors, officers, shareholders, members or employees may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, Investments, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other issuers, partners of any partnership, or trustee of any trust, or entering into any other commercial arrangements, whether or not any such activities may conflict with any interest of the parties with respect to the Partnership. Without in any way limiting the foregoing, each Partner hereby acknowledges that none of the General Partner, its Affiliates or their respective partners, managers, directors, officers, shareholders, members or employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the Partnership, but may refer the same to any other party or keep such opportunities for their own benefit.
- (c) The General Partner and its Affiliates shall act in a manner that each considers fair, reasonable and equitable on an overall basis in allocating investment opportunities to the Partnership and any Other Account. The General Partner and its Affiliates shall allocate investment opportunities as set forth in their policies and procedures, as may be amended from time to time, and as communicated to Limited Partners through the Partnership's private offering memorandum for Interests or otherwise.
- (d) Each of the Partners hereby waives and covenants not to sue on the basis of any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners *inter se* which is or may be inconsistent with this Section 4.4.

#### **4.5 Exculpation; Indemnification**

- (a) The General Partner, the Investment Manager, any of their Affiliates, each direct or indirect member, manager, partner, director, officer, shareholder and employee of any of the foregoing and, with the approval of the General Partner, any agent of any of the foregoing (including their respective executors, heirs, assigns, successors or other legal representatives) (each an "***Indemnified Person***") shall not be liable to the Partnership or to any of the Limited Partners for any loss or damage occasioned by any acts or omissions in the performance of services under this Agreement or the Investment Management Agreement, or otherwise in connection with the Partnership, its Investments or operations, unless such loss or damage has occurred by reason of the willful misconduct, fraud or gross negligence of such Indemnified Person or as otherwise required by law; provided that nothing in this Agreement is to be construed as waiving any legal rights or remedies which the Partnership may have under state or federal securities laws.

- (b) The Partnership (but not the Partners individually) shall indemnify each Indemnified Person to the fullest extent permitted by law against any cost, expense (including reasonable attorneys' fees), judgment or liability incurred by or imposed upon it in connection with any action, suit or proceeding (including any proceeding before any judicial, administrative or legislative body or agency) to which it may be made a party or otherwise be involved or with which it shall be threatened by reason of being or having been General Partner, having been the Investment Manager pursuant to the Investment Management Agreement or its having provided services to the Partnership; provided that the Indemnified Person is not so indemnified to the extent such cost, expense, judgment or liability has been finally determined (i) in a non-appealable decision on the merits in any such action, suit or proceeding, or (ii) on a plea of *nolo contendere*, to have been incurred or suffered by the Indemnified Person solely by reason of willful misconduct, fraud or gross negligence by the Indemnified Person.
- (i) The right to indemnification granted by this Section 4.5 shall be in addition to any rights to which the Indemnified Person may otherwise be entitled and shall inure to the benefit of the successors or assigns of such Indemnified Person. The Partnership shall pay the expenses incurred by the Indemnified Person in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by the Indemnified Person to repay such payment if there is an adjudication or determination that it is not entitled to indemnification as provided herein; provided that no such advance shall be made in connection with any action brought by a Majority-in-Interest of the Limited Partners.
- (ii) In any suit in the name of the Partnership to recover expenses advanced pursuant to the terms of an undertaking, the Partnership shall be entitled to recover such expenses upon a final adjudication that the Indemnified Person or other Person claiming a right to indemnification hereunder has not met the applicable standard of conduct set forth in Section 4.5(a). In any such suit brought to enforce a right to indemnification or to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnified Person or other Person claiming a right to indemnification shall not be entitled to be indemnified, or to an advancement of expenses, hereunder shall be on the Partnership (or any Limited Partner acting derivatively or otherwise on behalf of the Partnership or the Limited Partners) unless otherwise required by applicable law.
- (iii) Each Indemnified Person may not satisfy any right of indemnity or reimbursement granted in this Section 4.5 or to which it may be otherwise entitled except out of the assets of the Partnership, and no Partner shall be personally liable with respect to any such claim for indemnity or reimbursement. The General Partner may obtain appropriate insurance on behalf, and at the expense, of the Partnership to secure the Partnership's obligations hereunder.

- (iv) Nothing in this Agreement is to be construed as to provide for the indemnification of an Indemnified Person for any liability (including liability under U.S. federal securities laws) to the extent that such indemnification would be in violation of applicable law but is to be construed so as to effectuate this Section 4.5 to the fullest extent permitted by law.
- (v) Each Indemnified Person shall be deemed a third-party beneficiary (to the extent not a direct party hereto) of this Agreement and, in particular, the provisions of this Section 4.5. The General Partner and/or the Investment Manager may enter into agreements on behalf of the Partnership with an Indemnified Person to provide an indemnity to the same extent provided in this Section 4.5.

#### 4.6 Advisory Committee

- (a) The General Partner and/or the Investment Manager may appoint a committee (the “*Advisory Committee*”) composed of one or more individuals selected from time to time by the General Partner. No member of the Advisory Committee may be an Affiliate of the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in an Affiliate of the Partnership).
- (b) If established, the Advisory Committee will meet with the General Partner and/or the Investment Manager from time to time as requested by and deemed appropriate by the General Partner and/or the Investment Manager to consult with and advise the General Partner and/or the Investment Manager on any matter deemed appropriate by the General Partner and/or the Investment Manager, including any circumstances involving conflicts of interest between the General Partner and/or the Investment Manager (and their Affiliates), on the one hand, and the Limited Partners and the Partnership, on the other.
- (c) The General Partner and/or the Investment Manager may in its discretion seek the approval of the Advisory Committee or establish any other reasonable mechanism in connection with (i) approvals that are or would be required under the Investment Advisers Act (including Section 206(3)) or (ii) any other matter deemed appropriate by the General Partner and/or the Investment Manager. Each Limited Partner agrees that, except as otherwise specifically provided herein and to the extent permitted by applicable law, the approval of a majority of the members of the Advisory Committee at such time is binding upon the Partnership and each Partner with respect to any approval sought under this Section 4.6(c).
- (d) As determined by the General Partner and/or the Investment Manager, meetings of the Advisory Committee may be held in person or by telephone. Approval of the Advisory Committee is deemed to have been given if given by a majority of those members present at a meeting or by a majority of all members of the Advisory Committee if given pursuant to a written consent without a meeting.

- (e) The Partnership agrees to reimburse members of the Advisory Committee for their out-of-pocket expenses relating to their services as Advisory Committee members and to indemnify each Advisory Committee member to the maximum extent permitted by law
- (f) In the event an Advisory Committee is not appointed, the General Partner and/or the Investment Manager may obtain the approval of an unaffiliated third party, as is determined advisable by the General Partner and/or the Investment Manager, and any such approval by such third party shall, to the extent permitted under applicable law, serve as the approval of the Advisory Committee and shall be binding on the Partnership and the Limited Partners.

#### **4.7 Alternative Investment Vehicles**

The General Partner shall have the right in connection with any Investment to direct the capital contributions of some or all of the Partners to be made through one or more alternative investment vehicles (“*Alternative Investment Vehicles*”) and to exchange a portion of the Interests of one or more Limited Partners for similar equity interests in one or more Alternative Investment Vehicles if, in the judgment of the General Partner, the use of such vehicle or vehicles would allow the Partnership to overcome legal or regulatory constraints or invest in a more tax efficient manner and/or would facilitate participation in certain types of Investments; provided that the General Partner shall not employ the use of an Alternative Investment Vehicle in any manner that would reasonably be expected to have a material adverse effect on the participating Limited Partners. Any Alternative Investment Vehicle shall contain terms and conditions substantially similar to those of the Partnership and shall be managed by the General Partner or an Affiliate thereof, and such controlling Person is required to comply with the provisions of this Agreement applicable to Alternative Investment Vehicles. Expenses related to an Alternative Investment Vehicle on behalf of less than all of the Partners shall not be borne by the Partners that do not participate in such Alternative Investment Vehicle.

### **Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS**

#### **5.1 Admission of Limited Partners**

The General Partner may, at such times as the General Partner may determine, without advance notice to or consent from the Limited Partners, admit to the Partnership any Person who executes this Agreement or any other writing evidencing the intent of such Person to become a Limited Partner. Such admission shall be effective when the General Partner enters the name of such Person on the books and records of the Partnership as a Partner and does not require the consent or approval of any other Partner. The General Partner has the authority to reject subscriptions for Interests in whole or in part.

#### **5.2 Admission of Additional General Partners**

- (a) Except as provided in Section 5.2(b), the General Partner may admit one or more Persons as additional general partners to the Partnership. No additional general

partner shall be added unless such additional general partner agrees to be bound by all of the terms of this Agreement.

- (b) Any Person to whom the General Partner has transferred its general partner interest in accordance with Section 5.4 shall be admitted to the Partnership as a substitute General Partner without the consent of the Limited Partners unless otherwise provided for in Section 5.4.

### **5.3 Transfer of Interests of Limited Partners**

- (a) No Transfer of any Limited Partner's Interest, whether voluntary or involuntary, shall be valid or effective, and no transferee may become a substituted Limited Partner, unless the prior written consent of the General Partner has been obtained, which consent may be granted, withheld or conditioned for any reason by the General Partner. Any attempted Transfer not made in accordance with this Section 5.3, to the fullest extent permitted by law, shall be void *ab initio*.
- (b) Prior to recognizing any Transfer in accordance with this Section 5.3, the General Partner may require the transferring Limited Partner to execute and acknowledge an instrument of Transfer in form and substance satisfactory to the General Partner, and may require the transferee to make certain representations and warranties to the Partnership and Partners and to accept, adopt and approve in writing all of the terms and provisions of this Agreement.
- (c) In the event of a Transfer of a Partner's Interest or in the event of a distribution of assets of the Partnership to any Partner, the Partnership may, but shall not be required to, file an election under Section 754 of the Code and in accordance with the applicable Regulations, to cause the basis of the Partnership's assets to be adjusted for U.S. federal income tax purposes as provided by Section 734 or 743 of the Code.
- (d) In the event of a Transfer at any time other than the end of a Fiscal Year, items of income, gain, loss, deduction or credit recognized by the Partnership for U.S. federal income tax purposes shall be allocated between the transferring parties, as determined by the General Partner, using any permissible method under Code Section 706(d) and the Regulations thereunder. To the extent the transferring parties have given the General Partner written notice prior to the consent by the General Partner pursuant to Section 5.3(a) of their agreement to apply a particular and reasonable method, then the General Partner may elect to use such method. The transferring parties agree to reimburse the General Partner and the Partnership for any incidental accounting fees and other expenses incurred by the General Partner and the Partnership in making allocations pursuant to this Section 5.3(d).

### **5.4 Transfer of Interest of the General Partner**

The General Partner may Transfer its Interest as a General Partner in the Partnership; provided that if any such proposed Transfer would result in an "assignment" (as such term is

defined under the Advisers Act), the General Partner shall obtain the consent of Limited Partners constituting a Majority-in-Interest of Limited Partners that are not Affiliated Investors.

## 5.5 Withdrawal of Interests of Partners

- (a) The Interest of a Limited Partner may not be withdrawn from the Partnership prior to its dissolution except as provided in this Section 5.5.
- (b) Withdrawal rights are determined separately with respect to each Capital Account (and each capital sub-account, if applicable). Each capital contribution shall be accounted for using a separate capital sub-account, and, in the case of a Limited Partner for which more than one capital sub-account is maintained, the withdrawals from any such capital sub-accounts shall be processed on a “first-in, first-out” basis based upon the date on which each capital contribution was made, unless otherwise agreed between the General Partner and such Partner. Each capital sub-account relating to a contribution of capital from a Limited Partner will be treated as if it were the separate Capital Account of a separate Partner for the purposes of applying the withdrawal provisions of this Section 5.5.
- (c) Subject to a Suspension and the other provisions of this Section 5.5:
  - (i) A Limited Partner may make a complete or partial withdrawal from its Series A Capital Account effective on the last Business Day of each calendar quarter occurring at least 36 calendar months after the contribution of the capital to be withdrawn (each, a “**Series A Withdrawal Date**”) by providing written notice to the General Partner at least 90 days prior to the proposed Series A Withdrawal Date (such restriction, the “**Series A Lock-Up**”). For purposes of calculating the Series A Lock-Up, each Limited Partner holding Series A Interests on of the Effective Date is deemed to have made its initial contribution for Series A Interests as of the Effective Date. Additional contributions for Series A Interests after the Effective Date will also be subject to the Series A Lock-Up, which lock-up period shall commence on the date of each such additional contribution.
  - (ii) A Limited Partner may make a complete or partial withdrawal from its Series B Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series B Withdrawal Date. The “**Series B Withdrawal Date**” means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Withdrawal Date (or the last Business Day of such month).
  - (iii) A Limited Partner may make a complete or partial withdrawal from its Series C Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series C Withdrawal Date. The “**Series C Withdrawal Date**” means: (i) the end of the day on the last Business Day of



the calendar month that immediately precedes the two-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Withdrawal Date (or the last Business Day of such month).

- (iv) A Limited Partner may make a complete or partial withdrawal from its Series D Capital Account effective on the last Business Day of each calendar quarter (each, a “*Series D Withdrawal Date*”) occurring at least 12 calendar months after the contribution of the capital to be withdrawn by providing written notice to the General Partner at least 90 days prior to the proposed Series D Withdrawal Date.
- (d) Any notice of withdrawal shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. For the avoidance of doubt, if a Limited Partner notifies the General Partner of its intent to withdraw and later chooses not to withdraw (with the General Partner’s consent), any transaction costs incurred by the Partnership or the General Partner in connection therewith may be charged to such withdrawing Limited Partner. The General Partner may refuse to honor any Limited Partner’s request for a full or partial withdrawal if such request is not accompanied by such additional information as the General Partner may reasonably require, including any information required to determine the “adjusted basis” for U.S. federal income tax purposes in the Limited Partner’s Interest withdrawn.
- (e) With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Partnership or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable Withdrawal Date, and withdrawn amounts will be fixed as of the applicable Withdrawal Date, except as provided in Section 3.6. For the avoidance of doubt, none of the Partnership, the General Partner or the Investment Manager shall be liable to a Limited Partner for interest on the proceeds of any withdrawal.
- (f) At least 90% of the estimated amount due with respect to the Partnership’s marketable investments is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Partnership, within 30 Business Days after the Withdrawal Date, provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Partnership or the remaining Capital Accounts. The General Partner is entitled to deduct from such settlement payment an amount equal to the pro rata portion of any Performance Allocation (based on the portion of the withdrawal being settled) payable to the Investment Manager with respect to such withdrawn amount. Any balance will be held back and distributed, without interest thereon, promptly following completion of the audit of the Partnership’s financial statements for such Fiscal Year, or sooner in the General Partner’s discretion.
- (g) In the case of a complete withdrawal, or a partial withdrawal that cannot be fully funded out of the Limited Partner’s interest in the Partnership’s marketable

investments, no settlements occur with respect to any of such Limited Partner's interest in the Partnership's non-marketable investments until the occurrence of liquidity events with respect to such non-marketable investments after the scheduled payment date for the withdrawal (without interest thereon). Notwithstanding the foregoing, the General Partner may, however, make settlements in such cases prior to the occurrence of a liquidity event if such settlement would, in the good faith opinion of the General Partner, not have a material adverse effect on the Partnership. Generally, a liquidity event will be a sale of the relevant investment for cash, in which case the settlement will be funded in cash within 90 days after the liquidity event (without interest). If the liquidity event is not a sale for cash, the General Partner may effect the settlement either by making a distribution in kind of the Limited Partner's ratable share of the relevant investment or by distributing the net proceeds derived from a sale of such investment. The General Partner is entitled to withdraw from each such settlement an amount equal to the remaining portion of any Performance Allocation (pro rata based on the portion of such withdrawal being distributed) to be credited to the Investment Manager at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Limited Partner.

- (h) The General Partner may effect withdrawal payments (i) in cash, (ii) in kind, by transfer of marketable or non-marketable Investments to the Limited Partner, the value of which, as determined in accordance with Section 7.2, would satisfy the Limited Partner's request for withdrawal, or (iii) in any combination of the foregoing.
- (i) The General Partner may deduct from any withdrawal proceeds due to any Limited Partner pursuant to this Section 5.5 an amount representing the Partnership's actual or estimated expenses, as determined by the General Partner, associated with processing the withdrawal. Any such withdrawal deduction shall be retained by the Partnership for the benefit of the remaining Limited Partners.
- (j) The right of any Partner to withdraw or receive distributions pursuant to the provisions of this Section 5.5 is subject to all Capital Account allocations and adjustments contemplated by this Agreement and to the provision by the General Partner for all Partnership liabilities and for reserves and holdbacks for contingencies provided in Section 3.6.
- (k) The General Partner may suspend or limit, in whole or in part, (i) the right of the Partners to withdraw or receive distributions from the Partnership and/or (ii) the valuation of the Partnership's Net Assets:
  - (i) during any period when any exchange or over-the-counter market on which the Partnership's Investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended;



- (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of, or withdrawals or redemptions from, Investments by the Partnership, or the determination of the value of the assets of the Partnership, would not be reasonably practicable;
  - (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Partnership's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Partnership cannot reasonably be accurately ascertained within a reasonable time frame;
  - (iv) during any period when the transfer of funds involved in the realization or acquisition of any Investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange;
  - (v) in other circumstances where the General Partner is unable to fairly value the Partnership's assets due to extreme market conditions; or
  - (vi) automatically upon liquidation of the Partnership.
- (l) In the event of any such suspension or limitation described above in Section 5.5(k) (a "***Suspension***"), the General Partner shall promptly notify each Limited Partner. Any Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted is not given any priority with respect to the withdrawal of such Interests or portions thereof after the cause for such Suspension ceases to exist. The General Partner may, however, allow any such Partners to rescind their withdrawal requests to the extent of any portion thereof for which withdrawal proceeds have not yet been remitted. Upon the reasonable determination by the General Partner that conditions leading to Suspension no longer apply, withdrawal rights for all Limited Partners shall be promptly reinstated, and any pending withdrawal requests (or new, timely withdrawal requests) shall be honored as of the last Business Day of the calendar quarter in which withdrawals have recommenced, subject to the application of the withdrawal limitations described herein.
- (m) The General Partner may, notwithstanding any Suspension, upon not less than five days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Partnership may cause the Partnership, the Investment Manager or the General Partner to violate any applicable law), require any Limited Partner's Interest to be withdrawn in part or in its entirety from the Partnership (including, but not limited to, for reasons relating to FATCA) and for the Limited Partner to cease to be a Limited Partner of the Partnership (in the case of a withdrawal of a Limited Partner's Interest in its entirety) pursuant to this Section 5.5(m). Except as otherwise provided herein, settlements of withdrawals pursuant to this Section 5.5(m) are made in the same manner as voluntary withdrawals.

- (n) Notwithstanding the foregoing, the General Partner may waive any restrictions on any Limited Partner's ability to withdraw.

**Article VI**  
**SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION**

**6.1 Soft Wind Down**

- (a) The General Partner may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued (whether or not the General Partner has implemented a Suspension). Having made such determination, the Investment Manager may recommend to the General Partner to cause the Partnership to return the Partnership's assets to Limited Partners in an orderly manner (without proceeding with a liquidation of the Partnership) (an "***Orderly Realization***"). The General Partner may, in such circumstances, resolve to effect an Orderly Realization should it determine that doing so is in the best interests of the Partnership as a whole. Such Orderly Realization shall not constitute a dissolution or winding up of the Partnership for any purposes, but rather only the continued management of the Partnership's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Partnership to the Limited Partners.
- (b) The General Partner will notify the Limited Partners of any decision to proceed with an Orderly Realization of the Partnership. During an Orderly Realization, the Investment Manager may, in consultation with the General Partner, take such steps as are considered appropriate in the best interests of the Partnership as a whole to effect the Orderly Realization. The General Partner, in consultation with the Investment Manager, shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the "***Realization Period***"). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Partnership and may be carried out without recourse to a formal process of liquidation under Delaware law or any other applicable bankruptcy or insolvency regime.
- (c) The General Partner, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued.
- (d) Management Fees, and all other fees and expenses, shall be payable and Performance Allocations shall be made during an Orderly Realization on the same basis as provided herein.

## 6.2 Dissolution of Partnership

- (a) The Partnership shall be dissolved upon the first to occur of the following dates:
  - (i) any date on which the General Partner shall elect in writing to dissolve the Partnership; or
  - (ii) the occurrence of any other event causing (A) the General Partner (or a successor to its business) to cease to be the general partner of the Partnership or (B) the dissolution of the Partnership under the Act.
- (b) In the event an Orderly Realization lasts longer than three years, a Super-Majority-in-Interest of the Limited Partners may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Partnership. The Limited Partners will not have any other right to bring an action in court to dissolve the Partnership. The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein.

## 6.3 Liquidation of Assets

- (a) Upon dissolution of the Partnership, the General Partner shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible, except that if the General Partner is unable to perform this function, a liquidator elected by a Majority-in-Interest of Limited Partners shall liquidate the business and administrative affairs of the Partnership. Net Profit and Net Loss during any Accounting Period, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:
  - (i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith), up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);
  - (ii) such debts as are owing to the Partners as Partners are next paid; and
  - (iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the

Accounting Period ending on the date of the distributions under this Section 6.1(a)(iii).

- (b) Notwithstanding this Section 6.3 and the priorities set forth in the Act, the General Partner or liquidator may distribute ratably in kind rather than in cash, upon dissolution, any assets of the Partnership; provided, however, that if any in kind distribution is to be made, (i) the assets distributed in kind shall be valued pursuant to Section 7.2, and charged as so valued and distributed against amounts to be paid under Section 6.3(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in kind shall be included in the Net Profit or Net Loss for the Accounting Period ending on the date of such distribution.

## **Article VII**

### **ACCOUNTING AND VALUATION; BOOKS AND RECORDS**

#### **7.1 Accounting and Reports**

- (a) The Partnership may adopt for tax accounting purposes any accounting method that the General Partner shall decide is in the best interests of the Partnership and that is permissible for U.S. federal income tax purposes.
- (b) As soon as practicable after the end of each Fiscal Year thereafter, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of each such period to be made by a firm of independent accountants selected by the General Partner. As soon as is practicable thereafter, but subject to Section 7.4, the General Partner shall furnish to each Limited Partner a copy of the set of financial statements prepared in accordance with GAAP, with such adjustments thereto as the General Partner determines appropriate, including the report of such independent accountants.
- (c) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each Limited Partner properly to report for U.S. federal, state and local income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.
- (d) As soon as practicable after the end of each calendar month, but subject to Section 7.5, the General Partner shall arrange for the preparation and delivery to each Limited Partner of an interim report containing such information concerning the affairs of the Partnership (which need not include any financial statements) as the General Partner considers appropriate.

## 7.2 Valuation of Partnership Assets and Interests

- (a) The General Partner (or its delegate, including the Investment Manager or the administrator of the Partnership) shall value the assets of the Partnership as of the close of business on the last day of each Accounting Period. Such valuations will generally be in accordance with GAAP, with such adjustments thereto as the General Partner reasonably determines appropriate. In addition, the General Partner shall value the assets which are being distributed in kind as of the close of the Business Day immediately preceding the distribution date in accordance with Section 5.5(c) or Section 6.3(b). In determining the value of the assets of the Partnership, no value shall be placed on the goodwill or name of the Partnership, or the office records, files, statistical data or any similar intangible assets of the Partnership not normally reflected in the Partnership's accounting records, but there shall be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.
- (b) To the extent readily available, valuations will be based on independent market quotations obtained by the General Partner from recognized pricing services, market participants or other sources. In the case of any Investment for which a quotation from an independent source is not available or is determined by the General Partner to be unreliable or inadequate, the General Partner (i) shall be authorized, to the extent permitted by applicable law, to value such positions at their fair value in such manner as the General Partner determines in good faith, or (ii) may (but shall not be required to) obtain an appraisal, at the expense of the Partnership, by an independent third party selected by the General Partner. Except as otherwise determined by or at the direction of the General Partner, investment and trading transactions shall be accounted for on the trade date.
- (c) Accounts shall be maintained in U.S. dollars, and except as otherwise determined by or at the direction of the General Partner: (i) assets and liabilities denominated in currencies other than U.S. dollars shall be translated at the rates of exchange quoted by an independent pricing service as in effect as of the close of business on the relevant valuation dates (and exchange adjustments shall be recorded in the results of operations); and (ii) investment and trading transactions and income and expenses shall be translated at the rates of exchange in effect at the time of each transaction.

## 7.3 Determinations by the General Partner

- (a) All matters concerning the determination and allocation among the Partners of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final

and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

- (b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss or any other allocations with respect to any Limited Partner, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or sub-account as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

#### 7.4 Books and Records

- (a) The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and all transactions entered into by the Partnership. The General Partner shall afford to the Partnership's independent auditors reasonable access to such documents during customary business hours and shall permit the Partnership's auditors to make copies thereof or extracts therefrom at the expense of the Partnership.
- (b) The General Partner shall establish such standards as it deems appropriate regarding the access of Limited Partners to the books and records of the Partnership and shall not be obliged to permit access by a Limited Partner to the name or address of any other Limited Partner.

#### 7.5 Confidentiality

- (a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Interest or for purposes of filing such Limited Partner's tax returns) or disclose to any Person, any information or matter relating to the Partnership and its affairs and any information or matter related to any Investment (other than disclosure to such Limited Partner's directors, employees, agents, advisors, or representatives responsible for matters relating to the Partnership or to any other Person approved in writing by the General Partner (each such Person being hereinafter referred to as an "***Authorized Representative***")); provided that (i) such Limited Partner and its Authorized Representatives may make such disclosure to the extent that (A) the information to be disclosed is publicly available at the time of proposed disclosure by such Limited Partner or Authorized Representative, (B) the information otherwise is or becomes legally available to such Limited Partner other than through disclosure by the Partnership or the General Partner, or (C) such disclosure is required by law or in



response to any governmental agency request or in connection with an examination by any regulatory authorities; provided that such governmental agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) such Limited Partner and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners; and (iii) each Limited Partner will be permitted, after written notice to the General Partner, to correct any false or misleading information which becomes public concerning such Limited Partner's relationship to the Partnership or the General Partner. Prior to making any disclosure required by law, each Limited Partner shall use its best efforts to notify the General Partner of such disclosure. Prior to any disclosure to any Authorized Representative or beneficial owner, each Limited Partner shall advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 7.5(a) and each such Authorized Representative or beneficial owner shall agree to be bound by such obligations.

- (b) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, any information, including the identity of the Partners or information regarding the Partners or Investments, which the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or agreement with a third party to keep confidential.
- (c) Subject to applicable legal and regulatory considerations, the General Partner shall use reasonable efforts to keep confidential any information relating to a Limited Partner obtained by the General Partner in connection with or arising out of the Partnership which the Limited Partner requests to be kept confidential.
- (d) Notwithstanding the provisions of this Section 7.5, Partners (and their employees, representatives and other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Partnership and its transactions and all materials of any kind (including tax opinions or other tax analyses) that are provided to such Person by, or on behalf of the Partnership. For this purpose, "tax treatment" is the purported or claimed U.S. federal income tax treatment of a transaction and "tax structure" is limited to any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of a transaction. For this purpose, the names of the Partnership, the Partners, their affiliates, the names of their partners, members or equity holders and the representatives, agents and tax advisors of any of the foregoing are not items of tax structure.
- (e) The General Partner may disclose to prospective investors such information relating to the Partnership or the Investments as it believes in good faith will benefit the Partnership and facilitate investment in the Partnership by such prospective investors.

- (f) The Investment Manager and a Person acting as a service provider to the Partnership shall have the right to access all information belonging to the Partnership.

## **Article VIII GENERAL PROVISIONS**

### **8.1 Amendment of Partnership Agreement**

- (a) Except as otherwise provided in this Section 8.1, this Agreement may be amended, in whole or in part, with the written consent of (i) the General Partner and (ii) the consent of a Majority-in-Interest of Limited Partners (which approval may be obtained by negative consent affording the Limited Partners at least 30 calendar days to object).
- (b) Any amendment that would:
  - (i) increase the obligation of a Partner to make any contribution to the capital of the Partnership;
  - (ii) reduce the Capital Account of a Partner other than in accordance with Article III;
  - (iii) adversely alter any Partner's rights with respect to the allocation of Net Profit or Net Loss or with respect to distributions and withdrawals; or
  - (iv) change the respective liabilities of the General Partner and the Limited Partners;

may only be made if the consent of each Partner adversely affected thereby is obtained (which consent may be obtained by negative consent affording the Partner at least 30 calendar days to object).

- (c) Notwithstanding paragraphs (a) and (b) of this Section 8.1, this Agreement may be amended by the General Partner without the consent of the Limited Partners, at any time and without limitation, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Partnership as of a date determined by the General Partner that is not less than 30 calendar days after the General Partner has furnished written notice of such amendment to each affected Limited Partner and that is prior to the effective date of the amendment. The admission and withdrawal of Limited Partners will not require notice or disclosure to, or the approval of, the other Limited Partners.
- (d) The General Partner may at any time without the consent of the other Partners:



- (i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner under this Agreement, for the benefit of the Limited Partners;
  - (ii) cure any ambiguity or correct or supplement any conflicting provisions of this Agreement;
  - (iii) change the name of the Partnership;
  - (iv) make any changes required by a governmental body or agency which is deemed to be for the benefit or protection of the Limited Partners, provided, however, that no such amendment may be made unless such change (A) is for the benefit of, or not adverse to, the interests of Limited Partners, (B) does not affect the right of the General Partner to manage and control the Partnership's business, (C) does not affect the allocation of profits and losses among the Partners and (D) does not affect the limited liability of the Limited Partners;
  - (v) amend this Agreement to reflect a change in the identity of the General Partner which has been made in accordance with this Agreement;
  - (vi) amend this Agreement (other than with respect to the matters set forth in Section 8.1(b)) to effect compliance with any applicable laws, regulations or administrative actions;
  - (vii) subject to Section 8.1(b), amend this Agreement to reflect the creation, and terms, of any new Series of Interests;
  - (viii) effect any other amendment which would not, in the good faith judgment of the General Partner, adversely affect any of the existing Limited Partners; and
  - (ix) restate this Agreement together with any amendments hereto which have been duly adopted in accordance herewith to incorporate such amendments in a single, integrated document.
- (e) Following the adoption of any amendments to this Agreement pursuant to 8.1(d), the General Partner shall promptly deliver a copy of such amendments to this Agreement to the Limited Partners.
- (f) The General Partner may agree with a Limited Partner to waive or modify the application of any provision of this Agreement with respect to such Limited Partner without notifying or obtaining the consent of any other Limited Partner (other than a Limited Partner whose rights as a Limited Partner pursuant to this Agreement would be materially and adversely changed by such waiver or modification). Any such waiver or modification may be evidenced by a "side letter" or other document which will govern with respect to the applicable Limited Partner and be incorporated as part of this Agreement.

## 8.2 Special Power-of-Attorney

- (a) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner (and each of its successors and permitted assigns), with full power of substitution, the true and lawful representative and attorney-in-fact of, and in the name, place and stead of, such Limited Partner with the power from time to time to make, execute, sign, acknowledge, swear to, verify, deliver, record, file or publish:
- (i) an amendment to this Agreement that complies with the provisions of this Agreement (including the provisions of Section 8.1);
  - (ii) the Certificate and any amendment thereof required because this Agreement is amended, including an amendment to effectuate any change in the membership of the Partnership or in the capital contributions of the Partners;
  - (iii) any financing statement or other filing or document required or permitted to perfect the security interests contemplated by any provision hereof; and
  - (iv) all such other instruments, documents and certificates which, in the opinion of legal counsel to the Partnership, may from time to time be required by the laws of the United States of America, the State of Delaware, or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership as a limited partnership, exchange a portion of a Limited Partner's Interest for similar equity interests in an Alternative Investment Vehicle, or to effect the dissolution or termination of the Partnership.
- (b) Each Limited Partner is aware that the terms of this Agreement permit certain amendments to this Agreement to be effected and certain other actions to be taken or omitted by or with respect to the Partnership without that Limited Partner's consent. If an amendment of the Certificate or this Agreement or any action by or with respect to the Partnership is taken by the General Partner in the manner contemplated by this Agreement, each Limited Partner agrees that, notwithstanding any objection which such Limited Partner may assert with respect to such action, the General Partner in its sole discretion is authorized and empowered, with full power of substitution, to exercise the authority granted above in any manner which may be necessary or appropriate to permit such amendment to be made or action to be lawfully taken or omitted. Each Partner is fully aware that each other Partner relies on the effectiveness of this special power-of-attorney with a view to the orderly administration of the affairs of the Partnership. This power-of-attorney is a special power-of-attorney and is coupled with an interest in favor of the General Partner and as such:
- (i) is irrevocable and continues in full force and effect notwithstanding the subsequent death or incapacity of any party granting this power-of-attorney,

regardless of whether the Partnership or the General Partner has had notice thereof; and

- (ii) survives the delivery of an assignment by a Limited Partner of the whole or any portion of such Limited Partner's Interest, except that where the assignee thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, this power-of-attorney given by the assignor survives the delivery of such agreement for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

### **8.3 Notices**

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the register of Partners maintained by the General Partner or to such other addresses, facsimile numbers or electronic addresses as may be designated by any party hereto by notice addressed to (a) the General Partner, in the case of notice given by any Limited Partner, and (b) each of the Limited Partners, in the case of notice given by the General Partner. Notices will be deemed to have been given (i) when delivered by hand, transmitted by facsimile or transmitted electronically or (ii) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service.

### **8.4 Agreement Binding Upon Successors and Assigns; Delegation**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder are not assignable, transferable or delegable except as provided in Sections 4.1(c), 5.3 and 5.4, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections will be null and void *ab initio*.

### **8.5 Governing Law**

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in the courts located in Dallas County, Texas. Each Partner consents to service of process in any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the register of Partners maintained by the General Partner.

## 8.6 Not for Benefit of Creditors

The provisions of this Agreement are intended only for the regulation of relations among Partners and between Partners and former or prospective Partners and the Partnership. Except for the rights of the Indemnified Persons hereunder, this Agreement is not intended for the benefit of non-Partner creditors and no rights are granted to non-Partner creditors under this Agreement.

## 8.7 Dispute Resolution

The following procedures shall be used to resolve any controversy or claim (“*Dispute*”) arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Indemnified Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

### (a) Mediation

- (i) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.
- (ii) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- (iii) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (iv) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

### (b) Arbitration

- (i) If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney’s fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the

mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect (“*Arbitration Rules*”). In the event of a conflict, the provisions of this document will control.

- (ii) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the U.S. Federal Arbitration Act (“*FAA*”), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality, non-competition, non-solicitation or non-recruitment covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this Agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.
- (iii) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party’s actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.
- (iv) The party initiating arbitration shall pay all arbitration costs and arbitrator’s fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement.
- (v) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes

it. In any event, there shall be no more than (a) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (b) one non-party deposition of six hours; (c) twenty-five interrogatories; (d) twenty-five requests for admission; (e) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; and (f) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

- (vi) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.
- (vii) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

## **8.8 Consents and Voting**

- (a) Except as provided in Section 5.4, Limited Partners do not have any right to vote for the admission or removal of any General Partner and, except for the right to vote on certain amendments proposed by the General Partner and as otherwise expressly set out herein, have no other voting rights. Upon the request of any Limited Partner, the General Partner may designate an Interest as a Non-Voting Interest, in which case the Limited Partner shall not have the right to vote on any matter including amendments.
- (b) Any and all consents, agreements or approvals provided for or permitted by this Agreement shall be in writing and a copy thereof shall be filed and kept with the books of the Partnership. For the avoidance of doubt, an amendment made pursuant to Section 8.1(c) or pursuant to negative consent under Section 8.1(a) or Section 8.1(b) shall not require any affirmative written response by any Limited Partner who is not electing to withdraw from the Partnership.
- (c) In the event the Partnership seeks the approval, vote or consent of the Offshore Fund with respect to any matter to which it would be entitled to vote as a Limited



Partner of the Partnership under this Agreement, the Offshore Fund will: (i) submit such matter for the consent of the shareholders and (ii) shall vote its Limited Partner interest proportionally for and against such matter in the same proportion that the shareholders voted for and against such matter.

## **8.9 Merger and Consolidation**

- (a) The Partnership may merge or consolidate with or into one or more limited partnerships formed under the Act or other business entities pursuant to an agreement of merger or consolidation which has been approved in the manner contemplated by Section 17-211(b) of the Act.
- (b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Act may, to the extent permitted by Section 17-211(g) of the Act, (i) effect any amendment to this Agreement, (ii) effect the adoption of a new limited partnership agreement for the Partnership if it is the surviving or resulting limited partnership in the merger or consolidation, or (iii) provide that the limited partnership agreement of any other constituent partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating the merger or consolidation) shall be the limited partnership agreement of the surviving or resulting limited partnership.

## **8.10 Miscellaneous**

- (a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word “including” in this Agreement means in each case “without limitation,” whether or not such term is explicitly stated.
- (b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.
- (c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

## **8.11 BHCA Subject Persons**

Notwithstanding any other provision of this Agreement to the contrary:

- (a) Solely for purposes of any provision of this Agreement that confers voting rights on the Limited Partners and any other provisions hereof regarding consents of or action by the Limited Partners, any BHCA Subject Person that shall have given the General Partner an Election Notice and shall not thereafter have given the General Partner a Revocation Notice, and that at any time has a Partnership Percentage in

excess of 4.9% of the aggregate Partnership Percentages of the Limited Partners entitled to participate in such voting or the giving of any consent or the taking of any action, shall be deemed to hold a Partnership Percentage of only 4.9% of the aggregate Partnership Percentages of the Limited Partners (after giving effect to the limitations imposed by this Section 8.11 on all such Limited Partners), and such Partnership Percentage in excess of said 4.9% shall be deemed held by the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages; provided that this limitation shall not prohibit a Limited Partner from voting or participating in giving or withholding consent or taking any action under any provision of this Agreement up to the full amount of its Partnership Percentage in situations where such Limited Partner's vote or consent or action is of the type customarily provided by statute or stock exchange rules with regard to matters that would significantly and adversely affect the rights or preference of the Limited Partner's Interest. The foregoing voting restriction shall continue to apply with respect to any assignee or other transferee of such BHCA Subject Person's Interest; provided, however, that the foregoing voting restriction shall not continue to apply if the Interest is transferred: (i) to the Partnership; (ii) to the public in an offering registered under the Securities Act; (iii) in a transaction pursuant to Rule 144 or Rule 144A under the Securities Act in which no Person acquires more than 2% of the Partnership's outstanding Interests; or (iv) in a single transaction to a third party who acquires at least a majority of the Partnership's outstanding Interests without regard to the Transfer of such Interests.

- (b) Except as specifically provided otherwise in this Agreement, a Limited Partner that is a BHCA Subject Person that shall have given the General Partner an Election Notice, and shall not thereafter have given the General Partner a Revocation Notice, shall not be entitled to exercise any rights to consent to actions to be taken with respect to the Partnership, including rights conferred by any applicable law. Such right to consent shall be deemed granted to the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages.
- (c) A Limited Partner that is a BHCA Subject Person and that elects to be subject to Section 8.11(a) and (b) shall notify the General Partner thereof (an "***Election Notice***") and, on the General Partner's receipt of such Election Notice, such Limited Partner shall be subject to Section 8.11(a) and (b) until 10 calendar days after such Limited Partner notifies the General Partner that it elects no longer to be subject to Section 8.11(a) and (b) (a "***Revocation Notice***"), which period may be reduced by the General Partner.

## 8.12 RIC Limited Partners

An Interest of a RIC Limited Partner does not entitle the RIC Limited Partner to vote or consent with respect to any Partnership matter unless the RIC Limited Partner's vote or consent with respect to its Interest would not be considered to be "voting securities" as defined under Section 2(a)(42) of the Investment Company Act. Except as provided in this Section 8.12, an Interest held by a RIC Limited Partner as a Non-Voting Interest is identical in all regards to all other Interests held by Limited Partners.



### **8.13 Bad Actor Limited Partners**

Under Rule 506(d) under the Securities Act, the Partnership may be banned from selling Interests under Rule 506 if a Limited Partner beneficially owning 20% or more of the Partnership's voting securities engages in a "bad act" set forth in Rule 506. Accordingly, each Limited Partner agrees that the General Partner may deem the portion of any Bad Actor Limited Partner's Interests to be, or convert any Bad Actor Limited Partner's Interests into, Non-Voting Interests (except for the purposes of voting on any amendment to this Agreement that would materially and adversely change the Bad Actor Limited Partner's rights and preferences as a Limited Partner other than pursuant to an amendment under Section 8.1(c)) to the extent that the General Partner determines that such portion is in excess of 19.99% of the outstanding aggregate voting Interests of all Partners excluding any Interests that are Non-Voting Interests.

### **8.14 Entire Agreement**

The parties acknowledge and agree that, this Agreement, together with any other agreement with a Limited Partner pursuant to Section 8.1(e), constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

[Signature Page Follows]

The parties hereto have executed this Agreement as of the day and year first above written.

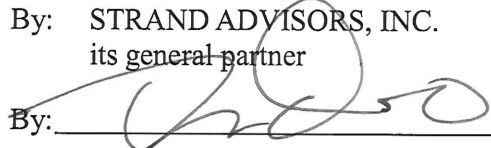
**GENERAL PARTNER:**

HIGHLAND MULTI STRATEGY CREDIT FUND GP,  
L.P.

By: HIGHLAND MUTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

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

Name: James Dondero

Title: President

**LIMITED PARTNERS:**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P.  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

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

Name: James Dondero

Title: President

**EXHIBIT 15**

**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES**

**AMENDED AND RESTATED  
MEMORANDUM AND ARTICLES OF ASSOCIATION**

**OF**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**



**004324**  
Uploaded: 05-Nov-2014 14:05 EST  
Filed: 05-Nov-2014 18:02 EST

**THE COMPANIES LAW (2013 REVISION)**  
**OF THE CAYMAN ISLANDS**  
**COMPANY LIMITED BY SHARES**  
  
**AMENDED AND RESTATED**  
**MEMORANDUM OF ASSOCIATION**  
**OF**  
**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**  
**(As Adopted by Special Resolution on 1 November 2014)**

- 1 The name of the Company is **Highland Multi Strategy Credit Fund, Ltd.**
- 2 The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, or at such other place within the Cayman Islands as the Directors may decide.
- 3 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the laws of the Cayman Islands.
- 4 The liability of each Member is limited to the amount unpaid on such Member's Shares.
- 5 The share capital of the Company is US\$50,000 divided into 100 Management Shares of US\$0.01 par value each and 49,999,000 Participating Shares of US\$0.001 par value each.
- 6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.
- 7 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.



**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES  
  
AMENDED AND RESTATED  
ARTICLES OF ASSOCIATION  
  
OF  
HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**

**1 Interpretation**

1.1 In these Articles, Table A in the First Schedule to the Statute does not apply and unless there is something in the subject or context inconsistent therewith:

<b>"Administrator"</b>	means the person, firm or corporation appointed and from time to time acting as administrator of the Company.
<b>"Articles"</b>	means these articles of association of the Company.
<b>"Auditor"</b>	means the person (if any) for the time being performing the duties of auditor of the Company.
<b>"Business Day"</b>	means any day normally treated as a business day in such places and/or on such markets as the Directors may from time to time determine.
<b>"Cayman Islands"</b>	means the British Overseas Territory of the Cayman Islands.
<b>"Class"</b>	means a separate class of Participating Share (and includes any sub-class of any such class).
<b>"Company"</b>	means the above-named Company.
<b>"Directors"</b>	means the directors for the time being of the Company.
<b>"Dollars" or "US\$"</b>	refers to the currency of the United States.
<b>"Electronic Record"</b>	has the same meaning as in the Electronic Transactions Law.



**"Electronic Transactions Law"** means the Electronic Transactions Law (2003 Revision) of the Cayman Islands.

**"Eligible Investor"** means a person eligible to hold Participating Shares, as determined from time to time by the Directors.

**"FATCA"** means:

- (i) sections 1471 to 1474 of the US Internal Revenue Code of 1986 and any associated legislation, regulations or guidance, or similar legislation, regulations or guidance enacted in any jurisdiction which seeks to implement similar tax reporting and/or withholding tax regimes;
- (ii) any intergovernmental agreement, treaty, regulation, guidance or any other agreement between the Cayman Islands (or any Cayman Islands government body) and the US, the UK or any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement or implement the legislation, regulations or guidance described in paragraph (i); and
- (iii) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding paragraphs.

**"Gross Negligence"** shall have the meaning ascribed thereto under the laws of the State of Delaware, USA.

**"Investment Manager"** means the person, firm or corporation appointed and for the time being acting as the investment manager of the Company.

**"Management Share"** means a voting non participating Share in the capital of the Company of US\$0.01 par value designated as a Management Share and having the rights provided for in these Articles.

**"Master Fund"** means Highland Multi Strategy Credit Fund, L.P., or any other entity in which all, or substantially all, of the assets of the Company are invested.

**"Member"** means each person whose name is, from time to time and for the time being, entered in the Register of Members as the holder of one or more Shares.



- "Memorandum"** means the memorandum of association of the Company.
- "Net Asset Value"** means the value of the assets less the liabilities of the Company, or of a Separate Account (as the context may require), calculated in accordance with these Articles.
- "Net Asset Value per Participating Share"** means the amount determined in accordance with these Articles as being the Net Asset Value per Participating Share of a particular Class and/or Series.
- "New Issue"** has the meaning ascribed thereto by Rule 2790 adopted by the National Association of Securities Dealers, Inc.
- "New Issue Investment"** means any New Issue acquired by the Company.
- "New Issue Shares"** means a class of Participating Shares issued and designated as "New Issue Shares" and which may be issued in any one or more Series having the rights and restrictions set out in these Articles
- "Offering Memorandum"** means an offering memorandum relating to Participating Shares of any Class and/or Series as amended or supplemented from time to time subject to and in accordance with these Articles.
- "Ordinary Resolution"** means a resolution passed by a simple majority of the votes of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution.
- "Participating Share"** means a participating redeemable Share in the capital of the Company of US\$0.001 par value and having the rights provided for in these Articles. Participating Shares may be divided into Classes in the discretion of the Directors in accordance with the provisions of these Articles and each Class may be further divided into different Series of Participating Shares and the term "Participating Share" shall include all such Classes and Series of Participating Share.
- "Prohibited Person"** means any person who is restricted from participating in a New Issue pursuant to the Free-Riding and Withholding Interpretation adopted by the Board of Governors of the National Association of Securities Dealers Inc.
- "Redemption Date"** means, in relation to any Class and/or Series of Participating Shares, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time, upon which a Member is entitled to require the redemption of Participating Shares.





of that Class and/or Series.

- "Redemption Fee"** means such fee (if any) payable by a Member to the Company on a redemption of Participating Shares, as the same may be determined by the Directors and disclosed to the Member at the time of its subscription for such Participating Shares.
- "Redemption Notice"** means a notice in a form approved by the Directors by which a holder of Participating Shares is entitled to require the Company to redeem its Participating Shares.
- "Redemption Price"** means the price determined in accordance with these Articles at which redeemable Participating Shares of the relevant Class and/or Series may be redeemed.
- "Register of Members"** means the register of Members, which shall be maintained in accordance with the Statute and includes (except where otherwise stated) any branch or duplicate Register of Members.
- "Registered Office"** means the registered office for the time being of the Company.
- "Sales Charge"** means such sales charge (if any) determined by the Directors as being payable by a subscriber on a subscription for Participating Shares of any Class and/or Series.
- "Seal"** means the common seal of the Company and includes every duplicate seal.
- "Separate Account"** means a separate internal account of the Company which the Directors may establish and cause to be maintained in accordance with these Articles.
- "Series"** means a separate series of Participating Share (and includes any sub-series of any such series).
- "Share" and "Shares"** means a share or shares of any class or series in the Company, including a Management Share, a Participating Share or a New Issue Share, as well as any fraction of a Share.
- "Share Rights"** means, with respect to the Participating Shares of any Class or Series in issue, the class rights for the time being applicable to such Participating Shares or other terms of offer for the time being applicable to such Participating Shares whether set out in the Offering Memorandum, any subscription agreement or otherwise (including any representations, warranties or other disclosure relating



to the offer or holding of such Participating Shares).

- "Special Resolution"** has the same meaning as in the Statute and includes a unanimous written resolution.
- "Statute"** means the Companies Law (2013 Revision) of the Cayman Islands.
- "Subscriber"** means the subscriber to the Memorandum.
- "Subscription Date"** means, in relation to Participating Shares of any Class and/or Series, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time upon which a person may subscribe for Participating Shares of that Class and/or Series.
- "Subscription Price"** means the price determined in accordance with these Articles at which Participating Shares of the relevant Class and/or Series may be subscribed.
- "Suspension"** means a determination by the Directors to postpone or suspend (i) the calculation of the Net Asset Value of Participating Shares of any one or more Classes and/or Series (and the applicable Valuation Date) (a "**Calculation Suspension**"); (ii) the issue of Participating Shares of any one or more Classes and/or Series (and the applicable Subscription Date) (an "**Issue Suspension**"); (iii) the redemption by Members (in whole or in part) of Participating Shares of any one or more Classes and/or Series (and the applicable Redemption Date) (a "**Redemption Suspension**"); and/or (iv) the payment (in whole or in part) of any redemption proceeds (even if Valuation Dates and Redemption Dates are not postponed) (a "**Payment Suspension**").
- "Transfer"** means, in respect of any Share, any sale, assignment, exchange, transfer, pledge, encumbrance or other disposition of that Share, and "**Transferred**" shall be construed accordingly.
- "Treasury Share"** means a Share held in the name of the Company as a treasury share in accordance with the Statute.
- "Valuation Date"** means, in relation to each Class and/or Series of Participating Shares, the day or days determined from time to time by the Directors to be the day or days on which the Net Asset Value per Participating Share of that Class and/or Series is calculated.
- "Valuation Point"** means, with respect to any Class and/or Series, the time or times on the Valuation Date of such Class and/or Series at which the Directors



determine that the Net Asset Value per Participating Share of that Class and/or Series shall be calculated.

1.2 In these Articles:

- (a) the singular number includes the plural number and vice versa;
- (b) the masculine gender includes the feminine gender;
- (c) persons includes corporations;
- (d) "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (e) "shall" shall be construed as imperative and "may" shall be construed as permissive;
- (f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;
- (g) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) the term "and/or" is used herein to mean both "and" as well as "or." The use of "and/or" in certain contexts in no respects qualifies or modifies the use of the terms "and" or "or" in others. "Or" shall not be interpreted to be exclusive, and "and" shall not be interpreted to require the conjunctive — in each case, unless the context otherwise requires;
- (i) any reference to the powers of the Directors shall include, when the context admits, the service providers or any other person to whom the Directors may delegate their powers;
- (j) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;
- (k) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Law;
- (l) sections 8 and 19(3) of the Electronic Transactions Law shall not apply; and
- (m) headings are inserted for reference only and shall be ignored in construing these Articles.



## **2 Commencement of Business**

- 2.1 The business of the Company may be commenced as soon after incorporation as the Directors shall see fit.
- 2.2 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and operation of the Company, including the expenses of registration and the initial offering of Participating Shares.

## **3 Service Providers**

- 3.1 The Directors may appoint any person, firm or corporation to act as a service provider to the Company (whether in general or in respect of any Class and/or Series of Shares) and may entrust to and confer upon any such service providers any of the functions, duties, powers and discretions exercisable by them as Directors, upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit. Without limiting the generality of the foregoing, such service providers may include managers, investment advisers, administrators, registrars, transfer agents, custodians and prime brokers.
- 3.2 Without prejudice to the generality of the preceding Article, the Directors may appoint any person, firm or corporation to act as the Investment Manager with respect to the assets of the Company (whether in general or in respect of any Class and/or Series of Shares). The Directors may entrust to and confer upon the Investment Manager any of the functions, duties, powers and discretions exercisable by them as Directors upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit.

## **4 Rights attaching to Shares**

- 4.1 The Management Shares shall have the following rights:
- (a) as to voting: the holder of a Management Share shall (in respect of such Management Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company; and
  - (b) as to capital: a Management Share shall confer upon the holder the right in a winding up to repayment of capital as provided in these Articles but shall confer no other right to participate in the profits or assets of the Company; and
  - (c) as to income: no dividends shall be payable on the Management Shares.
- 4.2 The Participating Shares shall have the following rights:



- (a) as to voting: the holder of a Participating Share shall not (in respect of such Participating Share) have the right to receive notice of, attend at or vote as a Member at any general meeting of the Company, but may vote at a separate Class meeting convened in accordance with these Articles; and
- (b) as to capital: a Participating Share shall confer upon the holder thereof the right in a winding up to participate in the surplus assets of the Company by reference to the Separate Account attributable to the relevant Class or Series of Participating Shares as provided in these Articles; and
- (c) as to income: the Participating Shares shall confer on the holders thereof the right to receive dividends as provided in these Articles.

4.3 Notwithstanding Articles 4.1(a) and 4.2(a), if the Company, in its capacity as a limited partner of the Master Fund, is called upon to approve, vote or consent to any matter to which it would be entitled to vote as a limited partner of the Master Fund and is required to seek the consent of the holders of Participating Shares in connection with any such approval, vote or consent pursuant to the constitutional documents of the Master Fund (a "**Master Fund Consent Transaction**"), each holder of a Participating Share shall have the right (in respect of such Participating Share), to the exclusion of the holders of the Management Shares (in respect of such Management Shares), to receive notice of, and vote on, the Master Fund Consent Transaction (the "**Special Voting Right**"). The voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote. For every Master Fund Consent Transaction, the Directors shall cause the Company to vote its limited partnership interest in the Master Fund proportionally for and against such matter in the same proportion that the Members holding Participating Shares voted for and against such matter pursuant to the Special Voting Right.

4.4 In relation to any Special Voting Right pursuant to Article 4.3, unless otherwise determined by the Directors in their sole discretion, the procedure in this Article 4.4 shall be invoked. The Directors shall provide written notice of the proposed Master Fund Consent Transaction to the Members holding Participating Shares and shall specify a deadline (the "**Consent Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written refusal to consent to the proposed Master Fund Consent Transaction. The holders of Participating Shares in respect of which an express written refusal to consent has not been received by the Consent Date shall be deemed to have consented in writing to the proposed Master Fund Consent Transaction.

## 5 Share Capital

5.1 Subject to these Articles, the Directors may allot, issue, grant options or warrants over, or otherwise dispose of Shares in separate classes and/or series with different terms, preferences, privileges or special rights including, without limitation, with respect to investment strategy and/or policy, participation in assets, profits and losses of the Company, voting, fees charged (including



management, performance and incentive fees), redemption privileges, allocation of costs and expenses (including, without limitation, the costs and expenses incurred in any hedging activities and any profits and losses arising therefrom) as they think proper. Subject to the Statute, these Articles and any applicable subscription agreement, any Share Rights (other than those set out in these Articles or set out in a Special Resolution) may be varied by either the Directors or by Ordinary Resolution. Notwithstanding the foregoing, the Subscriber shall have the power to:

- (a) issue one Share to itself;
  - (b) transfer that Share by an instrument of transfer to any person; and
  - (c) update the Register of Members in respect of the issue and transfer of that Share.
- 5.2 On or before the allotment of any Participating Share the Directors shall resolve the Class and/or Series to which such Participating Share shall be classified and may, prior to the issue of any Participating Share, reclassify such Participating Share. Each Class and/or Series shall be specifically identified. Subject to the Statute and these Articles, the Directors may at any time re-name any Participating Share.
- 5.3 Notwithstanding the currency in which the par value of the Participating Shares is denominated, the Directors may specify any currency as the currency in which the Subscription Price, Redemption Price and Net Asset Value of Participating Shares of a Class and/or Series is calculated.
- 5.4 The Company shall not issue Shares to bearer.
- 5.5 Fractional Shares may be issued.
- 5.6 Shares shall only be issued as fully paid-up.
- 5.7 No right of pre-emption or first refusal shall attach to any Shares.
- 5.8 New Issue Shares shall not be issued to a Prohibited Person.

## **6 Allotment and Issue of Participating Shares**

- 6.1 The Directors may from time to time allot and issue Participating Shares of any Class and/or Series. The Directors may, in their discretion, refuse to allot and issue any Participating Shares, and shall not issue any Participating Shares to or for the account of an investor who is not an Eligible Investor. If the Directors have declared a Calculation Suspension or Issue Suspension, no Participating Shares of that Class or Series (as appropriate) shall be issued until the relevant Suspension has ended.
- 6.2 The Directors shall determine the Subscription Price at the time of issue of the first issue of Participating Shares of any Class and/or Series. Thereafter, the Directors may allot and issue



Participating Shares of the same Class and/or Series on any Subscription Date provided that such additional Participating Shares are issued at a Subscription Price equal to not less than the Net Asset Value per Participating Share of such Class and/or Series calculated on the relevant Subscription Date (or if the Subscription Date is not also a Valuation Date then on the immediately preceding Valuation Date).

- 6.3 The Directors may add to the Subscription Price per Participating Share (before making any rounding adjustment) an amount which they consider to be an appropriate allowance to reflect fiscal and purchase charges which would be incurred for the account of the Company in investing an amount equal to the Subscription Price. The Directors may also add, in their discretion, a Sales Charge and/or an amount equal to any stamp duty and any other governmental taxes or charges payable by the Company with respect to the issue of such Participating Shares.
- 6.4 An applicant for Participating Shares shall pay for such Participating Shares in such currencies, in such manner, at such time, in such place and to such person acting on behalf of the Company as the Directors may from time to time determine.
- 6.5 Subject to the terms of any subscription agreement, an application for Participating Shares shall be irrevocable by an applicant for Participating Shares once it has been received by the Company. Participating Shares shall be treated as having been issued with effect from the relevant Subscription Date notwithstanding that the subscriber for those Participating Shares may not be entered in the Register of Members until after the Subscription Date.
- 6.6 Participating Shares shall be issued in such minimum numbers as the Directors may specify either generally or in any particular case; likewise the Directors may from time to time prescribe an amount as the minimum subscription amount.
- 6.7 The Directors may resolve to accept non-cash assets in satisfaction (in whole or in part) of the Subscription Price.
- 6.8 The Directors may require an applicant for Participating Shares to pay to the Company for the benefit of any selling agent such selling commissions or such organisational charges as may have been disclosed to such applicant. The Directors may differentiate between applicants as to the amount of such selling commissions or such organisational charges.
- 6.9 The Company may, in so far as the Statute permits, pay a commission to any person in consideration of that person subscribing or agreeing to subscribe whether absolutely or conditionally for any Participating Shares. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Participating Shares. The Company may also on any issue of Participating Shares pay such brokerage as may be lawful.

## **7 Separate Accounts**

- 7.1 The Directors shall have the power to establish and maintain, with respect to Participating Shares of any Class and/or Series, a Separate Account, to record (purely as an internal accounting





matter) the allocation, on a differentiated basis, of the assets and liabilities of the Company to the holders of Participating Shares of any such Class and/or a Series in a manner consistent with the methodology set forth in the Offering Memorandum and the rights otherwise attaching to the Participating Shares.

- 7.2 The proceeds from the issue of Participating Shares of any Class and/or Series shall be applied in the books of the Company to the Separate Account established for Participating Shares of that Class and/or Series. The assets and liabilities and income and expenditure attributable to that Separate Account shall be applied to such Separate Account and, subject to the provisions of these Articles, to no other Separate Account. In the event that the assets of a Separate Account referable to any Class and/or Series are exhausted, any and all unsatisfied claims which any Members or former Members referable to that Class and/or Series have against the Company shall be extinguished. The Members or former Members referable to a Class and/or Series shall have no recourse against the assets of any other Separate Account established by the Company.
- 7.3 Where any asset is derived from another asset (whether cash or otherwise), such derivative asset shall be applied in the books of the Company to the same Separate Account as the asset from which it was derived, and on each revaluation of an asset the increase or diminution in value shall be applied to the same Separate Account and, subject to the provisions of these Articles, to no other Separate Account.
- 7.4 In the case of any asset or liability of the Company which the Directors do not consider is attributable to a particular Separate Account, the Directors shall have discretion to determine the basis upon which any such asset or liability shall be allocated between or among Separate Accounts.
- 7.5 The Directors may, in the books of the Company, allocate assets and liabilities to and from Separate Accounts if, as a result of a creditor proceeding against certain of the assets of the Company or otherwise, a liability would be borne in a different manner from that in which it would have been borne if applied under the foregoing Articles.
- 7.6 The Directors may from time to time transfer, allocate or exchange an asset or liability from one Separate Account to another Separate Account provided that at the time of such transfer, allocation or exchange the Directors form the opinion (in good faith) that the value in money or money's worth of each such asset or liability transferred, allocated or exchanged is not significantly less or more than the value in money or money's worth (referred to in these Articles as "proper value") received by the Separate Account from which such asset or liability is transferred, allocated or exchanged except only as is otherwise provided by these Articles.

## **8 Determination of Net Asset Value**

- 8.1 The Net Asset Value and Net Asset Value per Participating Share of each Class and/or Series shall be determined by or on behalf of the Directors as at the relevant Valuation Point on each relevant Valuation Date.





- 8.2 In calculating the Net Asset Value and the Net Asset Value per Participating Share, the Directors shall apply such generally accepted accounting principles as they may determine.
- 8.3 The assets and liabilities of the Company shall be valued in accordance with such policies as the Directors may determine. Absent bad faith or manifest error, any valuation made pursuant to these Articles shall be binding on all persons.
- 8.4 Unless otherwise determined by the Directors in any resolution creating a Class and/or Series of Participating Shares or as otherwise disclosed in any Offering Memorandum, the Net Asset Value per Participating Share of each Class (or Series) shall be determined by allocating *pro rata* the Net Asset Value, as at the relevant Valuation Point, of the Company and/or of the relevant Separate Account among each Class and/or Series, adjusting the amount so calculated to reflect any fees, costs, foreign exchange items or other assets or liabilities which are properly attributable to a specific Class and/or Series and then by dividing the resultant amount by the number of Participating Shares of such Class and/or Series then in issue.
- 8.5 The Directors may determine that the Net Asset Value of any Class and/or Series shall be definitively determined on the basis of estimates and that such determination shall not be modified to reflect final valuations.
- 8.6 Any expense or liability may be amortised over such period as the Directors may determine.
- 8.7 The Directors may establish such reserves as they deem reasonably necessary for Company expenses and any other contingent Company assets or liabilities, and may, upon the reversal or release of such reserves, apply any monies resulting therefrom in such manner as they may, in their absolute discretion, determine.
- 8.8 Net Asset Value per Participating Share shall be rounded to the nearest cent or such other amount as the Directors may determine and the benefit of any such roundings may be retained by the Company.
- 8.9 The Directors may cause the Company to issue new Participating Shares at par or to compulsorily redeem at par such number of Participating Shares as they consider necessary to address, in such manner as they consider equitable, any prior miscalculation of Net Asset Value or Net Asset Value per Participating Share. The Company shall not be required to pay to the holder the redemption proceeds of any such compulsorily redeemed Participating Shares, which proceeds shall be retained by the Company.

## 9 Suspensions

- 9.1 The Directors may, from time to time, in the circumstances disclosed in the Offering Memorandum, declare a Suspension with respect to any one or more Classes and/or Series of Participating Shares.



9.2 The Directors shall promptly notify all affected Members of any such Suspension and shall promptly notify such Members upon termination of such Suspension.

## **10 Transfer of Shares**

10.1 Subject to Article 5.1, Shares may not be Transferred without the prior written approval of the Directors (which may be withheld for any or no reason) provided that the Directors may waive this requirement to the extent that they deem appropriate in connection with the listing of any Class or Series of Share on a stock exchange.

10.2 The Directors shall not register any Transfer of any Share to any person who is, in the opinion of the Directors, not an Eligible Investor.

10.3 Any proposed transferee shall provide to the Directors such information and documents as the Directors may request, including, without limitation, such documents or information as the Directors deem necessary or desirable:

- (a) to enable the Directors to determine that the proposed transferee is an Eligible Investor; and
- (b) to enable the Company to comply with all applicable laws, including anti-money laundering laws.

10.4 The instrument of Transfer of any Share shall be in writing and shall be executed by or on behalf of the transferor (and, if the Directors so require, signed by or on behalf of the transferee). The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

## **11 Transmission of Shares**

11.1 If a Member dies, the survivor or survivors (where the Member was a joint holder) or his or her legal personal representatives (where the Member was a sole holder) shall be the only persons recognised by the Company as having any title to the Member's interest in the Company. The death of any Member shall not operate to relieve, waive or reduce any liabilities attaching to the Member's Shares at the time of death and such liabilities shall continue to bind any survivor or survivors, or any personal representative, as the case may be.

11.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is an Eligible Investor may, upon delivery to the Directors of such evidence as may from time to time be required by them of:

- (a) such person's entitlement to such Shares; and/or
- (b) such person's status as an Eligible Investor,



elect, either to become the holder of such Share or to have such Share Transferred to another Eligible Investor nominated by such person. If such person elects to become the holder of such Share, such person shall give notice in writing to the Directors to that effect, but the Directors shall, in either case, have the same right to decline registration of such person as a holder of such Share as they would have had in the case of a Transfer of the Share by that Member before his or her death or bankruptcy, or liquidation or dissolution, as the case may be.

- 11.3 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is not an Eligible Investor shall not be registered as the holder of such Share and shall promptly Transfer such Share to an Eligible Investor in accordance with these Articles.
- 11.4 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by Transfer), and who is an Eligible Investor, shall be entitled to the same dividends and other advantages to which such person would be entitled if such person were the registered holder of such Share. However, the person shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him become the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days the Directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

## 12 Redemption of Shares

- 12.1 Subject to any provisions relating to a specific Class and/or Series as set out in the Offering Memorandum or these Articles or in any resolution constituting a Class and/or Series or otherwise forming part of the special rights of such Participating Shares, a Member may require the redemption of all or any of such Member's Participating Shares by serving a Redemption Notice on the Company. Unless timely receipt is waived by the Directors in a particular case, a Redemption Notice shall be required to be received on or before a Redemption Date with respect to such Participating Shares (or such number of days prior to such Redemption Date as may be determined by the Directors). Any Member redeeming Participating Shares shall submit to the Directors the share certificate (if any) issued in respect of those Participating Shares. The Company shall redeem such Participating Shares at the Redemption Price, being an amount equal to the Net Asset Value per Participating Share of the relevant Class and/or Series prevailing on the relevant Redemption Date (or if the Redemption Date is not a Valuation Date then on the immediately preceding Valuation Date) subject to any deductions, holdbacks or adjustments provided for in these Articles and/or the Offering Memorandum.



- 12.2 The Directors may deduct any Redemption Fee from the Redemption Price. The Directors may also deduct such amount which they consider to be an appropriate allowance to reflect fiscal and sale charges which would be incurred for the account of the Company in realising assets or closing out positions to provide funds to meet any redemption request.
- 12.3 A Member may not withdraw a Redemption Notice once submitted to the Company unless (a) the Directors shall have declared a Calculation Suspension or Redemption Suspension or (b) the Directors determine (in their sole discretion) to permit the withdrawal of such redemption request (which they may do in whole or in part). If a relevant Suspension has been declared by the Directors, the right of a Member to have its Participating Shares redeemed shall be suspended and during the period of Suspension the Member may withdraw its Redemption Notice. Any withdrawal of the Redemption Notice shall be made in writing and shall only be effective if actually received by the Company before the termination of the period of the Redemption Suspension or Calculation Suspension, as applicable. If the Redemption Notice is not withdrawn, any Participating Shares the redemption of which has been suspended shall be redeemed once the relevant Suspension has ended at the Redemption Price for Participating Shares of the relevant Class and/or Series calculated on the next Redemption Date following the end of the relevant Suspension.
- 12.4 The Directors may impose a gate the effect of which is to limit the redemptions of Participating Shares of any Class and/or Series or to limit the redemptions of Participating Shares held by any Member or Members as of any Redemption Date to such extent and in such manner as is disclosed in the Offering Memorandum. If the Directors determine to limit redemptions, the Directors may determine the manner in which such gated redemption requests will be dealt with on any subsequent Redemption Date.
- 12.5 If the Company is required by the laws of any relevant jurisdiction to make a withholding from any redemption monies payable to the holder of Participating Shares the amount of such withholding shall be deducted from the redemption monies otherwise payable to such person.
- 12.6 No redemption of part of a Member's holding of Participating Shares of any one Class and/or Series may be made if, as a result thereof, such Member would hold fewer Participating Shares of such Class and/or Series than such minimum number or value of Participating Shares of such Class and/or Series as may from time to time be specified (either generally or in any particular case or cases) by the Directors. If such partial redemption would reduce such Member's holding of Participating Shares to less than such minimum holding, the Directors may, in their discretion, elect to compulsorily redeem all of such Member's Participating Shares.
- 12.7 The Company may, in the absolute discretion of the Directors, refuse to make a redemption payment to a Member if the Directors suspect or are advised that the payment of any redemption proceeds to such Member may result in a breach or violation of any anti-money laundering law by any person in any relevant jurisdiction, or if such refusal is necessary to ensure the compliance by the Company, its Directors, the Administrator or any other service provider of the Company with any anti-money laundering law in any relevant jurisdiction.



- 12.8 Any amount payable to a Member for the redemption of Participating Shares shall be paid in such currency or currencies as the Directors may determine. Subject to any Payment Suspension, the Company shall remit redemption proceeds (net of the costs of remittance) by cheque or wire transfer within such period or periods as the Directors shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period or periods as the Directors shall determine. In the absence of directions as to payment the Company may remit redemption proceeds by cheque to the address of the Member appearing on the Register of Members or by wire transfer to such account as the Directors deem appropriate in the circumstances. The Company shall not be liable for any loss resulting from this procedure.
- 12.9 On any redemption of Participating Shares the Directors shall have the power to satisfy (in whole or in part) the Redemption Price (and any other sums payable on redemption as provided in these Articles) owing on the redemption of such Participating Shares by dividing *in specie* the whole or any part of the assets of the Company (including, without limitation, shares, debentures, or securities of any other company whether or not held by the Company on the Redemption Date in question) and either (i) distributing such assets directly to the redeeming shareholder, and/or (ii) distributing or allocating such assets to a liquidating account or other similar mechanism to be managed and/or liquidated at the discretion of the Directors.
- 12.10 Participating Shares shall be treated as having been redeemed with effect from the relevant Redemption Date irrespective of whether or not a Member has been removed from the Register of Members or the Redemption Price has been determined or remitted. Accordingly, on and from the relevant Redemption Date, Members in their capacity as such will not be entitled to or be capable of exercising any rights arising under these Articles with respect to Participating Shares being redeemed (including any right to receive notice of, attend or vote at any meeting of the Company) save the right to receive the Redemption Price and any dividend which has been declared prior to the relevant Redemption Date but not yet paid (in each case with respect to the Participating Shares being redeemed). Such Members will be treated as creditors of the Company with respect to the Redemption Price and will rank accordingly in the priority of the Company's creditors.
- 12.11 Once a Participating Share is redeemed it shall be available for re issue and, until re issue, shall form part of the authorised and unissued share capital of the Company.
- 12.12 Upon the written request of a Member or prospective Member in a form acceptable to the Directors, the Company may, in the discretion of the Directors, accept a standing redemption request from such Member or prospective Member pursuant to which the Company shall agree (without assuming any liability for failing to do so) to use its commercially reasonable efforts to redeem such Member's Participating Shares to the extent necessary to ensure that such Member does not own over a specified percentage of the outstanding Participating Shares of the Company or any Class and/or Series thereof; such percentage to be the percentage identified by such Member or prospective Member in such written request as being the percentage which such Member's or prospective Member's ownership cannot exceed without material risk of such



Member or prospective Member being in violation of applicable law or regulation. Any such written request may be revoked by notice in writing to the Company from the affected Member.

- 12.13 No amendment to these Articles made after a Redemption Date shall affect a Member with respect to Participating Shares of that Member which have been redeemed, or are being treated as redeemed, on or prior to that Redemption Date.
- 12.14 Unless otherwise provided in the Offering Memorandum, unremitted redemption proceeds shall not bear interest against the Company and redeemed Participating Shares shall not participate in the profits and losses of the Company with effect from the relevant Redemption Date.

### **13 Compulsory Redemption**

- 13.1 The Directors may cause the Company to redeem any or all of the Participating Shares held by any person at the appropriate Redemption Price in the circumstances disclosed in the Offering Memorandum. If the Directors determine compulsorily to redeem any Participating Shares under this Article they shall give the holder of the Participating Shares such notice of the redemption as they shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period as the Directors shall determine.
- 13.2 The Directors may cause a compulsory redemption during any period for which a Redemption Suspension has been declared.
- 13.3 Without prejudice to the generality of the foregoing, the Company may (without notice) compulsorily redeem the Participating Shares of any Member and, on behalf of such Member, apply the proceeds of redemption in paying for new Participating Shares to give effect to any exchange, conversion or roll-up policy disclosed to Members pursuant to which Participating Shares of one Class or Series (the "**Old Shares**") may, at the option of the Company, be exchanged for Participating Shares of another Class or Series (the "**New Shares**") by means of the redemption of the Old Shares and the immediate re-subscription of the redemption proceeds in paying up the New Shares.

### **14 FATCA**

- 14.1 Notwithstanding any other Article, in order to comply with FATCA, any Director shall be entitled to release and/or disclose on behalf of the Company to the Cayman Islands Tax Information Authority or equivalent authority (the "**TIA**") and any other foreign government body as required by FATCA, any information in its or its agents' or delegates' possession regarding a Member including, without limitation, financial information concerning the Member's investment in the Company, and any information relating to any shareholders, principals, partners, beneficial owners (direct or indirect) or controlling persons (direct or indirect) of such Member. Any such Director may also authorise any third party agent, including but not limited to, the Investment Manager or Administrator, to release and/or disclose such information on behalf of the Company.





- 14.2 In order to comply with FATCA and, if necessary, to reduce or eliminate any risk that the Company or its Members are subject to withholding taxes pursuant to FATCA or incur any costs or liabilities associated with FATCA, the Directors may cause the Company to undertake any of the following actions:
- (a) compulsorily redeem any or all of the Shares held by a Member either (i) where the Member fails to provide (in a timely manner) to the Company, or any agent or delegate of the Company, including but not limited to, the Investment Manager or the Administrator, any information requested by the Company or such agent or delegate pursuant to FATCA; or (ii) where there has otherwise been non-compliance by the Company with FATCA whether caused, directly or indirectly, by the action or inaction of such Member, or any related person, or otherwise;
  - (b) deduct from, or hold back, redemption or repurchase proceeds, dividend payments or any other distributions, in order to:
    - (i) comply with any requirement to apply and collect withholding tax pursuant to FATCA;
    - (ii) allocate to a Member an amount equal to any withholding tax imposed on the Company as a result of the Member's, or any related person's, action or inaction (direct or indirect), or where there has otherwise been non-compliance by the Company with FATCA;
    - (iii) ensure that any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) are recovered from the Member(s) whose action or inaction (directly or indirectly, including the action or inaction of any person related to such Member) gave rise or contributed to such costs or liabilities;
  - (c) in order to give effect to the requirements imposed upon the Company by FATCA, including the actions contemplated by articles 14.2(a) and 14.2(b), the Directors may:
    - (i) create separate classes and/or series of Shares ("**FATCA Shares**"), with such rights and terms as the Directors may in their sole discretion determine, and following the compulsory redemption of some or all of a Member's Shares may immediately apply such redemption proceeds in subscribing for such number of FATCA Shares as the Directors determine; and/or
    - (ii) may re-name any number of Shares (whether issued or unissued) as FATCA Shares, create a Separate Account with respect to such FATCA Shares and apply any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) to such Separate Account; and/or



- (iii) allocate any FATCA costs, debts, expenses, obligations, liabilities or withholding tax among Separate Accounts on a basis determined solely by the Directors; and/or
- (iv) adjust the Net Asset Value per Share of any relevant Shares (including any FATCA Share).

## 15 Designated Investments

- 15.1 The Directors may, in their discretion, classify certain of the Company's investments which are deemed by the Directors or the Investment Manager to be illiquid or the value of which is not readily or reliably ascertainable or which may have a relatively long-term investment horizon as "**Designated Investments**". Once so classified, Designated Investments may, in the discretion of the Directors, be represented by a separate Class and/or Series of Participating Shares which, unless otherwise determined by the Directors, shall be allotted only to those Members who are holders of Participating Shares at the time of such designation. The gains and losses attributable to Designated Investments may, in the discretion of the Directors, be segregated and separately calculated and attributed amongst Members holding Shares of the relevant Class or Series in such manner as is consistent with the relevant provisions of the Offering Memorandum. Participating Shares of any such separate Class and/or Series may be issued by way of bonus or by way of conversion or exchange of all or part of a Member's holding of Participating Shares of another Class and/or Series. Similarly, Shares of a Designated Investment Class and/or Series may be converted or exchanged back into Participating Shares of the original Class and/or Series upon the Directors making a determination that the relevant investment no longer qualifies as a Designated Investment. The power to convert or exchange Participating Shares of one Class and/or Series into Participating Shares of another Class and/or Series may be effected by the Directors in any manner permitted by the Statute and the Articles, including the compulsory redemption of Participating Shares of one Class and/or Series and the application of the proceeds of redemption in subscribing for Participating Shares of the other Class and/or Series or by redesignating a portion of the Participating Shares of any existing Class and/or Series as thereafter belonging to a new Class and/or Series. Shares of a Class or Series of Shares which represent Designated Investments shall not, unless the Directors otherwise determine, be redeemable at the option of the Members holding such Participating Shares. Where investments are classified as Designated Investments and Participating Shares of a separate Class and/or Series are issued by way of bonus, the requirement of these Articles to ensure proper value is transferred to the Separate Account of the Participating Shares of the original Class and/or Series to which such investments were originally allocated shall not apply.

## 16 Purchase and Surrender of Shares

- 16.1 Subject to the provisions of the Statute and without prejudice to these Articles, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.





16.2 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

16.3 The Directors may accept the surrender for no consideration of any fully paid Share.

## 17 Treasury Shares

17.1 The Directors may, prior to the purchase, redemption or surrender of any Share, determine that such Share shall be held as a Treasury Share.

17.2 The Directors may determine to cancel a Treasury Share or transfer a Treasury Share on such terms as they think proper (including, without limitation, for nil consideration).

## 18 Variation of Share Rights

18.1 Subject to the Statute, these Articles and any applicable subscription agreement, all or any of the Share Rights applicable to any Class or Series of Participating Shares in issue (unless otherwise provided by the terms of issue of those Participating Shares) may (whether or not the Company is being wound up) be varied without the consent of the holders of the issued Participating Shares of that Class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation may be made with the prior consent in writing of the holders of not less than two-thirds by Net Asset Value of such Participating Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Participating Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of such Participating Shares. To any such meeting all the provisions of these Articles as to general meetings shall *mutatis mutandis* apply, but so that any holder of a Participating Share present in person or by proxy may demand a poll, and the quorum for any such meeting shall be Members holding not less than twenty per cent. by Net Asset Value of the issued Participating Shares of the relevant Class or Series. At any Class meeting, the voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote.

18.2 For the purposes of a Class consent, the Directors may treat two or more or all the Classes or Series of Participating Shares as forming one Class or Series if the Directors consider that such Classes or Series would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes or Series.

18.3 Where the Shares of any Class or Series (the "**First Class**") rank, or will on issue rank, pari passu with the Shares of another Class or Series (the "**Second Class**") with respect to participation in the same pool of profits or assets of the Company on a winding up, the rights of the First Class shall be deemed to be varied by any variation of or creation of rights in the Second



Class (including on initial issue) which gives the Second Class priority over the First Class on a winding up of the Company.

- 18.4 Subject to the foregoing Articles, the Share Rights applicable to any Class or Series of Shares in issue shall (unless otherwise expressly provided by the conditions of issue of such Shares) be deemed not to be varied by:
- (a) the creation, allotment or issue of further Shares ranking *pari passu* therewith and which may be issued with the benefit of the terms referred to below;
  - (b) the purchase or redemption of any Shares;
  - (c) the exercise of the powers to allocate assets and charge liabilities to the various Separate Accounts or any of them and to transfer the same to and from the various Separate Accounts or any of them, as provided for in these Articles;
  - (d) any reduction or waiver of any fees (including early redemption, management or performance fees) chargeable or allocable to any Class or Series of Shares;
  - (e) any reduction or waiver of any redemption notice, gate or lock-up period applicable to any Class or Series of Shares; or
  - (f) any variation or waiver contemplated by or provided for in the Offering Memorandum applicable to the relevant Class and/or Series.
- 18.5 In relation to any Class or Series consent required pursuant to Article 18.1, the Directors in their discretion may invoke the following procedure (the "**Negative Consent Procedure**"). The Directors shall provide written notice of the proposed variation (the "**Proposal**") to the Members of the affected Class or Series and shall specify a deadline (the "**Redemption Request Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written request for redemption of some or all of their Participating Shares of the affected Class and/or Series on the Redemption Date (the "**Specified Redemption Date**") specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the "**Effective Date**") shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Participating Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the "**Affected Shares**") shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the "**Negative Consent Shares**"). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under Article 18.1 with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favour of the Proposal on the Effective Date.



## 19 Variation of Terms

The Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a Member to waive or modify the terms applicable to such Member's subscription for Participating Shares (including those relating to management and performance fees and redemption terms) without obtaining the consent of any other Member; provided that such waiver or modification does not amount to a variation of the rights attaching to the Participating Shares of such other Members.

## 20 Certificates for Shares

- 20.1 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or another person authorised by the Directors. The Directors may authorise certificates to be issued with the authorised signature(s) affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and, subject to these Articles, no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.
- 20.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- 20.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) on delivery up of the old certificate.

## 21 Register of Members

- 21.1 The Company shall maintain or cause to be maintained the Register of Members.
- 21.2 The Directors may determine that the Company shall maintain one or more branch registers of Members in accordance with the Statute. The Directors may also determine which register of Members shall constitute the principal register and which shall constitute the branch register or registers, and to vary such determination from time to time.

## 22 Closing Register of Members and Fixing Record Date

- 22.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Directors may provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed thirty days.



- 22.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of, or to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any dividend or in order to make a determination of Members for any other proper purpose.
- 22.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to receive payment of a dividend, the date on which notice of the meeting is sent or the date on which the resolution of the Directors declaring such dividend is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

### **23 Non Recognition of Trusts**

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the registered holder.

- 23.1 if it is not paid all the provisions of these Articles shall apply as if that amount had become due and payable by virtue of a call.
- 23.2 The Directors may issue Shares with different terms as to the amount and times of payment of calls, or the interest to be paid.
- 23.3 The Directors may, if they think fit, receive an amount from any Member willing to advance all or any part of the monies uncalled and unpaid upon any Shares held by it, and may (until the amount would otherwise become payable) pay interest at such rate as may be agreed upon between the Directors and the Member paying such amount in advance.
- 23.4 No such amount paid in advance of calls shall entitle the Member paying such amount to any portion of a dividend declared in respect of any period prior to the date upon which such amount would, but for such payment, become payable.

### **24 Lien on Shares**

- 24.1 The Company shall have a first and paramount lien on all Shares (whether fully paid-up or not) registered in the name of a Member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such Member or such Member's estate, either alone or jointly with any other person, whether a Member or not, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The registration of a Transfer of any such Share shall operate as a waiver of the Company's lien thereon. The Company's lien on a Share shall also extend to any amount payable in respect of that Share.



- 24.2 The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, if a sum in respect of which the lien exists is presently payable, and is not paid within fourteen clear days after notice has been given to the holder of the Shares, or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold.
- 24.3 To give effect to any such sale the Directors may authorise any person to execute an instrument of Transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The purchaser or such purchaser's nominee shall be registered as the holder of the Shares comprised in any such Transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Shares be affected by any irregularity or invalidity in the sale or the exercise of the Company's power of sale under these Articles.
- 24.4 The net proceeds of such sale after payment of costs, shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and any balance shall (subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

## **25 Amendments of Memorandum and Articles and Alteration of Capital**

- 25.1 The Company may, by Ordinary Resolution:
- (a) increase its share capital by such sum and with such rights, priorities and privileges annexed thereto, as the resolution shall prescribe;
  - (b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;
  - (c) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum; and
  - (d) cancel any Shares that at the date of the passing of the resolution have not been taken or agreed to be taken by any person.
- 25.2 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of these Articles with reference to liens, Transfer, transmission and otherwise as the Shares in the original share capital.
- 25.3 Subject to the provisions of the Statute and the provisions of these Articles as regards the matters to be dealt with by Ordinary Resolution the Company may, by Special Resolution:
- (a) change its name;
  - (b) alter or add to these Articles;



- (c) alter or add to the Memorandum with respect to any objects, powers or other matters specified therein; and
- (d) reduce its share capital or any capital redemption reserve fund.

## **26 Registered Office**

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

## **27 General Meetings**

- 27.1 All general meetings other than annual general meetings shall be called extraordinary general meetings. The Directors may call general meetings.
- 27.2 The Company may but shall not be obliged to hold a general meeting in each year as its annual general meeting, and shall specify the meeting as such in the notice calling it. Any annual general meeting shall be held at such time and place as the Directors shall determine.

## **28 Notice of General Meetings**

- 28.1 At least five Business Days' notice shall be given of any general meeting. Every notice shall be exclusive of the day on which it is given or deemed to be given and of the day on which the meeting is to be held and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of these Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:
  - (a) in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and
  - (b) in the case of an extraordinary general meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety five per cent. in par value of the Shares giving that right.
- 28.2 The accidental omission to give notice of a general meeting to, or the non receipt of notice of a meeting by, any person entitled to receive notice thereof shall not invalidate the proceedings of that meeting.

## **29 Proceedings at General Meetings**

- 29.1 No business shall be transacted at any general meeting unless a quorum is present. A quorum shall be one or more Members (present in person, by proxy or authorised corporate





representative, as the case may be) entitled to attend and vote and representing not less than twenty per cent. in par value of all of the Shares in issue and carrying the right to vote at the meeting.

- 29.2 A person may, with the consent of the Directors, participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.
- 29.3 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.
- 29.4 If a quorum is not present within half an hour from the time appointed for the meeting or if during such a meeting a quorum ceases to be present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time or such other place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
- 29.5 The chairman, if any, of the board of Directors shall preside as chairman at every general meeting of the Company, or if there is no such chairman, or if the chairman shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.
- 29.6 If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairman of the meeting.
- 29.7 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice.
- 29.8 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, the chairman or any Member present in person or by proxy (or in the case of a non-natural person, by its duly authorised representative or by proxy) demands a poll.
- 29.9 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority,



an entry to that effect in the minutes of the proceedings of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 29.10 The demand for a poll may be withdrawn.
- 29.11 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.
- 29.12 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.
- 29.13 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a second or casting vote.

### **30 Votes of Members**

- 30.1 Subject to any rights or restrictions attached to any Shares, on a show of hands every Member holding Shares carrying the right to vote on the matter in question who (being an individual) is present in person or by proxy or (if a corporation or other non-natural person) is present by its duly authorised representative or by proxy, shall have one vote and on a poll every such Member shall have one vote for every Share of which he is the holder.
- 30.2 In the case of joint holders of record, the vote of the senior holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. Seniority among joint holders shall be determined by the order in which the names of the holders stand in the Register of Members.
- 30.3 A Member of unsound mind, or in respect of whom an order has been made by any court or authority having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the Member's committee, receiver, curator bonis, or other similar person appointed on such Member's behalf by that court or authority and any such committee, receiver, curator bonis or other similar person may vote by proxy.
- 30.4 No person shall be entitled to vote at any general meeting unless such person is registered as a Member on the record date for such meeting, nor unless all calls or other monies then payable by such person in respect of such Shares have been paid.
- 30.5 No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is purported to be given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.





- 30.6 On a poll or on a show of hands votes may be cast either personally or by proxy. A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall state which proxy is entitled to vote on a show of hands.
- 30.7 A Member holding more than one Share need not cast the votes in respect of its Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain (any such abstentions to count neither for nor against the resolution) from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing it, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which such proxy is appointed either for or against a resolution and/or abstain from voting.

### **31 Proxies**

- 31.1 The instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of such appointor's attorney duly authorised in writing or, if the appointor is a corporation or other non-natural person, under the hand of an officer or other person duly authorised for that purpose. A proxy need not be a Member of the Company.
- 31.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the place and the time (being not later than the time for holding the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting, the instrument appointing a proxy shall be deposited at the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.
- 31.3 The chairman may in any event, at the chairman's discretion, declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted and which has not been declared to have been duly deposited by the chairman, shall be invalid.
- 31.4 The instrument appointing a proxy may be in any usual or common form and may be incorporated within any subscription agreement or other document signed by or on behalf of the Member. An instrument appointing a proxy may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.
- 31.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the Transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or Transfer was received by the



Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

### **32 Corporate Members**

Any corporation or other non-natural person which is a Member of the Company may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as the corporation could exercise if it were an individual Member.

### **33 Shares Beneficially Owned by the Company**

Shares of the Company that are beneficially owned by the Company shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.

### **34 Directors**

There shall be a board of Directors consisting of not less than one person (exclusive of alternate Directors) provided however that the Company may from time to time by Ordinary Resolution increase or reduce the limits in the number of Directors. The first Directors of the Company shall be determined in writing by, or appointed by a resolution of, the Subscriber.

### **35 Powers of Directors**

- 35.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- 35.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.
- 35.3 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. Notwithstanding the foregoing, the Directors shall not exercise the powers specified in this Article in breach of any limits or restrictions specified in the Offering Memorandum.



### **36 Appointment and Removal of Directors**

- 36.1 The Company may, by Ordinary Resolution, appoint any person to be a Director and may, by Ordinary Resolution, remove any Director.
- 36.2 The Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with these Articles as the maximum number of Directors.

### **37 Vacation of Office of Director**

The office of a Director shall be vacated if:

- (a) the Director gives notice in writing to the Company that such Director resigns the office of Director;
- (b) the Director is absent (without being represented by proxy or an alternate Director appointed by such Director) from three consecutive meetings of the board of Directors without special leave of absence from the Directors, and they pass a resolution that such Director has by reason of such absence vacated office;
- (c) the Director dies, becomes bankrupt or makes any arrangement or composition with such Director's creditors generally;
- (d) the Director is or becomes of unsound mind;
- (e) the Director ceases to be a Director by virtue of, or is prohibited from being a Director by, an order made pursuant to any law or regulation binding on the Company; or
- (f) all the other Directors of the Company (being not less than two in number) resolve that such Director should be removed as a Director.

### **38 Proceedings of Directors**

- 38.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be two if there are two or more Directors, and shall be one if there is only one Director. A person who holds office as an alternate Director shall, if such person's appointor is not present, be counted in the quorum. A Director who also acts as an alternate Director shall, if such Director's appointor is not present, count twice towards the quorum.
- 38.2 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall not have a second or casting vote. A Director who is also an alternate Director shall be entitled in the absence of such Director's appointor to a separate vote on behalf of such Director's appointor in addition to such Director's own vote.



- 38.3 A person may participate in a meeting of the Directors or any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors, the meeting shall be deemed to be held at the place where the chairman is located at the start of the meeting.
- 38.4 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of Directors (an alternate Director being entitled to sign such a resolution on behalf of such alternate Director's appointor) shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.
- 38.5 A Director or alternate Director may, or other officer of the Company at the direction of a Director or alternate Director may call a meeting of the Directors by at least two days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held.
- 38.6 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
- 38.7 The Directors may elect a chairman of their board and determine the period for which the chairman is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
- 38.8 All acts done by any meeting of the Directors or of a committee of Directors (including any person acting as an alternate Director) shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or alternate Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director or alternate Director as the case may be.
- 38.9 A Director but not an alternate Director may be represented at any meetings of the board of Directors by a proxy appointed in writing by such Director. The proxy shall count towards the quorum and the vote of the proxy shall for all purposes be deemed to be that of the appointing Director.

### **39 Presumption of Assent**

A Director who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless the Director's dissent shall be entered in the minutes of the meeting or unless the Director shall file such



Director's written dissent from such action with the person acting as the chairman or secretary of the meeting before the close or adjournment thereof or shall forward such dissent by personal delivery, courier or registered post to such person immediately after the close or adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

#### **40 Directors' Interests**

- 40.1 A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with such Director's office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
- 40.2 A Director may act alone or by such Director's firm in a professional capacity for the Company and the Director or such Director's firm shall be entitled to remuneration for professional services as if such Director were not a Director or alternate Director.
- 40.3 A Director or alternate Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by such Director or alternate Director as a director or officer of, or from such Director or alternate Director's interest in, such other company.
- 40.4 No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or transaction by reason of such Director holding office or of the fiduciary relationship thereby established. A Director (or such Director's alternate Director in such Director's absence) shall be at liberty to vote in respect of any contract or transaction in which such Director is interested provided that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by such Director at or prior to such Director's consideration and any vote thereon.
- 40.5 A general notice that a Director or alternate Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or transaction in which such Director has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

#### **41 Minutes**

The Directors shall cause minutes to be made in books kept for the purpose of recording all appointments of officers made by the Directors, all proceedings at meetings of the Company or



the holders of any Class of Shares and of the Directors, and of committees of Directors including the names of the Directors or alternate Directors present at each meeting.

## **42 Delegation of Directors' Powers**

- 42.1 The Directors may delegate any of their powers to any committee consisting of one or more Directors or such other persons as the Directors may designate. They may also delegate to any managing director or any Director holding any other executive office such of their powers as they consider desirable to be exercised by such managing director or any Director provided that an alternate Director may not act as managing director and the appointment of a managing director shall be revoked forthwith if such managing director ceases to be a Director. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers, and may be revoked or altered. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.2 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees or local boards. Any such appointment may be made either collaterally with or to the exclusion of the Directors' powers, shall be subject to any conditions the Directors may impose, and may be revoked or altered. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.3 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised person to delegate all or any of the powers, authorities and discretions vested in such attorney or authorised person.
- 42.4 The Directors may appoint such officers as they consider necessary on such terms, at such remuneration (if any) and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of such officer's appointment an officer may be removed by resolution of the Directors or Members.

## **43 Alternate Directors**

- 43.1 Any Director (other than an alternate Director) may by written notice to the Company appoint any other Director, or any other person willing to act, to be an alternate Director and by written notice to the Company may remove from office an alternate Director so appointed by the Director.





- 43.2 An alternate Director shall be entitled to receive notice of all meetings of Directors and of meetings of committees of Directors of which such alternate Director's appointor is a member, to attend and vote at every such meeting at which the Director appointing such alternate Director is not personally present, and generally to perform all the functions of such alternate Director's appointor as a Director in such Director's absence.
- 43.3 An alternate Director shall cease to be an alternate Director if such alternate Director's appointor ceases to be a Director.
- 43.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.
- 43.5 Subject to the provisions of the Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for such alternate Director's own acts and defaults and shall not be deemed to be the agent of the Director appointing such alternate Director.

#### **44 No Minimum Shareholding for Directors**

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director shall not be required to hold Shares.

#### **45 Remuneration of Directors**

- 45.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any Class of Shares or debentures of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.
- 45.2 The Directors may by resolution approve additional remuneration to any Director for any services other than such Director's ordinary routine work as a Director. Any fees paid to a Director who is also counsel to the Company, or otherwise serves it in a professional capacity, shall be in addition to such Director's remuneration as a Director.

#### **46 Seal**

The Company may, if the Directors so determine, have a Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some officer or other person authorised by the Directors for the purpose.



## 47 Dividends, Distributions and Reserves

- 47.1 Subject to the Statute, these Articles, and the special rights attaching to Participating Shares of any Class and/or Series, the Directors may, in their absolute discretion, declare dividends and distributions on Participating Shares of any Class and/or Series in issue and authorise payment of the dividends or distributions out of the relevant Separate Account in respect of such Participating Shares. No dividend or distribution shall be paid except out of the realised or unrealised profits of the Company, or out of the share premium account attributable to Participating Shares of the Class and/or Series in respect of which the dividend or distribution is proposed to be paid, or as otherwise permitted by law.
- 47.2 Except as otherwise provided by the rights attached to Participating Shares, or as otherwise determined by the Directors, all dividends and distributions in respect of Participating Shares of a particular Class and/or Series shall be declared and paid according to Net Asset Value of the Participating Shares of the Class and/or Series that a Member holds. If any Participating Share is issued on terms providing that it shall rank for dividend or distribution as from a particular date, that Participating Share shall rank for dividend or distribution accordingly.
- 47.3 The Directors may deduct and withhold from any dividend or distribution otherwise payable to any Member all sums of money (if any) then payable by it to the Company on account of calls or otherwise or any monies which the Company is obliged by law to pay to any taxing or other authority.
- 47.4 Under no circumstances may the assets (or the income derived from such assets) attributed to a Separate Account in respect of any Class and/or Series be used to pay a dividend in respect of a Separate Account that is attributed to any other Class and/or Series.
- 47.5 The Directors may declare that any dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of shares, debentures or securities of any other company or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.
- 47.6 Any dividend, distribution, interest or other monies payable in cash in respect of Participating Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall (unless the Directors in their sole discretion otherwise determine) be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the Participating Share held by them as joint holders.





47.7 Any dividend or distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date of declaration of such dividend or distribution may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the dividend or distribution shall remain as a debt due to the Member. Any dividend or distribution which remains unclaimed after a period of six years from the date of declaration of such dividend or distribution shall be forfeited and shall revert to the Company.

47.8 No dividend or distribution shall bear interest against the Company.

#### **48 Capitalisation**

The Directors may capitalise any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members of any Class and/or Series in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and to apply such sum on their behalf in paying up in full unissued Participating Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power to the Directors to make such provisions as they think fit for the case of Participating Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter into an agreement with the Company, on behalf of all of the Members interested, providing for such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

#### **49 Books of Account**

49.1 The Directors shall cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account must be retained for a minimum period of five years from the date on which they are prepared. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

49.2 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute, or authorised by the Directors or by the Company in general meeting.



49.3 The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

## **50 Audit**

50.1 The Directors may appoint an Auditor of the Company who shall hold office on such terms as the Directors determine.

50.2 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.

50.3 Any Auditors of the Company shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an ordinary company, and at the next extraordinary general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an exempted company, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

## **51 Notices**

51.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to the Member or to the address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent airmail.

51.2 Where a notice is sent by courier, service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in the Cayman Islands) following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient.



- 51.3 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under these Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 51.4 Notice of every general meeting shall be given in the manner authorised by these Articles to every person shown as holding Shares carrying an entitlement to receive such notice in the Register of Members on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of such person being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for such Member's death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.

## 52 Winding Up

- 52.1 If the Company shall be wound up the liquidator shall apply the assets of the Company in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. The liquidator shall in relation to the assets available for distribution among the Members make in the books of the Company such transfers thereof to and from Separate Accounts as may be necessary in order that the effective burden of such creditors' claims may be shared among the holders of Participating Shares of different Classes and/or Series in such proportions as the liquidator in such liquidator's absolute discretion may think equitable.
- 52.2 Subject to the special rights attaching to Participating Shares of any Class or Series, the balance shall then be applied in the following priority:
- (a) first, to the holders of Management Shares, an amount equal to the par value of such Management Shares; and
  - (b) second, the balance shall be paid to the holders of Participating Shares in proportion to the Net Asset Value of Participating Shares held, subject to a deduction from those Participating Shares in respect of which there are monies due, of all monies due to the Company for unpaid calls, or otherwise.
- 52.3 If the Company shall be wound up (whether the liquidation is voluntary or by or under the supervision of the Court) the liquidator may, with the authority of a resolution or resolutions passed by the holders of Participating Shares (whether as a whole or at separate Class meetings), divide among the Members in specie the whole or any part of the assets of the Company, and whether or not the assets shall consist of property of one kind or shall consist of property of different kinds, and may for such purposes set such value as the liquidator deems fair upon any one or more class or classes of property, and may determine how such division shall be



carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator, with the like authority, shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no Member shall be compelled to accept any shares or other property in respect of which there is a liability.

### 53 Indemnity and Insurance

- 53.1 Every Director and officer of the Company (which for the avoidance of doubt, shall not include any Auditor), together with every former Director and former officer of the Company (each an "**Indemnified Person**") shall be indemnified out of the assets of the Company against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud, wilful default or Gross Negligence. No Indemnified Person shall be liable to the Company for any loss or damage incurred by the Company as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud, wilful default or Gross Negligence of such Indemnified Person. No person shall be found to have committed actual fraud, wilful default or Gross Negligence under this Article unless or until a court of competent jurisdiction shall have made a finding to that effect.
- 53.2 The Company shall advance to each Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defence of any action, suit, proceeding or investigation involving such Indemnified Person for which indemnity will or could be sought. In connection with any advance of any expenses hereunder, the Indemnified Person shall execute an undertaking to repay the advanced amount to the Company if it shall be determined by final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification pursuant to this Article. If it shall be determined by a final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification with respect to such judgment, costs or expenses, then such party shall not be indemnified with respect to such judgment, costs or expenses and any advancement shall be returned to the Company (without interest) by the Indemnified Person.
- 53.3 The Directors, on behalf of the Company, may purchase and maintain insurance for the benefit of any Director or other officer of the Company against any liability which, by virtue of any rule of law, would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which such person may be guilty in relation to the Company.
- 53.4 Pursuant to the foregoing provisions, the Company may enter into a service or other agreement with any Director (or any entity providing one or more persons to the Company to act as Directors) upon such terms and conditions (including as to indemnification and exculpation) as the Directors shall, in their absolute discretion, determine. Any such indemnification and exculpation provisions may be specified to a standard equal to or more favourable (but not less favourable) to the Company than any standard specified in these Articles.



**54 Disclosure**

If required to do so under the laws of any jurisdiction to which the Company, the Investment Manager, the Administrator or any other service provider is subject, or in compliance with the rules of any stock exchange upon which the Company's Shares are listed, or to ensure the compliance by any person with any anti-money laundering law in any relevant jurisdiction, any Director, Officer, the Investment Manager, the Administrator or Auditor of the Company shall be entitled to release or disclose any information in its possession regarding the affairs of the Company or a Member including, without limitation, any information contained in the Register of Members or subscription documentation of the Company relating to any Member.

**55 Financial Year**

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

**56 Transfer by way of Continuation**

The Company shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

**57 Mergers and Consolidations**

The Company shall, with the approval of a Special Resolution, have the power to merge or consolidate with one or more constituent companies (as defined in the Statute), upon such terms as the Directors may determine.



**EXHIBIT 16**

**THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT**

**by and among**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**

**and**

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

**November 1, 2013**

**004367**

**THIS THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT** (this “*Agreement*”), is dated effective as of November 1, 2014, by and among:

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**, a Cayman Islands exempted company (the “*Offshore Fund*”);

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**, a Delaware limited partnership (the “*Domestic Fund*,” and together with the Offshore Fund, the “*Clients*”) acting through its general partner, Highland Multi Strategy Credit Fund GP, L.P. a Delaware limited partnership (the “*General Partner*”); and

**HIGHLAND CAPITAL MANAGEMENT, L.P.**, a Delaware limited partnership (the “*Investment Manager*”).

### PRELIMINARY STATEMENTS

A. The Domestic Fund previously retained the Investment Manager as its investment manager pursuant to an investment management agreement dated as of December 1, 2005, as amended and restated as of December 29, 2005 and as further amended and restated as of September 1, 2006 (the “*Original Agreement*”).

B. The Offshore Fund will invest all of its investable assets in the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and will serve merely as a steward thereof. The Investment Manager will conduct its investment activities at the Domestic Fund level as the investment manager to the Domestic Fund.

C. The Domestic Fund desires to continue to retain the Investment Manager and the Offshore Fund desires to retain the Investment Manager to provide certain discretionary advisory services relating to the assets and liabilities of the Domestic Fund and the Investment Manager desires to accept such appointment, all subject to the terms and conditions hereinafter set forth.

### AGREEMENT

This Agreement amends and restates in its entirety the Original Agreement as set forth below. For good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

#### 1. Appointment.

The Clients hereby appoint the Investment Manager as investment manager with respect to the assets and liabilities of the Domestic Fund and the Investment Manager hereby accepts such appointment and agrees to perform its obligations in accordance with the terms hereof and of the Fourth Amended and Restated Limited Partnership Agreement of the Domestic Fund, dated effective as of November 1, 2014, as amended from time to time (the “*Domestic Fund Partnership Agreement*”), and the investment objectives, policies,



guidelines and restrictions that from time to time are set forth in the Governing Documents of the Clients as applicable. “**Governing Documents**” mean, with respect to:

- (a) the Offshore Fund: the Memorandum and Articles of Association of the Offshore Fund, as amended from time to time, and the Confidential Private Offering Memorandum dated November 2014, as may be supplemented from time to time (the “**POM**”);
- (b) the Domestic Fund: the Domestic Fund Partnership Agreement and the Private Placement Memorandum dated November 2014, as may be supplemented from time to time (the “**PPM**”).

## **2. Authority and Duties of the Investment Manager.**

- (a) All of the investable assets of the Offshore Fund must be invested in, and the investment program of the Offshore Fund is to be conducted by the Investment Manager through, the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and the investment activities of the Investment Manager will be conducted at the Domestic Fund level as the investment manager to the Domestic Fund.
- (b) The Domestic Fund’s investment program will be conducted by the Investment Manager in accordance with the PPM.
- (c) The Investment Manager serves as the investment manager to the Domestic Fund and in that capacity has full discretion and authority, without obtaining the prior approval of any officer or other agent of the Domestic Fund:
  - (i) to continuously supervise the investment program of the Domestic Fund and the composition of its investment portfolio including, without limitation, determining from time to time what investments will be purchased, retained or sold, what contracts will be entered into by the Domestic Fund and what portion of its assets will be retained as cash, and to engage consultants and analysts in connection therewith; to cause the Domestic Fund to purchase or sell any asset, enter into any other investment-related transaction, including (directly or through subsidiaries or affiliates of the Domestic Fund) borrowing money, entering into swap transactions, lending securities, exercising control over a company, exercising voting or approval rights and selecting brokers and dealers for execution of portfolio transactions; and to undertake to do anything incidental to the foregoing to facilitate the performance of its obligations hereunder;
  - (ii) to invest within or outside the United States of America in “Investments” (as defined in, and subject to the provisions of, the Domestic Fund Limited Partnership Agreement);
  - (iii) to effect any and all transactions in Investments, including collateralized loan obligations, asset-backed securities, commodities, total return swaps,

credit default swaps, synthetic securities and other financial instruments and assets (and options and other contracts thereon), and everything connected therewith in the broadest sense, including, without limitation, the full discretion and authority to make short sales, to purchase or write options (including uncovered options) and to trade on margin;

- (iv) to, on behalf of the Clients, exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the Investments and other property and funds held or owned by the Domestic Fund, including without limitation the right to possess, lend, transfer, mortgage, pledge or otherwise deal in, and to secure the payment of obligations of the Domestic Fund by mortgage upon, or hypothecation or pledge of, all or part of the property of the Domestic Fund, whether at the time owned or thereafter acquired, and to vote Investments, participate in arrangements with creditors, institute and settle or compromise suits and administrative proceedings and other similar matters;
- (v) to select brokers, dealers, banks and other intermediaries by or through whom such transactions will be executed or carried out and to open, maintain and close accounts with brokers, which power shall include the authority to issue all instructions and authorizations to brokers regarding securities and money therein and to cause the Domestic Fund to pay, or authorize the payment and reimbursement of, brokerage commissions;
- (vi) to open, maintain and close bank accounts and authorize the drawing of checks or other orders for the payment of monies;
- (vii) to borrow or raise monies or utilize any other forms of leverage and to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness and otherwise to utilize any lines of credit, credit balances or overdraft privileges available to the Domestic Fund;
- (viii) to value the Client's assets as of the close of each fiscal period and any other date selected by the respective Client;
- (ix) to direct any administrator of the Clients, banks, brokers or other custodians to effect deliveries of funds or assets, but only in the course of effecting portfolio transactions for the account of the Clients;
- (x) to remove or replace any administrator of the Clients and/or any accountant of the Clients at any time; and
- (xi) to make and execute all such documents and to take all such other actions as the Investment Manager considers necessary or appropriate to carry out its investment management duties hereunder.

- (d) In furtherance of the foregoing, the Board of Directors, on behalf of the Offshore Fund, and the General Partner, on behalf of the Domestic Fund, has delegated certain rights and responsibilities with respect to the operation of their respective partnerships and funds to the Investment Manager, as more fully set forth in the Governing Documents.
- (e) Each Client hereby designates the Investment Manager as the commodity pool operator (the “*CPO*”) for such Client with complete authority and responsibility for compliance with the U.S. Commodity Exchange Act and the regulations promulgated thereunder, including to perform any and all duties required of a CPO (i) that is exempt from registration under the regulations of the U.S. Commodity Futures Trading Commission (the “*CFTC*”) and (ii) that is in compliance with CFTC Rule 4.13(a)(3), including the filing of a notice of exemption under said Rule 4.13(a)(3) with the CFTC.
- (f) Additionally, each of the Clients hereby designates and appoints the Investment Manager as its agent and attorney-in-fact, with full power and authority and without the need for further approval of the Clients (except as may be required by law) to complete and execute all such documents and to take any and all actions that the Investment Manager, in its discretion, may deem advisable to carry out the foregoing with respect to the assets of the Clients; provided, however, that the Investment Manager is not intended to have actual or constructive custody of any assets of the Clients. In connection with any of the foregoing, the Investment Manager is further authorized to transfer or tender for cash or exchange such assets. In all such purchases, sales or trades the Clients authorize the Investment Manager to act for the Clients, and at their risk, and in their name and on their behalf, in the same manner and with the same force and effect as the Clients might or could do with respect to such purchases, sales or trades without prior consultation with the Clients. The Clients also appoint the Investment Manager as their agent and attorney-in-fact to vote, and to execute proxies, waivers, consents and other instruments with respect to, the assets of the Clients.
- (g) At the request of a Client, in any wind down of such Client, the Investment Manager will manage the realization of the Client’s assets and the distribution thereof to investors.
- (h) In connection with the execution of transactions on behalf of the Domestic Fund, the Domestic Fund hereby acknowledges and agrees that in the course of selecting brokers, dealers, futures commission merchants, banks and financial intermediaries to effect transactions for the Domestic Fund’s account, the Investment Manager may agree to such commissions, fees and other charges on behalf of the Domestic Fund’s account as it may deem reasonable in the circumstances, taking into consideration all such factors as the Investment Manager deems relevant, including the following: the ability to effect prompt and reliable executions at favorable prices; the operational efficiency with which transactions are effected; the financial strength, integrity and stability of the broker; the quality, comprehensiveness and frequency of available research and other services considered to be of value; and

the competitiveness of commission rates in comparison with other brokers satisfying the Investment Manager's other selection criteria. It is understood that the costs of such services will not necessarily represent the lowest costs available and that the Investment Manager is under no obligation to combine or arrange orders so as to obtain reduced charges.

### **3. Fees and Expenses.**

- (a) For its services to the Domestic Fund, the Domestic Fund will pay the Investment Manager the Management Fee (as defined in the Domestic Fund Partnership Agreement), calculated and payable monthly in advance. The Investment Manager may waive or reduce the management fees with respect to capital account and capital sub-accounts of the Domestic Fund in its discretion.
- (b) The Clients will pay, or will reimburse the Investment Manager, for all costs and expenses arising in connection with their operations, including without limitation, with respect to the Domestic Fund, all costs and expenses directly related to portfolio investments or prospective investments (whether or not consummated) of the Domestic Fund.
- (c) The Clients will not have their own separate employees or office, and they will not reimburse the Investment Manager for salaries, office rent and other general overhead costs of the Investment Manager. The Investment Manager will pay all of its own operating and overhead costs (except liability insurance) without reimbursement by the Clients. The Investment Manager is entitled to reimbursement from the Clients for any expenses paid by it on behalf of the Clients; provided that, the Investment Manager in its sole discretion may absorb any or all of such expenses incurred on behalf of the Clients. If the Investment Manager incurs any such expenses for the account of the Clients and any Customers (as defined below), the Investment Manager will allocate such expenses among the Clients and each such Customer in proportion to the size of the investment made by each in the activity or entity to which the expense relates, or in such other manner as the Investment Manager in its sole discretion considers fair and reasonable.

### **4. Other Activities and Investments.**

- (a) The Investment Manager is not required to devote its full time to the affairs of the Clients, but must devote such of its time to the business and affairs of the Clients as it may determine, in its discretion exercised in good faith, to be necessary to conduct the affairs of the Clients for the benefit of the Clients, the shareholders of the Offshore Fund and the partners of the Domestic Fund. Subject to this limitation, the Investment Manager, its partners and principals and their affiliates are not precluded from engaging in or owning an interest in other business ventures or investment activities of any kind. It is expressly understood that the Investment Manager and its affiliates may effect investment transactions for their own accounts and for the accounts of other customers (generally, "*Customers*"), and the Clients further understand and agree that nothing herein restricts the ability of the

Investment Manager and its affiliates to engage in any such transactions notwithstanding the fact that the Clients may enter into or engage in such transactions so long as such transactions are in the best interests of the Clients.

- (b) The Investment Manager will act in a manner that it considers fair, reasonable and equitable in allocating investment opportunities to the Clients. It is understood that when the Investment Manager determines that it would be appropriate for the Clients and one or more of the Customers to participate in an investment opportunity, the Investment Manager will seek to execute orders for, or otherwise allocate such opportunities to, the Clients and such Customers on an equitable basis. In such situations, the Investment Manager may place orders for the Clients and each Customer simultaneously, and if all such orders are not filled at the same price, the Investment Manager may cause the Clients and each Customer to pay or receive the average of the prices at which such orders were filled for the Clients and all other Customers. If all such orders cannot be fully executed under prevailing market conditions, the Investment Manager may allocate among the Clients and the Customers the investments traded in a manner which the Investment Manager considers equitable, taking into account the size of the order placed for the Clients and each such Customer as well as any other factors which the Investment Manager deems relevant.

## **5. Account and Other Information.**

- (a) The Investment Manager must furnish such information concerning activities undertaken for the account of the Clients as the Clients may reasonably request.
- (b) The Clients agree to keep confidential and not to disclose to any person any information or matter relating to the Clients' investments (other than disclosure to the Clients' shareholders, partners, directors and employees, legal counsel, administrator, registrar and accountant in connection with the preparation and review of financial statements and with the filing of any tax returns or to any other person approved in writing by the Investment Manager (each such person being hereinafter referred to as an "***Authorized Representative***")); provided that the Clients and their Authorized Representatives may make such disclosure to the extent that (x) the information to be disclosed is publicly known at the time of proposed disclosure by the Clients or Authorized Representative, (y) the information otherwise is or becomes legally known to the Clients other than through disclosure by the Investment Manager or (z) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities, provided that such agency, regulatory authorities or association is aware of the confidential nature of the information disclosed. Prior to making any disclosure required by law, the Clients will use their best efforts to notify the Investment Manager of such disclosure. Prior to any disclosure to any Authorized Representative, the Clients must advise such Authorized Representative of the obligations set forth in this Section 5(b) and are responsible for any breach of these obligations made by an Authorized Representative.

- (c) The Investment Manager retains, or arranges for the retention of, for a period of at least 5 years, copies of any documents generated or received by the Investment Manager in the ordinary course of business pertaining to the financial condition of the account of the Clients or to the compensation payable to the Investment Manager. At the request of the Clients, the Investment Manager will afford to the Clients' independent auditors reasonable access to such documents during customary business hours and will permit the Clients' auditors to make copies thereof or extracts therefrom at the expense of the Clients.

**6. Custody.**

The assets of the Clients must be held in the custody of one or more custodians (or other independent institutions performing the functions of custodian, with respect to the assets which are held by such institutions) selected by the Investment Manager. The Investment Manager will notify the Clients promptly of the proposed selection of any custodians.

**7. Scope of Liability.**

The Clients agree that the Investment Manager is not liable to the Clients or any of their partners or shareholders for any losses, damages, expenses or claims occasioned by any act or omission of the Investment Manager in connection with the performance of its services hereunder, other than as a result of the Investment Manager's willful misconduct, fraud or gross negligence, or as otherwise prescribed by applicable law. The Clients explicitly recognize that the investment advisory opinions, recommendations and actions of the Investment Manager will be based on advice and information deemed to be reliable but not guaranteed by or to the Investment Manager.

**8. Indemnification.**

- (a) The Clients must indemnify and hold harmless the Investment Manager, each member, shareholder, partner, manager or director of, or any person who controls, the Investment Manager, each of the respective affiliates of the foregoing and each of the respective executors, heirs, assigns, successors or other legal representatives of the foregoing (each, an "*indemnatee*") from and against any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted against such indemnatee in connection with the Investment Manager's serving or having served as such pursuant to this Agreement; provided, however, that the indemnatee is not entitled to any such indemnification with respect to any expense, loss, liability or damage that was caused by the indemnatee's willful misconduct, fraud or gross negligence.
- (b) In the event that the Investment Manager or any other indemnatee entitled to indemnification pursuant to paragraph (a) above is or becomes a party to any action or proceeding in respect of which, or there otherwise exists a claim pursuant to which, it may be entitled to seek indemnification hereunder, the indemnatee must promptly notify the respective Client thereof. The respective Client is entitled to participate in any such suit or proceeding and, to the extent that it may wish, to



assume the defense thereof with counsel reasonably satisfactory to the indemnitee. After notice of an election by the Client so to assume the defense thereof, the Client will not be liable to the indemnitee hereunder for any legal or other expenses subsequently incurred by the indemnitee in connection with the defense thereof other than reasonable costs of investigation or reasonable legal expenses incurred as a result of (i) potential conflicts of interest between the indemnitee and the Client or (ii) the protection of proprietary or privacy interests of other clients of or parties in interest with the indemnitee. The Client must advance to the indemnitee the reasonable costs and expenses of investigating and/or defending such claim, subject to receiving a written undertaking from the indemnitee to repay such amounts if and to the extent of any subsequent determination by a court or other tribunal of competent jurisdiction that the indemnitee was not entitled to indemnification hereunder.

- (c) A Client is not liable hereunder for any settlement of any action or claim effected without its written consent thereto.

#### **9. Independent Contractor.**

For all purposes of this Agreement, the Investment Manager is an independent contractor and not an employee or dependent agent of any Client. Nothing herein is to be construed as making any Client a partner or co-venturer with the Investment Manager or any of its affiliates or Customers. Except as provided in this Agreement, the Investment Manager has no authority to bind, obligate or represent the Clients.

#### **10. Term; Termination; Renewal.**

- (a) This Agreement will remain in full force and effect for a period commencing on the date first above written and ending on December 31, 2014, and thereafter will renew automatically for successive one-year periods. This Agreement may be terminated by any party hereto, without penalty, upon 75 days' prior written notice to the other parties.
- (b) The termination of this Agreement does not extinguish the obligations of the Clients for the payment of fees and expenses in respect of services rendered by the Investment Manager prior to the effective date of such termination.

#### **11. Acknowledgement.**

Each of the Clients certifies and acknowledges to the Investment Manager that it:

- (i) has fully disclosed to potential investors the fee provisions and other arrangements relating to the Client's account with the Investment Manager and is satisfied that the potential investors have received sufficient information from the Investment Manager to enable them to evaluate the terms of this Agreement; and
- (ii) fully understands the method of compensation provided herein and its associated risks, including the risk that the performance compensation arrangements with

affiliates of the Investment Manager may create an incentive for the Investment Manager to engage in transactions that are riskier or more speculative than would be the case in the absence of performance compensation and that such risk has been disclosed to potential investors.

**12. Amendment; Modification; Waiver.**

Except as otherwise expressly provided herein, this Agreement may not be amended, nor may any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by the party to be charged with such amendment, waiver or modification.

**13. Binding Effect; Assignment.**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations hereunder are not, except as otherwise expressly provided herein, assignable, transferable or delegable without the written consent of the other parties hereto and any attempted assignment, transfer or delegation thereof without such consent is null and void, except that the Investment Manager may assign its rights and obligations hereunder to an entity that controls, is controlled by or is under common control with the Investment Manager; provided, however, that such entity assumes the obligations of the Investment Manager hereunder.

**14. Governing Law.**

This Agreement is governed by and construed in accordance with the substantive laws of the State of Delaware which are applicable to contracts made and entirely to be performed therein, without regard to the place of performance hereunder.

[SIGNATURE PAGE FOLLOWS]



The parties have executed this Agreement as of the day and year first above written.

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, LTD.**

By: 

Name: James Dondero  
Title: Director

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT  
GP, LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT,  
L.P.  
its sole member


By: STRAND ADVISORS, INC.  
its general partner

By: 

Name: James Dondero  
Title: President

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

By: STRAND ADVISORS, INC.

By: 

Name: James Dondero  
Title: President

**EXHIBIT 17**

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

HAYWARD PLLC  
Melissa S. Hayward (Texas Bar No. 24044908)  
Zachery Z. Annable (Texas Bar No. 24053075)  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

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

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

-----  
In re:

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

Reorganized Debtor.

-----  
THE CHARITABLE DAF FUND, L.P.,

Plaintiffs,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.  
-----

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§  
§ Adversary Proceeding No.  
§  
§ 22-03052-sgj  
§  
§  
§  
§  
§  
§  
§  
§

**DECLARATION OF JAMES P. SEERY, JR., IN SUPPORT OF HIGHLAND CAPITAL  
MANAGEMENT, L.P.'S AMENDED MOTION TO DISMISS**

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

I, James P. Seery, Jr., pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declare as follows:

1. During the bankruptcy case, I was first appointed as a member of the Board of Directors (the “Board”) of Strand Advisors, Inc. (“Strand”), the general partner of Highland Capital Management, L.P. (the “Highland” or the “Debtor,” as applicable), and later as the Debtor’s Chief Executive Officer (“CEO”) and Chief Restructuring Officer (“CRO”).

2. In August 2021, upon the occurrence of the effective date of Highland’s Plan, I became Highland’s CEO.

3. I submit this Declaration in support of *Highland Capital Management, L.P.’s Amended Motion to Dismiss* (the “Motion”),<sup>2</sup> being filed concurrently with this Declaration. Unless stated otherwise, this Declaration is based on my personal knowledge, my review of the documents described below, and my communications with certain of Highland’s employees and counsel.

4. Highland is the investment manager for Multi-Strat (defined below) pursuant to the terms of the *Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P.*, dated November 1, 2013.

5. Multi-Strat is a pooled investment fund structured as a “mini master” and consists of Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “Master Fund”), and Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “Feeder Fund”). We refer to the Master Fund and the Feeder Fund collectively as “Multi-Strat.”

---

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed in the Motion.

6. Multi-Strat is managed by Highland, as its investment manager, and its general partner, Highland Multi Strategy Credit Fund GP, L.P. (“MSCF GP”). MSCF GP is wholly-owned by Highland Multi Strategy Credit GP, LLC, which is in turn wholly-owned by Highland. I am the sole officer of MSCF GP. I am also a director of the Feeder Fund.

7. Multi-Strat’s investors include both the limited partners in the Master Fund and the shareholders of the Feeder Fund (which itself is a limited partner of the Master Fund). The ultimate investors, whether direct or through the Feeder Fund, are commonly referred to as Multi-Strat’s limited partners. Multi-Strat’s current limited partners on a consolidated basis are:

<b>Limited Partner</b>	<b>Ownership %</b>
Highland	58.70%
CLO Holdco, Ltd.	4.06%
The Dugaboy Investment Trust	1.71%
Highland Capital Management Services, Inc.	35.10%
Mark Okada	0.43%

8. In addition to the limited partners, there are a number of former “redeemed” limited partners of Multi-Strat.

9. The Charitable DAF Fund, L.P., is not a Multi-Strat limited partner, investor, or “redeemed” limited partner in Multi-Strat.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

I declare under penalty of perjury OF the laws of the United States that the foregoing is true and correct.

Dated: May 27, 2022

/s/ James P. Seery, Jr.  
James P. Seery, Jr.

**EXHIBIT 18**

[1992–93 CILR 372]

CAYMAN HOTEL AND GOLF INCORPORATED v. RESORT GEMS LIMITED

GRAND COURT (Smellie, Ag. J.): July 6th, 1993

Civil Procedure—joinder of parties—party who “ought to have been joined”—Grand Court (Civil Procedure) Rules, r.26 permits joinder of defendant who ought to have been joined at commencement of proceedings only if established link between original cause of action and that against party to be joined—joinder not permitted for purpose of expanding original cause, e.g. to join party not privy to contract forming subject of original cause  
Civil Procedure—pleading—amendment—application to amend under Rules of Supreme Court, O.20, r.5 to be decided on merits and effect on action against original defendant—normally allowed unless applicant causing injury for which no compensation or acting mala fide—inconsistent, useless or futile claims or those constituting new cause of action not permitted

Landlord and Tenant—characteristics of relationship—exclusivity—if landlord/tenant relationship and remedy for breach comprehensively covered by lease agreement, court will not impose equitable or agency relationship—court will also not impose duties not strictly and necessarily incidental to relationship expressly created by parties

Landlord and Tenant—breach of covenant—forfeiture—notice—Registered Land Law (Revised), s.56 requirements for notice before forfeiture applicable only if breach capable of remedy

The plaintiff sought leave to amend its writ and statement of claim in an action against the defendant for breach of a lease.

The plaintiff leased premises to the defendant for the operation of its jewellery retail business. The form of lease was based on a Canadian model and provided for the payment of an annual basic rent and an annual percentage rent based on sales. The lease contained extensive provisions dealing with the defendant’s obligations to report and account to the plaintiff and specified the relief available in the event of breach of those provisions.

The defendant failed to keep full and faithful records and refused to comply with the directions of an independent auditor engaged by the plaintiff to obtain a reconstruction or compilation of those records. The plaintiff also obtained evidence of at least one sale of a valuable item which had not been recorded. The plaintiff claimed forfeiture of the lease and gave notice

---

1992–93 CILR 373

to that effect. It brought proceedings for recovery of possession and for rent claiming that the defendant had repudiated the lease.

The plaintiff subsequently sought leave to amend its writ and statement of claim (a) to add four more defendants who it alleged conspired with and facilitated or assisted the defendant in its falsification of accounts and disclosures; (b) to plead claims against those defendants; and (c) to effect substantial amendments of the pleadings against the primary defendant to include *inter alia* a claim for an account from the defendant to ascertain the amount owed to it, a claim for a declaration that the lease was duly forfeited and a claim in the alternative for damages for breach of the covenant to pay rent.

The plaintiff submitted that (a) the joinder of the additional defendants was permitted under r.26 of the Grand Court (Civil Procedure) Rules because the proper test was whether they could have been joined in some way at the time the original action was brought irrespective of whether they could have been joined in the action as it was actually brought. Accordingly, though the original action sought recovery of possession and mesne profits from the defendant, it could have instituted proceedings in damages at the same time against the other parties for having procured and conspired with the defendant to breach the lease; (b) the justification for giving leave to amend to include a claim for an account from the defendant consisted in the fiduciary relationship of principal and agent which should be implied as existing between it and the defendant having regard to the lease agreement which demanded a duty of trust from the defendant as tenant; further, an action for an account was an established remedy available to a principal against his agent in lieu of damages; (d) it was entitled to forfeit the lease on the basis that the breach was incapable of being remedied; and (e) it was entitled to make an alternative claim for damages for breach of the covenant to pay rent.

The defendant submitted in reply that (a) the joinder of the proposed defendants under r.26 was not permissible as they were not party to any contract with the plaintiff; (b) the court had no jurisdiction to permit the plaintiff to amend its writ and statement of claim to include new causes of action or inconsistent or useless amendments; (c) no fiduciary relationship existed between itself and the plaintiff; theirs was strictly a relationship of landlord and tenant to be governed by the clearly express terms of the lease; and (d) the plaintiff’s application should be



dismissed in its entirety for the most important reason that the cause of action was bound to fail, for though it might have breached the lease, that breach was not irremediable. Accordingly, by virtue of s.56 of the Registered Land Law (Revised) it was entitled to notice requiring it to remedy the breach. As there had been no such proper notice nor any proper demand to remedy, the forfeiture was wrong in law and the cause of action based on it, for recovery of possession, rent and, latterly, damages, could not succeed. Further, the lease was still intact despite the plaintiff's claim to forfeiture.

**Held**, granting the application in part:

(1) The Grand Court (Civil Procedure) Rules, r.26 provided for the

---

1992–93 CILR 374

joinder of defendants who ought to have been joined at the commencement of the proceedings where there was an established link between the original cause and the cause against those to be joined. It did not permit joinder for the purpose of expanding the original cause of action. Since the original action between the plaintiff and the defendant was based on the lease agreement between them as landlord and tenant and the plaintiff's claim to recovery of possession and mesne profits arising from the defendant's breach, there could have been no other parties to the action as instituted because privity of contract existed only between those two (page 381, lines 13–15; lines 21–28; page 383, line 37 – page 384, line 9).

(2) In general, a plaintiff's application to amend pleadings to vary or add claims was to be decided on the merits to the extent that they might affect the action brought against the original defendant. The applicable principles were embodied in the Rules of the Supreme Court, O.20, r.5, by which amendments should normally be allowed unless it was apparent that the plaintiff applicant was acting *mala fide* or that by his omission or by the amendment he had done or would cause injury to his opponent which could not be compensated for by costs or otherwise; a plaintiff would not be permitted to raise entirely new claims amounting to a new cause of action or those that were inconsistent or useless or which sought to support a case that was bound to fail (page 385, line 27 – page 386, line 26).

(3) The court should not search for liability in tort or in equity where the parties were in a contractual relationship and this was particularly so in commercial relationships. More specifically it should not impose duties which were not strictly and necessarily incidental to that relationship. Since the lease agreement between the parties was a commercial transaction and it specified expressly and comprehensively their intentions with regard to the defendant's duties as well as an appropriate remedy for breach of the agreement, the court would not invoke the rules of equity so as to impose a relationship where there was no true need for the special protection that equity afforded. Similarly, no relationship of principal and agent could be found in what was strictly a landlord and tenant relationship. Furthermore, the proposition that the court should impose a fiduciary duty on the defendant because of the self-dealing manner in which he had breached the agreement was not acceptable since the equitable rules about self-dealing were based on a pre-existing fiduciary duty. Accordingly, no separate fiduciary duty on the defendant to account was to be implied from their relationship and the plaintiff's application to amend the pleadings on this basis would therefore be refused (page 387, lines 12–30; page 388, line 28 – page 389, line 36).

(4) The plaintiff had satisfied the court that it had a good, arguable case for forfeiture on the merits since even though it had omitted to address the question of whether the defendant's breach could be

---

1992–93 CILR 375

remedied, it was at least objectively arguable that it should be entitled to treat the circumstances existing at the time it purported to forfeit the case as irremediable because (a) the defendant's falsifications were deliberate; (b) its failure to assist the independent auditor betrayed an intention to continue its dissemblance; and (c) the continued performance of the lease depended on the good faith and willingness of the defendant, not only to remedy the breach but also to keep faithful accounts and make full and frank disclosure of sales and income. Although s.56 of the Registered Land Law (Revised) and its requirements for proper notice superseded any provisions in the lease to the contrary, the section would apply only if it were to be determined on the facts that the breaches were capable of remedy. Since the plaintiff's contention was that the breach was irremediable and repudiatory and entitled him to repudiate the lease without notice, it should be allowed to present that claim for determination on its merits. Given the interlocutory nature of these proceedings, the plaintiff needed to show no more than that it had a good, arguable case in this respect. Accordingly, the leave to amend would be granted to

include the claim for a declaration that the lease had been duly forfeited (page 390, lines 3–10; page 390, line 21 – page 392, line 20; page 392, lines 33–41).

(5) Leave would also be granted to include a claim in the alternative for damages for breach of the covenant to pay rent. This was sustainable in light of the evidence of at least one instance in which the defendant had failed to declare the sale of a valuable item which would have generated income to be assessed for percentage rent (page 393, lines 14–19).

Cases cited:

- (1) *Baker (G.L.) Ltd. v. Medway Building & Supplies Ltd.*, [1958] 1 W.L.R. 1216; [1958] 3 All E.R. 540, observations of Jenkins, L.J. applied.
- (2) *Bank of Nova Scotia v. Becker*, 1988–89 CILR 12, applied.
- (3) *Cayman Arms (1982) Ltd. v. English Shoppe Ltd.*, 1988–89 CILR 383; on appeal, Cause No. 16 of 1989, September 20th, 1989, unreported.
- (4) *Clarapede v. Commercial Union Assn.* (1883), 32 W.R. 262, observations of Brett, M.R. applied.
- (5) *Executive Air Servs. Ltd. v. MacDonald*, 1990–91 CILR N-4.
- (6) *Empire Clothing Serv. & Sales Ltd. v. Hillgate House Ltd.*, [1986] Ch. 340; [1985] 2 All E.R. 998, *dicta* of Slade, L.J. applied.
- (7) *Iorgulescu v. Swiss Bank & Trust Corp. Ltd.*, 1990–91 CILR 163.
- (8) *Jones v. Hughes*, [1905] 1 Ch. 180, observations of Vaughan Williams, L.J. applied.
- (9) *Ketteman v. Hansel Properties Ltd*, [1987] A.C. 189; [1988] 1 All E.R. 38, observations of Lord Griffiths applied.
- (10) *Kurtz v. Spence* (1887), 36 Ch. D. 770.
- (11) *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 R.C.S. 574, applied.
- (12) *Molnlycke AB v. Procter & Gamble Ltd.*, [1992] 1 W.L.R. 1112; [1992] 4 All E.R. 47, distinguished.

---

1992–93 CILR 376

- (13) *Norwich Pharmacal Co. v. Customs & Excise Commrs.*, [1974] A.C. 133; [1973] 2 All E.R. 943.
- (14) *Paradise Manor Ltd. v. Bank of Nova Scotia*, 1984–85 CILR 437, considered.
- (15) *Raleigh v. Goschen*, [1898] 1 Ch. 73.
- (16) *Salomon v. A. Salomon & Co. Ltd.*, [1897] A.C. 22; [1895–99] All E.R. Rep. 33, considered.
- (17) *Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd.*, [1986] A.C. 519; [1985] 2 All E.R. 947; [1985] 2 Lloyd’s Rep. 313, followed.
- (18) *Tildesley v. Harper* (1878), 10 Ch. D. 393, observations of Bramwell, L.J. applied.
- (19) *Tito v. Waddell (No.2)*, [1977] Ch. 106; [1977] 3 All E.R. 129, *dicta* of Megarry, V.-C. applied.

#### **Legislation construed:**

Grand Court (Civil Procedure) Rules, r.25: The relevant terms of this rule are set out at page 380, lines 29–34.

r.26: The relevant terms of this rule are set out at page 380, line 35 – page 381, line 9.

Registered Land Law (Revised) (Law 21 of 1971, revised 1976), s.37(1): The relevant terms of this section are set out at page 392, lines 25–27.

s.55(1):

“Subject to the provisions of section 57 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee—

(a) commits any breach of, or omits to perform any agreement or condition on his part expressed or implied in the lease. . . .”

s.56:

“Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease whether expressed or implied, until the lessor has served on the lessee a notice—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach,

and the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.”

Rules of the Supreme Court, O.20, I.5.  
“Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to

1992–93 CILR 377

amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.”

*M. Parkinson* for the plaintiff;

*P. Lamontagne, Q.C.* and *P. Boni* for the defendant.

10 **SMELLIE, Ag. J.:** By summons dated March 1st, 1993 the landlord/plaintiff sought leave to re-amend its writ and statement of claim in this matter to achieve three main objectives. The first was to add parties—the proposed second to fifth defendants. The second was to plead claims against those additional defendants and the third, to effect consequential amendments of the pleadings against the original defendant. Submissions were taken on March 31st, April 1st and April 5th and an order made on April 16th, 1993 with written reasons to be delivered at a later date. These are the reasons.

15 The original parties stand in the position of landlord and tenant by virtue of a lease dated August 16th, 1990. In the action the plaintiff’s case is that the tenant/defendant has falsified records of accounts and disclosures required to be respectively kept and made by the defendant pursuant to the lease and that the defendant has falsified those records in order to deprive the plaintiff of rents lawfully due under the lease. The proposed additional defendants are parties who, the plaintiff alleges, conspired with and actually facilitated or assisted the defendant in

20 its falsification of the accounts and disclosures.

25 The lease is not typical of the forms in use in this jurisdiction and I am informed by counsel that it follows a Canadian model. It is unusual in that, among other things, it includes a provision for “annual percentage rent” as well as a provision for “basic rent.” Central to the dispute is the issue whether the defendant has made full and frank disclosure as to its income from sales as the basis for arriving at the annual percentage rent.

30 Article III of the lease contains the following provisions:

“3.01 *Basic rent*

35 The tenant shall pay to the landlord in each lease year \$45,000 *per annum* (in this lease referred to as ‘basic rent’) by equal monthly instalments in advance, commencing upon the commencement date and on the first day of each calendar month thereafter during the term (provided that if the term commences on a day which is not the first day of a calendar

1992–93 CILR 378

commencement date for the broken portion of the calendar month at the beginning of the term shall be calculated at a rate per day of 1/365 of the annual basic rent).

3.02 *Percentage rent*

5 The tenant shall pay to the landlord in each lease year during the term the annual percentage rent for such lease year. Such annual percentage rent shall be payable in monthly instalments of estimated monthly percentage rent which shall be payable 20 days after the close of each  
10 calendar month in each and every lease year (including any portion of a calendar month at the commencement of the term if the term commences on a day other than the first day of a calendar month) *the amount of such estimated monthly percentage rent to be calculated by the tenant and accom*  
15 *panied by a statement certified as correct by the tenant showing in such detail as the landlord shall reasonably require, the amount of gross revenue for such calendar month and the amount of estimated monthly percentage rent payable.*

3.03 *Adjustment of annual percentage rent*

20 Within 120 days after the end of each lease year *the tenant shall deliver to the landlord a statement in writing and certified by the tenant, and which shall also be certified as being audited by an independent chartered accountant acceptable to the landlord, setting forth accurately and with reasonable*  
25 *detail and particulars and in such form as the landlord may require the gross revenue both monthly and in the aggregate, for such lease year and its annual percentage rent payable for such lease year.* If the aggregate annual percentage rent set forth in such statement differs from the annual percentage  
30 rent set forth in such statement, the tenant shall pay or the landlord shall refund the difference within 30 days after such statement is provided.” [Emphasis supplied.]

In the definitions in Article I, the following appears:

35 “ ‘Annual percentage rent’ means 6% of gross revenue plus 1.5% of extraordinary off premises revenue (derived from sales by the tenant of stock kept on the leased premises or sold off-premises having been placed for display on the leased premises) minus the basic rent. Annual percentage rent shall only be payable in the event such calculation from  
40 time to time produces a net positive figure.”

By virtue of those provisions the plaintiff claims that special

duties and responsibilities are created and are owed to him by the defendant and that they give rise to an implied relationship of trust which is not to be found in an ordinary lease where liabilities for rent are essentially stipulated as a pre-determined sum. Here the plaintiff argues that the lease contains covenants that the tenant must keep proper accounts of its income in order to ensure that the proper amounts of annual percentage rent are known and payable to the plaintiff.

A most important issue centered on this argument. It is whether this implied relationship of trust is so germane to the landlord/tenant relationship in this lease that the manner in which it was dishonoured by the tenant gave rise to an irremediable breach of the lease. If so the consequence would be that the plaintiff should be entitled to claim that the lease has been duly forfeited and in the manner which the plaintiff has purported to do so in a letter and notice which it sent to the defendant dated November 17th, 1992.

The plaintiff having raised these allegations of breach of contract and breach of faith, the court was invited by counsel for the defendant to reject any suggestion of fraudulent conduct on the part of the defendant as fraud had not been specifically pleaded at the outset. Instead, and without any admission on the part of his client, counsel for the defendant invited the court to make the following assumptions for the purposes of the hearing of this summons that (a) there is no dispute as to the tenant's contractual obligations to pay basic rent and annual percentage rent, although the amount owed may be disputed; (b) there is no dispute that the tenant is in breach of the lease in not having kept full and faithful records as required by Articles 3:03, 3:04 and 3:05 of the lease; (c) despite efforts on the part of the landlord to obtain a reconstruction or compilation of the records of the revenue of the defendant, through an independent auditor engaged for the purpose by the landlord, the tenant had failed to comply with the directions of the auditor to provide names and addresses of customers from whom verification of sales transactions might be obtained, and that such verification was essential to that exercise of reconstruction or compilation of the records; and (d) in at least one instance a certain named customer had purchased an expensive item of jewellery from the tenants' on-premises shop and that the tenant had failed to declare that item of revenue for the purposes of the accounting records.



Despite those assumptions which I was invited to make, counsel for the defendant submitted ultimately that the plaintiff's application on his summons should be dismissed in its entirety for the most important reason that the cause of action was bound to fail. This submission was based on the position taken by the defendant that though it may have breached the lease, those breaches were not irremediable; it was entitled to notice requiring it to remedy them; and as there was no such proper notice nor any proper demand to remedy, the forfeiture was wrong in law and the cause of action based on it, for recovery of possession, rent and, latterly, damages, could not succeed. Further, that the lease was still intact despite the landlord's claim to forfeiture. The landlord's claim was therefore bound to fail.

For the reasons which will follow, I was unable to accept the defendant's submissions that the plaintiff will inevitably fail to establish that it was entitled to forfeit the lease. Although that is the central issue underlying the action as it stands between the plaintiff and the defendant, the plaintiff sought leave by its summons to do a number of things, some of which were allowed by my order of April 16th and others disallowed. I will proceed to set out my reasons for the order in respect of each issue separately.

(A) *Application for leave to re-amend to join the proposed second,*

*third, fourth and fifth defendants. Leave refused.*

For the purposes of joinder of defendants to an existing cause of action, rr. 25 and 26 of the Grand Court (Civil Procedure) Rules are applicable. The text of the rules is as follows:

"25. All persons may be joined as defendants against whom the right of any relief is alleged to exist, whether jointly, severally or in the alternative, and any judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

26. No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court may, at any stage of the proceedings, either upon or without the application of any party and upon such terms as may seem just, order the names of any parties

improperly joined, whether as plaintiffs or defendants, to be struck out and the names of any parties added who *ought to have been joined*, whether as plaintiffs or defendants, or whose presence before the Court may be necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter:

Provided that no person shall be added as a plaintiff, or as the next friend of a plaintiff under a disability, without his own consent in writing thereto.” [Emphasis supplied.]

Rule 25 deals with the joinder of defendants in a single action. Rule 26 addresses the principles and circumstances which determine the joinder of a party to proceedings already instituted. As to joinder of plaintiffs or defendants, r.26 provides for the addition of two categories of persons: (a) those who ought to have been joined at the commencement of the proceedings, and (b) those whose presence may be necessary to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter. Mr. Parkinson sought the joinder of the additional defendants on the basis that they came within the first category of persons.

The original action is between the landlord and tenant based on the lease agreement between them. The claim at the time that action was brought was against the tenant for recovery of possession, for rent and for mesne profits and arose from the tenant’s alleged repudiation of the lease. Privity of contract existed only between those parties and in the cause of action as it was thus framed, there could have been no other parties to the action as originally instituted. Notwithstanding those circumstances Mr. Parkinson submitted that amendments ought to be allowed to add the proposed second to fifth defendants because the proper test is whether they could have been joined as defendants in some way, *at the time* the original action was brought, irrespective of whether they could have been joined as defendants in the action *as it was actually brought*.

The plaintiff’s claim against the proposed second to fifth defendants was, *inter alia*, for damages for having procured and conspired with the defendant to breach the lease. As such a claim could have been brought originally and *at the same time* as the original action, Mr. Parkinson submitted the requirements of rr. 25 and 26 were met, notwithstanding that the rules of privity of contract would have precluded joinder of the proposed

defendants in the action as originally framed. He relied primarily on the judgment of the Court of Appeal in *Executive Air Servs. Ltd. v. MacDonald* (5).

5 In that case the Court of Appeal upheld the decision of this court in allowing amendments to join a party as a joint tortfeasor in a statement of claim which originally raised allegations of tortious conduct as well as of breach of contract. In so doing it is significant that the court disallowed amendments seeking to join the same party as defendant to the claim based on allegations of  
10 breach of contract. In that case it was urged that the additional defendant was someone who fell within the first of the two categories of persons covered by r.26 of those who ought to have been joined at the commencement of the proceedings. From my reading of that case it appears clear that the court regarded the  
15 additional defendant as a party who “ought to have been joined” in the original action as framed in tort and within the meaning of that expression as it appears within r.26. It follows that the Court of Appeal disallowed the further pleadings as the additional defendant was not a party who ought to have been joined in the  
20 contractual claim as originally pleaded; as such an amendment would have been contrary to the principles of privity of contract, the additional defendant not having been a party to the contract and therefore against the principles established by *Salomon v. A. Salomon & Co. Ltd.* (16). I therefore did not think the case  
25 supported Mr. Parkinson’s position.

Although rr. 25 and 26 may be outmoded, they still apply and I consider that the applicable principles were settled by the Court of Appeal in the earlier case of *Bank of Nova Scotia v. Becker* (2) which was cited in argument by Mr. Lamontagne on behalf of  
30 the proposed defendants.

In that case, the applicant and third defendant, a company in liquidation which had been joined as a party in the suit between the plaintiff bank and the other defendants, applied for an order to join its own receivers as parties. The company had been  
35 granted a loan by the plaintiff bank for which collateral had been provided by the other defendants. It had defaulted in payment and the bank had appointed receivers who took possession of the company’s property. In an action by the bank against the other defendants as guarantors, the company was itself made a  
40 co-defendant upon the successful application of one of the other defendants. It was joined for the purpose of setting off any



damages it might recover for the wrongful acts of the receivers (whom it alleged to be agents or servants of the bank) against any relief granted to the bank in relation to it as principal debtor and the other defendants as guarantors.

5 The company then sought to counterclaim against the bank alleging that the receivers, as the bank’s agents or servants, had trespassed upon the company’s land, wrongfully taken possession of it and wrongfully converted the company’s chattels. The company also applied for leave to join the receivers as added parties in the counterclaim contending that (a) as it was entitled to damages from the bank or the receivers or both, the receivers were, under the Grand Court (Civil Procedure) Rules, r.26 “necessary parties to the proceedings”; and (b) in any event, since by virtue of r.25 it could have initiated proceedings against the bank and joined the receivers as co-defendants, it was “only just and convenient” that it should be able to counterclaim against them both at the same time.

10 The Court of Appeal, in refusing to order the joinder of the receiver, held (a) the court was obliged to have regard to the terms of the Grand Court (Civil Procedure) Rules and was only entitled to consider whether joinder was “just and convenient” as an aspect of the application of those rules. It was not entitled to use the “just and convenient” principles to give itself an unfettered discretion to order joinder; (b) as the bank had originally made no claim against the receivers they could not be added as defendants in the bank’s writ against the guarantors. Consequently, so far as that action was concerned, the receivers could not qualify as persons who “ought to have been joined” at the beginning of the proceedings. Nor did they so qualify when the company was introduced into the proceedings as an added party and counterclaimed against the bank. The application had therefore failed the first criterion for joinder in r.26; and (c) nor did the receivers qualify under the second criterion as parties “whose presence before the court may be necessary to enable the court effectually and completely to adjudicate upon the issue involved within the meaning of r.26. . . .”

20 The Court of Appeal, in refusing to order the joinder of the receiver, held (a) the court was obliged to have regard to the terms of the Grand Court (Civil Procedure) Rules and was only entitled to consider whether joinder was “just and convenient” as an aspect of the application of those rules. It was not entitled to use the “just and convenient” principles to give itself an unfettered discretion to order joinder; (b) as the bank had originally made no claim against the receivers they could not be added as defendants in the bank’s writ against the guarantors. Consequently, so far as that action was concerned, the receivers could not qualify as persons who “ought to have been joined” at the beginning of the proceedings. Nor did they so qualify when the company was introduced into the proceedings as an added party and counterclaimed against the bank. The application had therefore failed the first criterion for joinder in r.26; and (c) nor did the receivers qualify under the second criterion as parties “whose presence before the court may be necessary to enable the court effectually and completely to adjudicate upon the issue involved within the meaning of r.26. . . .”

25 From the second head of the *ratio decidendi* of the case as extracted above from the report and from the judgment itself, it seems to me that parties can only be joined pursuant to r.26 as persons “who ought to have been joined” if that nexus is established with the action as originally commenced. It is

impermissible to join parties for the purpose of expanding the original cause of action.

In the case before me, there was no privity of contract between the proposed additional defendants and the plaintiff. The action based on the lease for recovery of possession and mesne profits as commenced could have joined no other parties. It rested entirely between the plaintiff as landlord and the defendant as tenant. For those reasons I was unable to allow the joinder of the proposed second to fifth defendants.

I should also mention in passing that Mr. Parkinson also placed great reliance on the case of *Molnlycke AB v. Procter & Gamble Ltd.* (12) as authority for two propositions. The first was that other members of a corporate group besides the defendant (as were the proposed second and third defendants in relation to the defendant herein) may be brought in as defendants in the same action if they are in some way shown to have facilitated the conspiracy whereby the original defendant was able to commit the wrongdoing complained of and that is so whether or not the others are willing parties to the conspiracy. The second proposition was that the *Molnlycke* case confirms it is not an abuse of process to join other parties for the purpose only of obtaining discovery where that discovery will assist in proving the claims against the original defendant and assist in the later claim against the added defendants and further that that approach would not be in breach of the principles laid down in *Norwich Pharmacal Co. v. Customs & Excise Commrs.* (13).

My reading of the *Molnlycke* case leads me to a different view of it. To my mind it deals with a situation where a plaintiff sought to join as an alleged tortfeasor a German company which was an affiliate of the defendant company. By virtue of certain provisions of the Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments 1968, joinder in the circumstances of that case was as of right provided the plaintiff met the preliminary criterion of showing it had a good arguable case against the alleged defendant by satisfying the court that there was a serious question which called for a trial for its proper determination in respect of an alleged defendant company domiciled in a country which was party (as was Germany) to the convention. That criterion is premised on a basis entirely distinct from those criteria laid down by rr. 25 and 26 of the Grand Court (Civil Procedure) Rules and which are clearly set out in the judgment of

the Court of Appeal in *Bank of Nova Scotia v. Becker* (2), which I regard as applicable here. It follows I did not regard the *Molnlycke* case as persuasive authority for either proposition in the circumstances of this case.

5 I should also make it clear that leave to amend to join the additional defendants was not refused on the basis that the plaintiff's case was doomed to failure in its entirety. Had that been my view of the case I would have been obliged to invoke also the principles stated in *Raleigh v. Goschen* (15) that leave should not be given to add parties to an action which is bound to fail and where such leave would allow the plaintiff to mount a substantially different cause of action against added parties.  
10  
15 (B) *Leave for consequential re-amendments in respect of the proposed additional defendants, including an amendment seeking orders for discovery against them. Leave refused.*

It followed from the refusal of leave to join the proposed additional defendants that leave for consequential re-amendments to plead claims against them had also to be refused. I note further that in any event Mr. Parkinson for the plaintiff indicated he would have been prepared to seek discovery from them separately had they been joined as defendants and to have done so by separate process. As joinder was refused, on the merits, that recourse would also fail to materialize. I have set out above the reasons for the decision not to allow further amendments which sought to add new parties.

20 The remaining issues related to the application to re-amend the pleadings to vary or add claims. Such applications still fell to be decided on the merits to the extent that they might affect the action brought against the original defendant. There was no dispute as to the general principles which the court should apply in deciding on an application to amend pleadings for the purposes

30 of adding or varying claims. They are set out at O.20, r.5 of the Rules of the Supreme Court and, as they apply to this case, I summarize them as follows:

35 (a) Generally speaking, all amendments ought to be allowed which are for the purpose of determining the real question in controversy between the parties to any proceedings or for correcting any defect or error in any proceedings (*per* Jenkins, L.J. in *G.L. Baker Ltd. v. Medway Building & Supplies Ltd.* (1) ([1958] 1 W.L.R. at 1231).  
40

(b) Leave should be given to amend unless the court is satisfied

that the party applying was acting *mala fide*, or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise. However negligent or careless may have been the omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs (*per* Bramwell, L.J. in *Tildesley v. Harper* (18) (10 Ch. D. at 397) and *per* Brett, M.R. in *Clarapede v. Commercial Union Assn.* (4) (32 W.R. at 263).

(c) An amendment ought to be allowed if thereby “the real substantial question” can be raised between the parties and multiplicity of legal proceedings avoided: see *Kurtz v. Spence* (10).

(d) On the other hand, it should be remembered that there is a clear difference between allowing amendments to clarify the issues in dispute and those that provide distinct defences or claims to be raised for the first time (*per* Lord Griffiths in *Ketteman v. Hansel Properties Ltd.* (9) ([1987] A.C. at 220)).

(e) Furthermore, the court will always look at the materiality of the proposed amendment; inconsistent or useless amendments will not be allowed nor will amendments be allowed to raise a case which must fail: see 1 *The Supreme Court Practice 1991*, para. 20/5 – 8/23; *Jones v. Hughes* (8) ([1905] 1 Ch. at 187 *per* Vaughan Williams, L.J.) and the judgment of the Court of Appeal of the Cayman Islands in *Iorgulescu v. Swiss Bank & Trust Corp. Ltd.* (7).

I now turn to deal with the application for re-amendments to the claims.

(C) *Leave to re-amend the writ and the statement of claim to include a claim for an account from the defendant to be taken in order to ascertain the ultimate amount which the defendant owes the plaintiff by way of annual percentage rent. Leave refused.*

This aspect of the application had proceeded on the basis that a fiduciary relationship of principal and agent should be implied as existing between the plaintiff and defendant having regard to the lease arrangement which demanded a duty of trust from the defendant as tenant. Mr. Parkinson had submitted further that an action for an account is an established remedy available to a principal against his agent (in lieu of damages) and that such an action arose here. I need not provide reasons at length for this

correct the principles cited by Mr. Lamontagne in his response

5 but as considerable time was taken on it and as a distinction needs to be struck between the duty to account prescribed by the lease and the remedy in equity which was sought here, I will provide a brief minute of reasons.

10 Two considerations were paramount bearing in mind that the lease agreement embodies a commercial arm's length transaction between the parties. It contains extensive provisions as set out in Articles 3:01 – 3:05 as to the tenant's obligations to report and account to the landlord. It also specifies the relief available in the event of breach of those provisions. The two questions which arose were (a) whether there was the necessity and therefore a basis for implying as between the parties, a term or condition of the lease that there existed a further fiduciary relationship and arising from it that there should be accounting, as a separate remedy, beyond that expressly provided in the lease in the event the tenant acted in breach of the lease; and (b) could there be a need or basis for finding a relationship of principal and agent and a resulting duty to account, where the written agreement between the parties is a complete code of the intentions of the parties.

15 The decision of the Privy Council in *Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd.* (17) was cited in opposition to Mr. Parkinson's submissions and is clear authority for the proposition that the court should not search for a liability in tort or in equity where the parties are in a contractual relationship and that this is particularly so in commercial relationships. It is not permissible, on the contractual analysis of the relationship between the parties, to imply duties which are not strictly and necessarily incidental to that relationship.

20 Mr. Parkinson had conceded there was no English authority directly on point to support his submissions but had cited extracts from Underhill & Hayton, *Law relating to Trusts & Trustees*, 14th ed., at 14 (1987), 1(2) *Halsbury's Laws of England*, 4th ed., para. 86, at 62, and from 1 *Atkin's Court Forms*, 2nd ed., at 601 *et seq.* (1992 Issue) in support of his general submissions that the categories of circumstances which may give rise to a fiduciary relationship are not closed and that a principal/agent relationship might be inferred from the nature of the relationship between the parties as was evident in this case from the lease. Further, that an action for an account is a remedy arising from that relationship.

---

1992–93 CILR 388

Mr. Lamontagne in opposition relied also on the decision of the Supreme Court of Canada in *Lac Minerals Ltd. v. Interna*

principles which are extracted from the headnote to the case in  
the *Canada Supreme Court Reports* ([1989] 2 R.C.S. at 577–  
578):

“The following common features provide a rough and  
ready guide to whether or not a fiduciary obligation should  
be imposed on a new relationship: (1) the fiduciary has scope  
for the exercise of some discretion or power; (2) the fiduciary  
can unilaterally exercise that power or discretion so as to  
affect the beneficiary’s legal or practical interests; and (3) the  
beneficiary is peculiarly vulnerable to or at the mercy of the  
fiduciary holding the discretion or power.”

This description of the fiduciary relationship accords with the  
treatment of the subject in the textbooks which were cited in  
argument and especially as regards the relationship of principal  
and agent the following definition of agency is to be found in  
Fridman’s *Law of Agency*, 6th ed., at 9 (1990):

“Agency is the relationship that exists between two persons  
when one, called the *agent*, is considered in law to represent  
the other, called the *principal*, in such a way as to be able to  
affect the principal’s legal position in respect of strangers to  
the relationship by the making of contracts or the disposition  
of property.”

That definition does not accord with the relationship created  
between the landlord and tenant in the context of the lease which  
is the subject of this action.

The very helpful and exhaustive treatment of the subject in the  
*Lac Minerals* case also demonstrates that no relationship of  
principal and agent could properly be implied into the commer-  
cial arm’s length transaction which was the lease agreement  
between the parties herein. It would not be appropriate to invoke  
the rules of equity so as to impose a relationship in a situation  
such as this where there is no true need for the special protection  
that equity affords.

I also observe that the plaintiff’s submissions were based not on  
any suggestion of a pre-existing fiduciary duty but on the pro-  
position that the court might find one having regard to the self-  
dealing manner in which the contractual duties of the defendant  
had been breached. In that regard I was specifically guided by the  
opinion of Megarry, V.-C. in *Tito v. Waddell (No. 2)* (19) in

---

1992–93 CILR 389

commenting on this approach to identifying a fiduciary  
obligation



“I cannot see why the imposition of a statutory duty to perform certain functions, or the assumption of such a duty, should as a general rule impose fiduciary obligations, or even be presumed to impose any. Of course, the duty may be of such a nature as to carry with it fiduciary obligations. . . .

Impose a fiduciary duty and you impose fiduciary obligations. But apart from such cases, it would be remarkable indeed if in each of the manifold cases in which statute imposes a duty, or imposes a duty relating to property, the person on whom the duty is imposed were thereby to be put in a fiduciary relationship with those interested in the property, or towards whom the duty could be said to be owed. . . .

Furthermore, I cannot see that coupling the job to be performed with self-dealing in the performance of it makes any difference. If there is a fiduciary duty, the equitable rules about self-dealing apply: but self-dealing does not impose the duty. Equity bases its rules about self-dealing on some pre-existing fiduciary duty: it is a disregard of this pre-existing duty that subjects the self-dealer to the consequences of the self-dealing rules. I do not think that one can take a person who is subject to no pre-existing fiduciary duty and then say that because he self-deals he is thereupon subjected to a fiduciary duty.”

Notwithstanding the assumptions I was invited by Mr. Lamontagne to make and which lead irresistibly to the conclusion that the defendant was in breach of the lease and thereby guilty of “self-dealing,” I was unable to conclude, having regard to the foregoing statements of principles, that there could be found to be a principal/agent relationship between the landlord and tenant as parties to the lease. Accordingly, no separate fiduciary duty to account was to be implied. The plaintiff had no arguable case for a claim in that regard and the re-amendments could not have been allowed.

(D) *Application for leave to re-amend to include a claim for a declaration that the lease was properly rescinded. Leave refused.*

This aspect of the application was abandoned by Mr. Parkinson and I see no need to comment further on it.

---

1992–93 CILR 390

(E) *Leave to re-amend to include a claim for a declaration against the defendant that the lease was duly forfeited. Leave granted.*

Having regard to the assumptions which I should make for

5 present purposes that the defendant was in breach of the lease,  
the real point in dispute, as I earlier mentioned, was whether the  
breaches committed by the defendant were repudiatory, that is  
irremediable breaches giving rise to a right in the plaintiff to  
repudiate the lease without first giving notice as required by the  
lease and more importantly as required by ss. 55 and 56 of the  
10 Registered Land Law (Revised).

Mr. Lamontagne submitted that leave should not be granted  
because the plaintiff's claim for a declaration that the lease was  
duly forfeited was bound to fail. This was so, he urged, because in  
purporting to forfeit the lease the plaintiff treated as irremedi-  
15 able breaches which were patently capable of being remedied  
and because it failed to give notice to remedy as mandatorily  
prescribed by s.56 of the Law. Furthermore, he submitted, it was  
not for the plaintiff unilaterally and subjectively to decide  
whether the breach was remediable; it was obliged to give notice  
20 and see whether the defendant complied within the reasonable  
time to be set in the notice. Acceptance of Mr. Lamontagne's  
submissions in this regard would result in the disallowance of the  
plaintiff's application to re-amend to include a claim for a  
declaration that the lease was duly forfeited as, having regard to  
25 the principles earlier cited, amendments should not be allowed in  
aid of futile claims. This would be the result as no right of action  
in forfeiture could have accrued to the plaintiff, if the breach had  
been capable of remedy.

I was satisfied the plaintiff had at least an arguable case that the  
30 breaches complained of were not capable of remedy. On the basis  
of the authorities the plaintiff need not show more than that, at  
this stage, in order to render his claim strike-out proof. In  
arriving at that conclusion I was guided by the following passage  
from the judgment of the English Court of Appeal given by  
35 Slade, L.J. in *Empire Clothing Serv. & Sales Ltd. v. Hillgate  
House Ltd.* (6) ([1985] 2 All E.R. at 1010):

40 "In my judgment, on the remediability issue, the ultimate  
question for the court was this: if the s.146 notice had  
required the lessee to remedy the breach and the lessors had  
then allowed a reasonable time to elapse to enable the lessee  
fully to comply with the relevant covenant, would such

---

1992–93 CILR 391

compliance, coupled with the payment of any appropriate  
monetary compensation, have effectively remedied the harm  
which the lessors had suffered or were likely to suffer from



5       No would the failure of the s.146 notice to require remedy of  
the breach have been justifiable. In the *Rugby School*,  
*Esplanade* and *Hoffman* cases the answer to this question  
plainly would have been No. In the present case, however,  
for the reasons already stated, I think the answer to it must  
10       have been Yes.”

Essentially, given the interlocutory nature of the proceedings  
before me, the issue is whether the plaintiff has an arguable case.  
The answer to that question is No. There is no dispute that the  
plaintiff’s notice did not afford an opportunity to the defendant to  
15       remedy the breach.

I took the view, in the light of the assumptions I was invited to  
draw by the defendant and having regard to the affidavit of Mr.  
Mark Chapman, the independent auditor engaged by the plaintiff  
to examine the records of the defendant, in which Mr. Chapman  
20       expressed the view that there had been no proper records of  
accounts at all maintained by the defendant, that the plaintiff had  
at least an arguable case that the harm had been irretrievably  
done and that the breaches of the positive covenants to keep and  
maintain proper accounts and to enable full disclosure of income  
25       are breaches which in the context of this case may be shown to  
be  
incapable of remedy. This is, in my view, arguable notwithstand-  
ing that Mr. Chapman’s affidavit dealt with the situation as he  
found it and did not specifically address the question whether it  
would be possible for the defendant to rectify the breach by  
30       reconstruction of the records.

To my mind it must be at least objectively arguable that the  
plaintiff should be entitled to treat the circumstances existing at  
the time it purported to forfeit the lease as irremediable because  
the defalcations were deliberate, because the defendant’s failure  
35       to assist Mr. Chapman’s audit betrayed its intention to continue  
its dissemblance and because the continued performance of the  
lease depended on the good faith, willingness and ability of the  
defendant not only to remedy the breach but also to keep faithful  
accounts and make full and final disclosure of sales and income.

40       Put another way, it will be an arguable matter whether a notice  
in keeping with s.56 of the Law, specifying the breach and

---

1992–93 CILR 392

requiring remedy, should have been issued in circumstances  
where it would have been clear no proper records existed and that  
their creation would depend upon the recall and co-operation of

5 the officers or employees of the defendant which, from all indications, would likely be convenient to the defendant's own interests and which records may have therefore been predisposed to falsification. Whether the plaintiff as landlord could reasonably and objectively apprehend such an outcome as the inevitable result of a notice to remedy is an issue to be tried.

10 On account of the unusual nature of this lease, none of the cases cited in argument provided a full answer by way of precedent to these factual issues which remain to be resolved on the question whether the plaintiff was entitled to forfeit this lease. It should also be clear that in arriving at this view of the matter I proceeded on the basis that the requirements of ss. 55 and 56 of the Registered Land Law (Revised), in respect of the exercise of the right of forfeiture of leases, are paramount, and specifically as regards the requirements set out in s.56 for proper notice, this is so regardless whether there are provisions to the contrary  
15  
20 contained in the lease itself.

The primacy of the s.56 requirements is confirmed by the pronouncements of this court in *Cayman Arms (1982) Ltd. v. English Shoppe Ltd.* (3) and by their confirmation by the Court of Appeal. Moreover, s.37(1) of the Registered Land Law (Revised)  
25 also expressly states that "no land, lease or charge registered under this Law shall be capable of being disposed of except in accordance with this Law. . . ." Henry, J.A. stated in the Court of Appeal case of *Paradise Manor Ltd. v. Bank of Nova Scotia* (14) (1984-85 CILR at 480) that under s.37 of the Registered  
30 Land Law (Revised), "no right of a proprietor in or over his land, lease or charge registered under the Law shall be capable of being affected except in accordance with the Law. . . ."

Nonetheless, as the plaintiff's primary contention is that it was entitled to forfeit the lease on the basis that the breaches were  
35 incapable of being remedied and as I decided it should be allowed to present that claim for determination on its merits, there was no need for me to consider whether the requirements of s.56 as to notice had been met, as those requirements would apply in the factual circumstances of this case only if it is determined that the  
40 breach is capable of remedy or that the defendant should have been afforded an opportunity to remedy.

---

1992-93 CILR 393

(F) *Leave to re-amend to include a claim in respect of auditor's*

The lease in Article 3:04 provides that the cost of “any special  
audit or an examination by an accountant designated by the  
landord pursuant to this section shall be chargeable to and paid  
by the tenant” in circumstances like those which led to Mr.  
Chapman’s audit. Accordingly Mr. Lamontagne for the defen-  
dant conceded that the plaintiff’s claim in that regard was not  
prone to being struck out and did not oppose the amendment.

(G) *Leave to re-amend to include a claim, in the alternative to the  
claim for a declaration of forfeiture, for damages for breach of  
the  
covenant to pay rent. Leave granted.*

In light of the proof of at least one instance where the  
defendant failed to declare the sale of a valuable item which  
would have generated income which would be subject to being  
assessed for percentage rent, a claim in the alternative for  
damages for breach of the covenant to pay rent is sustainable.

This re-amendment was therefore allowed without opposition.

*Order accordingly.*

Attorneys: *Ritch & Connolly* for the plaintiff; *Ian Boxall & Co.* for the  
defendant.

**EXHIBIT 19**

CAYMAN ISLANDS



Supplement No. 5 published with Extraordinary  
Gazette No. 35 dated 21<sup>st</sup> May, 2014.

**THE CONTRACTS (RIGHTS OF THIRD PARTIES) LAW, 2014**

**(LAW 4 OF 2014)**

004405

**THE CONTRACTS (RIGHTS OF THIRD PARTIES) LAW, 2014**

**ARRANGEMENT OF SECTIONS**

1. Short title
2. Interpretation
3. Application
4. Rights of third party to enforce contractual term
5. Variation and rescission of contract
6. Defences
7. Enforcement of contract by promisee
8. Protection of promisor from double liability
9. Exceptions
10. Supplementary provisions relating to third party
11. Arbitration provisions

CAYMAN ISLANDS

Law 4 of 2014.

I Assent

Franz Manderson

Acting Governor.

14<sup>th</sup> May, 2014

**A LAW TO MAKE PROVISION FOR THE ENFORCEMENT OF  
CONTRACTUAL TERMS BY THIRD PARTIES; AND FOR INCIDENTAL  
AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Contracts (Rights of Third Parties) Law, 2014. Short title
2. (1) In this Law - Interpretation  
  
“contract of employment” has the meaning assigned to that expression under section 2 of the Labour Law (2011 Revision); (2011 Revision)  
  
“employee” has the meaning assigned to that expression under section 2 of the Labour Law (2011 Revision);  
  
“set off” includes netting of claims; and  
  
“third party” means a person who is not a party to a contract.  
  
(2) In relation to a term of a contract which is enforceable by a third party -
  - (a) “promisor” means a party to the contract against whom the term is enforceable by the third party; and

(b) “promisee” means a party to the contract by whom the term is enforceable against the promisor.

Application

3. (1) This Law shall apply to any contract which, on or after the date on which this Law comes into force, includes terms which comply with section 4.

(2) A contract made on, before or after the date on which this Law comes into force may be amended to include terms which comply with section 4.

(3) If, after this Law comes into force, a contract is amended to include terms which comply with section 4, a third party may only enforce a right which accrues on or after the date on which the contract is amended.

(4) If, prior to the date on which this Law comes into force, a contract included terms which comply with section 4, a third party may only enforce a right which accrues on or after the date on which this Law comes into force.

Rights of third party to enforce contractual term

4. (1) Subject to section 9, a third party may in his own right enforce a term of the contract if -

- (a) he is expressly identified in the contract by name, as a member of a class or as answering a particular description, which includes a person nominated or otherwise identified pursuant to the terms of the contract but the third party need not be in existence when the contract is entered into; and
- (b) the contract expressly provides in writing that he may.

(2) This section does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.

(3) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly.

(4) Where a term of a contract excludes or limits liability in relation to any matter, references in this Law to the third party enforcing the term shall be construed as references to his availing himself of the exclusion or limitation.

Variation and rescission of contract

5. (1) Where a third party has a right under section 4 to enforce a term of the contract, the parties to the contract may not, by agreement, rescind the contract, or



vary it so as to extinguish or alter his entitlement under that right, without his consent if -

- (a) the third party has communicated his assent to the term to the promisor;
- (b) the promisor is aware that the third party has relied on the term; or
- (c) the promisor can reasonably be expected to have foreseen that the third party would rely on the term and the third party has in fact relied on it.

(2) The assent referred to in subsection (1)(a) -

- (a) may be by words or conduct; and
- (b) if sent to the promisor by post or other means, shall not be regarded as communicated to the promisor until received by him.

(3) Subsection (1) is subject to any express term of the contract under which -

- (a) the contract may be rescinded or varied without the consent of the third party; or
- (b) the consent of the third party is required in circumstances specified in the contract instead of those set out in subsection (1)(a) to (c).

(4) Where the consent of a third party is required under subsection (1) or (3), the court may, on the application of one or more of the parties to the contract, dispense with his consent if satisfied that it is just and equitable to do so having regard to all the circumstances.

(5) The court may, on the application of one or more of the parties to a contract, dispense with any consent that may be required under subsection (1)(c) if satisfied that it cannot reasonably be ascertained whether or not the third party has in fact relied on the term.

(6) If the court dispenses with a third party's consent, it may impose the conditions it thinks fit, including a condition requiring the payment of compensation to the third party.

6. (1) Subsections (2) to (5) apply where, in reliance on section 4, proceedings for the enforcement of a term of a contract are brought by a third party. Defences

(2) The promisor shall have available to him by way of defence or set-off any matter that -

- (a) arises from or in connection with the contract and is relevant to the term; and
  - (b) would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.
- (3) The promisor shall also have available to him by way of defence or set-off any matter if -
- (a) an express term of the contract provides for it to be available to him in proceedings brought by the third party; and
  - (b) it would have been available to him by way of defence or set-off if the proceedings had been brought by the promisee.
- (4) The promisor shall also have available to him -
- (a) by way of defence or set-off any matter; and
  - (b) by way of counterclaim any matter not arising from the contract,
- that would have been available to him by way of defence or set-off or, as the case may be, by way of counterclaim against the third party if the third party had been a party to the contract.
- (5) Subsections (2) and (4) are subject to any express term of the contract as to the matters that are not to be available to the promisor by way of defence, set-off or counterclaim.
- (6) Where in any proceedings brought against him a third party seeks in reliance on section 4 to enforce a term of a contract including, in particular, a term purporting to exclude or limit liability, he may not do so if he could not have done so, whether by reason of any particular circumstances relating to him or otherwise, had he been a party to the contract.

Enforcement of contract  
by promisee

7. Section 4 does not affect any right of the promisee to enforce any term of the contract.

Protection of promisor  
from double liability

8. Where under section 4 a term of a contract is enforceable by a third party and a promisee has recovered from the promisor a sum in respect of -

- (a) the third party's loss in respect of the term; or
- (b) the expense to the promisee of making good to the third party the default of the promisor,

then, in any proceedings brought in reliance on that section by the third party, the court shall reduce any award to the third party to the extent it thinks appropriate to take account of the sum recovered by the promisee.

9. (1) Section 4 confers no rights on a third party in the case of a contract on a bill of exchange, promissory note or other negotiable instrument. Exceptions

(2) Section 4 confers no rights on a third party in the case of any contract binding on a company and its members under sections 12 and 25 of the Companies Law (2013 Revision). (2013 Revision)

(3) Section 4 confers no rights on a third party to enforce any term of a contract of employment against an employee.

(4) Section 4 confers no rights on a third party in the case of -

- (a) a contract for the carriage of goods by sea;
- (b) a contract for the carriage of goods by road, or for the carriage of cargo by air; or
- (c) letters of credit.

(5) In subsection (4) -

“contract for the carriage of goods by sea” means a contract of carriage -

- (a) contained in or evidenced by a bill of lading, sea waybill or a corresponding electronic transaction; or
- (b) under or for the purposes of which there is given an undertaking which is contained in a ship’s delivery order or a corresponding electronic transaction.

10. (1) Section 4 does not affect any right or remedy of a third party that exists or is available apart from this Law. Supplementary provisions relating to third party

(2) In sections 7 and 10 of the Limitation Law (1996 Revision) the references to an action founded on a simple contract and an action upon a specialty shall respectively include references to an action brought in reliance on section 4 relating to a simple contract and an action brought in reliance on that section relating to a specialty. (1996 Revision)

(3) Except to the extent provided in section 11(1) or (2), a third party shall not, by virtue of section 4(4), 6(4), 6(6), 11(1) or 11(2) be treated as a party to the contract for the purposes of any other Law or any instrument made under any other Law.

11. (1) Where a right under section 4 to enforce a term is subject to an arbitration agreement, the third party shall be treated for the purposes of the Arbitration Law, 2012 as a party to the arbitration agreement as regards disputes Arbitration provisions  
(Law 3 of 2012)

between himself and the promisor relating to the enforcement of the term by the third party.

(2) Where -

- (a) a third party has a right under section 4 to enforce an arbitration agreement; and
- (b) the third party does not fall to be treated under subsection (1) as a party to the arbitration agreement,

the third party shall, if he exercises the right, be treated for the purposes of the Arbitration Law, 2012 as a party to the arbitration agreement in relation to the matter with respect to which the right is exercised, and be treated as having been so immediately before the exercise of the right.

(3) In this section -

“arbitration agreement” has the meaning assigned to that expression under section 2 of the Arbitration Law, 2012.

Passed by the Legislative Assembly the 11<sup>th</sup> day of April, 2014.

Juliana Y. O’Connor-Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.

**EXHIBIT 20**

# \*366 Ebbw Vale Urban District Council v South Wales Traffic Area Licensing Authority.



No Substantial Judicial Treatment

## Court

Court of Appeal

## Judgment Date

16 March 1951

## Report Citation

[1951] 2 K.B. 366



Court of Appeal

Cohen , Asquith and Birkett , L.JJ.

1951 March 16.

*Road Traffic—Omnibus company—100 per cent. subsidiary of British Transport Commission—Company's application to vary fares made to licensing authority—Jurisdiction of authority— Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 72 — Transport Act, 1947 (10 & 11 Geo. 6, c. 49), ss. 2, sub—ss. 1, 2 (f) (g) (i), 3, 63—5, 76 .*

By s. 65, sub-s. 1, of the Transport Act, 1947 , ss. 72 to 76 of the Road Traffic Act, 1930 , do not apply to any passenger road transport service provided by the British Transport Commission or by any person acting as agent for the commission.

The commission, acting under the Transport Act, 1947 , acquired all the shares of a passenger road transport company with power to appoint and dismiss all their directors, the company thus becoming a 100 per cent. subsidiary of the commission. There was no evidence that the commission had in fact appointed the company to act as their agent. The company applied to a licensing authority for public service vehicles under s. 72, sub-ss. 1 and 4, of the Road Traffic Act, 1930 , to vary the conditions of road service licences then held by them, i.e., to increase the existing scale of fares.

\*367

Held, that the licensing authority had jurisdiction to hear the application of the company, since the service in question was not a passenger road transport service provided by the commission or by any person acting as agent for the commission. The commission, in acquiring the shares of the company in the exercise of their general duty as stated in s. 3 of the British Transport Act, 1947 , were not "providing", but "securing or promoting" the provision of, an efficient, adequate, economical and properly integrated system of public inland transport.

*Salomon v. Salomon & Co. LD.[1897] A. C. 22* followed.

Observations of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.[1924] 2 Ch. 33 , 38, 40*, referred to.

Decision of the Divisional Court reversed.

Appeal from the Divisional Court.

The applicants, Ebbw Vale Urban District Council, sought an order to prohibit the licensing authority for public service vehicles for the South Wales Traffic Area from hearing and determining an application by Red and White Services Ld. under s. 72 of the Road Traffic Act, 1930 <sup>1</sup>, to vary the conditions of road service licences then held by them, that was, to increase their existing scale of fares. The ground for the application was that the licensing authority had no jurisdiction to hear the application by the omnibus company by reason of s. 65 of the Transport Act, 1947 <sup>2</sup>.

\*368

The Divisional Court (Lord Goddard, C.J., Hilbery and Hallett, JJ.) held that s. 72 of the Act of 1930 on the facts of the case had ceased to apply, because the services afforded by the omnibus company were provided "by the commission" or by a "person acting as agent for the commission" within the meaning of sub-s. 1 of s. 65 of the Transport Act, 1947.

The omnibus company had been a private enterprise concern when, under the Transport Act, 1947, the British Transport Commission had acquired all their shares and the power to appoint and dismiss all their directors. The omnibus company, therefore, became a 100 per cent. subsidiary of the British Transport Commission. Lord Goddard, C.J., said that the commission were providing the road passenger service of the omnibus company, though he was rather inclined to think that the omnibus company in the circumstances were acting as agents for the commission. The British Transport Commission and the omnibus company appealed.

Before the Court of Appeal, counsel for the urban district council did not see fit to support the order of prohibition made by the Divisional Court on the ground that the omnibus company provided the services as agents of the British Transport Commission: he contended that the services were provided by the commission.

*Heald, K.C.*, and *R. J. Parker* for the commission.

*Fox-Andrews, K.C.*, and *King-Hamilton* for the omnibus company.

*Cyril Morgan* for the urban district council.

The argument, based on the relevant sections of the Transport Act, 1947, appears fully from the judgment of Cohen, L.J. Counsel for the appellants cited *Salomon v. Salomon & Co. LD.* <sup>3</sup>; the speech of Lord Buckmaster in *Rainham Chemical Works LD. (In Liquidation) v. Belvedere Fish Guano Co. LD.* <sup>4</sup>; the judgment of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.* <sup>5</sup>; *Railway Executive v. Henson* <sup>6</sup>; and *Smith v. London Transport Executive* <sup>7</sup>.

COHEN, L.J.

This appeal raises a question as to the jurisdiction of the licensing authority under s. 72 of the Road Traffic Act, 1930, to hear an application by Red and White Services Ld. for the modification of the conditions of their licence in such a way as to enable them to increase the fares which they are entitled to charge for the services that they supply in a district in South Wales.

Section 72, sub-s. 1, provides: "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. It is under that last provision that Red and White Services Ld. made the application which gives rise to the present proceedings.

When the application came before the authority, the suggestion was made, and it has since been decided by the Divisional Court, that the jurisdiction of the authority had been taken away, so far as the point then under discussion was concerned, by s. 65 of the Transport Act, 1947. [His Lordship read sub-s. 1 of s. 65]. The Divisional Court decided that s. 72 of the Road Traffic Act, 1930, had ceased to apply on the facts of this case, because the services in question were services provided "by the commission", or by a "person acting as agent for the commission", within the meaning of s. 65.

I will refer to two passages in the judgment of Lord Goddard, C.J., in order to explain the ratio decidendi of the court. He said: "It seems to me, when one gives s. 65 the ordinary meaning of the English language, that the transport commission, having acquired the whole of the undertaking and share-holding of this company, and running the omnibuses of that company for the purpose of providing a passenger service through the Ebbw Vale, are providing a road transport service. The vehicles are not their own: they still belong to the legal entity which is the company; but it seems to me that the commission are in effect providing the road passenger transport, though I am rather inclined to think that the omnibus company in the circumstances are acting as agents for the commission". Then, in the last paragraph he said: "Mr. \*370 Heald has relied on the well-known case of *Salomon v. Salomon & Co. LD.*<sup>8</sup>, which decided that in what is commonly called a one-man company, the company is a different entity from the man who holds the whole of the shares. and I have no doubt here that the omnibus company are a different entity from the commission; but it seems to me that the commission are providing this road passenger transport service, because the company are put there by the Transport Commission to do what otherwise it is the privilege of the commission to do. For these reasons I think that the order of prohibition must go".

Colloquially speaking, it may be true to say that the British Transport Commission are running the omnibuses of the company; but I am unable to agree, with all respect to the Divisional Court, that so broad a construction can properly be placed on the material phrase in s. 65: "any passenger road transport service provided ... by the commission or by any person acting as agent for the commission".

Under the ordinary rules of law, a parent company and a subsidiary company, even a 100 per cent. subsidiary company, are distinct legal entities, and in the absence of an agency contract between the two companies one cannot be said to be the agent of the other. That seems to me to be clearly established by *Salomon v. Salomon & Co. LD.*<sup>9</sup>, and by the observations of Tomlin, J., in *British Thomson-Houston Co. LD. v. Sterling Accessories LD.*<sup>10</sup>.

Tomlin, J., said<sup>11</sup>: "I do not think that any such inference" - that is, an inference of agency between the directors and the company - "can be or ought to be drawn. It has been made plain by the House of Lords that for the purpose of establishing contractual liability it is not possible, even in the case of the so-called one-man companies, to go behind the legal corporate entity of the company and treat the creator and controller of the company as the real contractor merely because he is the creator and controller. If he is to be fixed with liability as principal, the agency of the company must be established substantively and cannot be inferred from the holding of director's office and the control of the shares alone: see *Salomon v. Salomon & Co. LD.*<sup>12</sup>. Any other conclusion would have nullified the purpose for which the creation of limited companies was authorized by the legislature".

\*371

Tomlin, J., continued: "Nor does the matter stand otherwise in regard to liability for tortious acts". and later<sup>13</sup>: "There is no evidence from which it ought or can be inferred that the defendant directors have authorized the wrongful acts. To draw that inference from the fact that they are sole directors and shareholders of the defendant company would be manifestly wrong and contrary to the principles enunciated by the House of Lords in the cases already referred to, and there is no evidence of any other facts at all in relation to the matter".

So I think that it can clearly be said here that there is no evidence to justify the inference which apparently Lord Goddard, C.J., was inclined to draw, that the omnibus company in the circumstances of the case are acting as agents for the British Transport Commission. In fairness to Mr. Morgan I add that he did not seek to support the order on the ground of agency. He did, however, strongly urge that, on a business view of the matter, the services which were provided in South Wales by the company were services provided by the commission.

I can find nothing in the Act to negative or exclude the ordinary rules of law so far as this question is concerned. I think that the proper approach to the question is to construe s. 65, sub-s. 1, in the light of the other relevant provisions of the Act; and, as Mr. Fox-Andrews said, the proper starting point is s. 3, which lays down the general duty of the commission and states the objects, as distinct from the powers, which the commission was incorporated to perform. By sub-s. 1: "It shall be the general duty of the commission so to exercise their powers under this Act as to provide, or secure or promote the provision of, an efficient, adequate, economical and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods with due regard to safety of operation".



I would emphasize the distinction that is plainly drawn there between "providing", on the one hand, and "securing or promoting" on the other, the provision of an efficient system of transport. It seems to me that those words clearly visualize that the commission may either provide the system themselves or may secure or promote its provision by others. With that in mind I turn back to s. 2, which concerns the powers which the commission are to \*372 have to enable them to fulfil their object. Section 2, sub-s. 1, provides: "Subject to the provisions of this Act, the commission shall have power - (a) to carry goods and passengers by rail, road and inland waterway, within Great Britain". By sub-s. 2: "Subject to the provisions of this Act, the powers conferred by sub-s. 1 of this section include power", and then follow a series of powers lettered in paragraphs from (a) to (i). I need only refer to paragraphs (f), (g) and (i). Paragraph (f): "to acquire by agreement (whether absolutely or for any period) the whole or any part of any undertaking of any other person, being an undertaking, or a part of an undertaking, the activities whereof are wholly or mainly such activities as are specified in the said sub-s. 1". Paragraph (g): "to enter into and carry out agreements with any person for the carrying on by that person, whether as agent for the commission or otherwise, of any of the activities specified in the said sub-s. 1, or for the provision by that person, whether as agent for the commission or otherwise, of clearing house facilities in connexion with the transport of goods". Paragraph (i): "to lend money to, or give guarantees for the benefit of, any person carrying on or about to carry on any of the activities specified in the said sub-s. 1", and then, omitting immaterial words, "and to acquire by agreement any securities of any body corporate which is carrying on or about to carry on or which directly or indirectly controls another body corporate which is carrying on or about to carry on any such activities".

I pause here to observe that it is plain as regards the omnibus company that it is under this latter power to acquire the securities of a body corporate which is carrying on transport activities that the acquisition was made. I pause also to observe that both sub-s. 1 and sub-s. 2 are subject to provisoes prohibiting the commission from doing certain things which might otherwise be within the wide words of the enabling power.

Sub-s. 3 provides: "Where, whether by agreement or otherwise, the commission acquire the whole or any part of any undertaking of any other person, they may, subject to the provisions of this Act, carry on any activities, whether mentioned in sub-s. 1 of this section or not, which were theretofore carried on for the purposes of that undertaking or part of an undertaking or were authorized by any statutory provision to be carried on for the purposes thereof". There again that is followed by a proviso restricting the generality of the foregoing Sub-s. 4 also contains certain restrictive powers.

\*373

It is clear from that section, and I think that it also appears clear from ss. 63 and 64, which concern the preparation and approval of area road transport schemes and the contents of area road transport schemes, that the Act contemplates that the commission may either provide services itself or may secure the provision of those services by or through other bodies, and not only by or through agents of the commission. That being so, prima facie, it would seem necessary to see whether what is being done in any particular case is an act done to provide transport facilities, or is an act done to secure the provision of transport facilities. Where a service is provided through a subsidiary company of the commission, it seems to me that prima facie, having regard to the general rule of law, what the commission are doing is to secure the provision of road transport facilities, and not to provide them.

That the commission can act by providing them themselves is made clear by the decision of this court to which our attention was called by Mr. Heald and Mr. Morgan, namely, *Smith v. London Transport Executive* <sup>14</sup>.

That the commission can act through an agent is also clear under the express provisions of sub-s. (2) (g); but, as I have said, there is no question of agency here. It seems to me quite plain that it can also arrange with independent concerns to provide a service, in which case it will be performing its function of securing or promoting the provision of an efficient, adequate, economical and properly integrated system of public inland transport. In the present case, I think, the commission were securing the provision of an efficient, adequate, economical and properly integrated system of public inland transport within the meaning of s. 3, sub-s. 1, of the Act, through the omnibus company - not an independent concern, but a separate legal entity.

That conclusion, it seems to me, is rendered more certain by sub-s. 6 of s. 2 of the Act. That provides: "For the purposes of sub-s. 4 and of the provisoes to sub-ss. 2 and 3 of this section, where a body corporate is directly or indirectly controlled by the commission, anything done by that body shall be deemed to be done by the commission, and the undertaking of the body shall be deemed to form part of the undertaking of the commission". The importance of that provision seems to me to be that it is quite plain that Parliament when it passed this Act had in mind the general rule of law to which I have \*374 referred as laid down in *Salomon v. Salomon & Co. LD.* <sup>15</sup>, and many other cases, that a subsidiary company is not the agent of the parent company, but is an entirely separate entity. Its acts are not the acts of the parent company, and the parent company is not responsible for its acts or defaults, in the absence of special provisions in some contract between the parties. Parliament, with that in mind, has gone out of its way to prescribe that for certain limited purposes the acts of the subsidiary company shall be

deemed to be the acts of the commission. It seems to me an inevitable inference from that provision that, except to that extent, the intention was that the ordinary rule of law should prevail and that the acts of the subsidiary company should be its own acts and not the acts of the commission.

Mr. Morgan was compelled to admit that if there were a road accident the victim would have a remedy, if he had a remedy at all, not against the commission, but only against the omnibus company. That seems to me to lead to, or support, the conclusion that the services here were provided, not by the commission, but by the company.

There is another argument of Mr. Morgan's to which I ought to refer. He laid some stress on the words in sub-s. 1 of s. 65, "any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise". He relied upon those words as in some way enlarging the meaning to be given to the word "provided". I am unable to follow him in this part of his argument. It seems to me that, in the context in which they appear, the words "or otherwise" are merely in contrast to the words "under a scheme", and mean no more than "provided, whether or not under a scheme under the preceding provisions of this Part of this Act". It does not assist us in determining whether or not as a matter of fact any particular service is provided by the commission.

There is still one other argument to which I must refer. It was said that it would lead to a ridiculous, or at any rate to an artificial, situation if there were to be two bodies dealing with the same subject-matter. Section 76 of the Transport Act, 1947, contains the provisions under which the commission "shall from time to time prepare, and submit to the transport tribunal for confirmation, drafts of schemes (hereafter in this Act referred to as 'charges schemes') for determining, as respects the \*375 services and facilities provided by the commission to which the schemes respectively relate - (a) the charges which are to be made by the commission". So, said Mr. Morgan, it is plain that in one case not the licensing authority under the Road Traffic Act, 1930, but the transport tribunal under the Transport Act, 1947, will have to determine the fares and charges which are to be made by the commission. Is it not, he said, most unlikely that the legislature intended that, as regards other cases, where in substance the service was provided by the commission, the reference should be to the licensing authority? It does not seem to me that that objection really has any substance, and in a sense it begs the question, because it is only where the services are provided by the commission that the obligation to set up a charging scheme arises; and it seems to me that Parliament, having, as it clearly had, in mind the prospect that the commission might discharge their obligations either by providing or by securing provision of the requisite services, should have visualized a different method of settling the charges according to whether the commission provided the services themselves or secured their provision. It seems to me quite natural that the charging scheme should only apply where the commission were providing the services themselves, leaving the matter to be dealt with under the Road Traffic Act, 1930, in cases where the part played by the commission was merely to secure the provision of the services.

For these reasons, I think that the proper inference from the facts proved before the Divisional Court was that this was a case where the services were not provided by the commission but the commission merely secured their provision. I therefore think that it is not a case for prohibition, and I would allow the appeal.

ASQUITH, L.J.

I agree, and I would add only a word or two out of deference to the judgment from which we are differing. The case originally raised two distinct issues: did the commission within the meaning of sub-s. 1 of s. 65 "provide" these services? Or, short of that, did the omnibus company provide them as agents for the commission?

Mr. Morgan has not pressed the second point on the appeal, but, as the Divisional Court based its judgment partly on an affirmative answer to it, it is desirable to glance at it briefly. The only relevant fact before the court is that the commission own substantially all the shares in the company. The two bodies are admittedly separate legal personæ. Admittedly a subsidiary is not necessarily, as such, an agent for the controlling corporation. \*376 There is, of course, nothing to prevent a controlling body from constituting a controlled body its agent if it chooses to do so, but there is no evidence of any such thing having happened here.

I turn, therefore, to the other question: did the commission provide these services themselves? The Divisional Court took a broad, common-sense view of the meaning of the word "provide", but in my view it has to be construed in the light of its context and the general structure of the Act. The other sections of the Act do draw a firm and sharp distinction between services "provided by" the commission themselves, and services of which they "secure the provision", presumably by other people. My Lord has read the first two or three lines of s. 3, sub-s. 1, of the Transport Act, 1947, in support of that proposition, and I will not repeat them, but the same distinction reappears in a salient form in ss. 63 and 64, concerning schemes. Sub-s. 1 of s. 63

provides: "(1) The commission may, at any time, prepare and submit to the Minister a scheme". Sub-s. 1 of s. 64 provides: "A scheme under the last preceding section may provide for all or any of the following matters, that is to say - (a) for constituting or specifying the body or bodies who are to provide passenger road transport services operating within or partly within the area ...". Then by sub-s. 2: "The commission may be the body specified, or one of the bodies specified, in a provision included in a scheme by virtue of paragraph (a) of sub-s. 1 of this section"; so that it is not to be assumed that the distinction between services provided by the commission themselves and services which they cause other bodies to provide - a distinction which is so clearly present in the draftsman's mind when drafting ss. 63 and 64 - has entirely escaped his mind when he passes on to draft s. 65. It would appear to me that the commission have not in fact themselves provided passenger road services up to this time; but it is quite clear that they could, if they wished to do so, purchase a fleet of omnibuses tomorrow and run them themselves under powers given by s. 2, sub-s. 1 (a) and sub-s. 2 : see *Smith. v. London Transport Executive* <sup>16</sup> . If the commission in this case had bought, not shares in the omnibus company, but the physical assets of that company, and had engaged the company's staff to run the undertaking, in that case the commission would have been "providing" the services themselves. But it is, in my view, only if and to the extent that the commission do provide such services by themselves (or by an \*377 "agent" within the meaning of sub-s. 1 of s. 65 ) that the jurisdiction as to fares of the licensing authority is displaced; and as neither of these conditions is fulfilled in the present case I agree with my Lord that the appeal ought to be allowed.

BIRKETT, L.J.

I agree with both the judgments which have just been delivered. The point in this case was described by the Lord Chief Justice in the Divisional Court as being a short point, and a short point it assuredly is.

The Lord Chief Justice said: "I think, therefore, for the reasons which I have endeavoured to express - it is a very short point - that this is a road transport service provided by the commission, or by persons acting as agents for the commission, and that accordingly the Road Traffic Act no longer applies". Also, in the Divisional Court the grounds upon which this order for prohibition was asked were these: "The relief sought is an order of prohibition that the licensing authority for public service vehicles for the South Wales Traffic Area be prohibited from hearing and determining an application by Red and White Services Ltd. to vary the conditions attached to road service licences now held by the Red and White Services Ltd., that is to say, to increase their present scale of fares. The grounds upon which relief is sought are that the said licensing authority has no jurisdiction to hear and determine the said application".

The short question, therefore, is: is it shown, on the true construction of the statutes, and on the facts which have been proved, that the British Transport Commission are providing these road services in South Wales so that ss. 72 to 76 of the Road Traffic Act, 1930 , no longer apply?

Mr. Morgan invited the court to take a broad view, as he termed it, of the word "provide" in sub-s. 1 of s. 65, and, of course, that, I think, is the gist of the whole matter. Section 65, sub-s. 1, of the Transport Act, 1947 , provides: " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the commission or by any person acting as agent for the commission". Quite naturally, Mr. Morgan said that you must take a broad view of that word "provide". If I may say so, with all respect, it was the acceptance of that invitation in the Divisional Court which led to error. The meaning of the word "provide" cannot be interpreted quite on those lines, but must be ascertained with \*378 some precision, having regard to the wording of the various sections of the Transport Act, 1947 .

I think that Mr. Fox-Andrews was quite right in saying that the section which sheds most light on this matter is s. 3. There the general duty of the commission is set out. Sub-section 1 provides: "It shall be the general duty of the commission so to exercise their powers under this Act as to provide, or secure or promote the provision of, an efficient, adequate, economical and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods with due regard to safety of operation; and for that purpose it shall be the duty of the commission to take such steps as they consider necessary for extending and improving the transport and port facilities within Great Britain in such manner as to provide most efficiently and conveniently for the needs of the public, agriculture, commerce and industry". That is the general duty of the commission, and it is to be observed that one can conceive all sorts of matters as within the power of the Transport Commission under that section: they can provide services themselves; they can, in lieu of providing services themselves, secure the provision of services; or they can, instead of doing that, promote services, all to the end that their general duty under the section shall be fulfilled.

In this case it was shown that the commission in fact controlled the omnibus company, in this sense, that they owned all the shares, with the possible exception of two, and that they had the controlling power over the appointment and the dismissal of directors. In relation to that, sub-s. 6 of s. 2 is very important, because it is contemplated that the commission shall control, directly or indirectly, corporate bodies. The sub-section provides: "For the purposes of sub-s. 4 and of the provisoes to sub-ss. 2 and 3 of this section, where a body corporate is directly or indirectly controlled by the commission, anything done by that body shall be deemed to be done by the commission", thus limiting this provision most carefully to the matters which are set out in the section, i.e., for the purposes of sub-s. 4 and the provisoes of sub-ss. 2 and 3 of s. 2. Therefore, in this case, although the commission do control the omnibus company, though they do own the shares, though they have the power to control the appointment and dismissal of directors, they do not own the property of the company and the vehicles which actually run upon the roads. As my Lord pointed out, there is no power to sue the commission either in contract or in tort. Therefore, popularly, \*379 or, if I may use Mr. Morgan's phrase, "in a broad sense", one may say, of course, that the commission provide the services, as one man might say to another, because they control the company, they own the shares; yet in fact what they are really doing here is, not to provide the services, but, as my Lord has already stated, to secure that those services are provided.

Asquith, L.J., discussed the matter of agency, which clearly influenced the Divisional Court, but which is no longer relied upon here; and Cohen, L.J., disposed of the argument raised on the use of the words "or otherwise" in the words of sub-s. 1 of s. 65: "any passenger road transport service provided whether under a scheme under the preceding provisions of this Part of this Act or otherwise".

In all these circumstances, I am clearly of opinion that this was not a case where the commission in fact provided the services, and, that being so, sub-s. 1 of s. 65, which eliminated ss. 72 to 76 of the Road Traffic Act, 1930, in the case of any passenger road transport service *provided* by the commission, has no application, and I agree that this appeal should be allowed.

## Representation

Solicitors: M. H. B. Gilmour ; M. H. B. Gilmour ; Lewin, Gregory, Torr, Durnford & Co. , for J. L. J. Price, Merthyr Tydfil .

*Appeal allowed. (C. G. M. )*

## Footnotes

- 1 Road Traffic Act, 1930, s. 72, sub-s. 1 : "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. Transport Act, 1947, s. 65, sub-s. 1 : " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the Commission or by any person acting as agent for the Commission, but neither the Commission nor any such person as aforesaid shall use any public service vehicle for the conveyance of passengers for hire or reward at separate fares except - (a) on a route approved, as respects so much thereof as falls within any traffic area, by the licensing authority for public service vehicles for that area; and (b) in accordance with such restrictions as may be imposed by that authority as to the class or description of vehicles which may be used on the route and as to the portions of the route on which, and the points at which, passengers may be taken up or set down ...".
- 2 Road Traffic Act, 1930, s. 72, sub-s. 1 : "Subject to the provisions of this section the commissioners may grant to any person applying therefor a licence (in this Act referred to as a 'road service licence') to provide such a road service as may be specified therein, and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence". Under sub-s. 6 power is given to the commissioners, subject to the

provisions of the section, to fix such fares and make it a condition of the licence that fares shall not be charged under or in excess of the minimum or maximum. Under sub-s. 4 the commissioners may from time to time vary, in such manner as they think fit, the conditions attached to a road service licence. Transport Act, 1947, s. 65, sub-s. 1 : " Sections 72 to 76 of the Road Traffic Act, 1930 (which relate to road service licences) shall not apply to any passenger road transport service provided, whether under a scheme under the preceding provisions of this Part of this Act or otherwise, by the Commission or by any person acting as agent for the Commission, but neither the Commission nor any such person as aforesaid shall use any public service vehicle for the conveyance of passengers for hire or reward at separate fares except - (a) on a route approved, as respects so much thereof as falls within any traffic area, by the licensing authority for public service vehicles for that area; and (b) in accordance with such restrictions as may be imposed by that authority as to the class or description of vehicles which may be used on the route and as to the portions of the route on which, and the points at which, passengers may be taken up or set down ...".

- 3 *[1897] A. C. 22 .*
- 4 *[1921] 2 A. C. 465 , 475.*
- 5 *[1924] 2 Ch. 33 , 38 and 40.*
- 6 *(1949) 65 T. L. R. 336; 113 J. P. 333 .*
- 7 *[1949] Ch. 685; [1951] W. N. 157 .*
- 8 *[1897] A. C. 22 .*
- 9 *[1897] A. C. 22 .*
- 10 *[1924] 2 Ch. 33 .*
- 11 **Ibid. 38.**
- 12 *[1897] A. C. 22 .*
- 13 *[1924] 2 Ch. 33 , 40.*
- 14 *[1949] Ch. 685; [1951] W. N. 157 .*
- 15 *[1897] A. C. 22 .*
- 16 *[1949] Ch. 685; [1951] W. N. 157*

(c) Incorporated Council of Law Reporting for England & Wales

**EXHIBIT 21**

## **EXHIBIT 21**



1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

3 In Re: ) **Case No. 19-34054-sgj-11**  
4 ) Chapter 11  
5 )  
6 HIGHLAND CAPITAL ) Dallas, Texas  
7 MANAGEMENT, L.P., ) Friday, June 25, 2021  
8 ) 9:30 a.m. Docket  
9 Debtor. )  
10 ) EXCERPT: MOTION FOR  
11 ) MODIFICATION OF ORDER  
12 ) AUTHORIZING RETENTION OF JAMES  
13 ) P. SEERY, JR. DUE TO LACK OF  
14 ) SUBJECT MATTER JURISDICTION  
15 ) (2248)  
16 )

10 TRANSCRIPT OF PROCEEDINGS  
11 BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
12 UNITED STATES BANKRUPTCY JUDGE.

12 WEBEX APPEARANCES:

13 For the Debtor: Jeffrey Nathan Pomerantz  
14 PACHULSKI STANG ZIEHL & JONES, LLP  
15 10100 Santa Monica Blvd.,  
16 13th Floor  
Los Angeles, CA 90067-4003  
(310) 277-6910

17 For the Debtor: John A. Morris  
18 PACHULSKI STANG ZIEHL & JONES, LLP  
19 780 Third Avenue, 34th Floor  
New York, NY 10017-2024  
(212) 561-7700

20 For CLO Holdco, Ltd. and Jonathan E. Bridges  
21 The Charitable DAF Fund, Mazin Ahmad Sbaiti  
22 LP: SBAITI & COMPANY, PLLC  
23 JP Morgan Chase Tower  
24 2200 Ross Avenue, Suite 4900 W  
25 Dallas, TX 75201  
(214) 432-2899

24 For Get Good Trust and Douglas S. Draper  
25 Dugaboy Investment Trust: HELLER, DRAPER & HORN, LLC  
650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
(504) 299-3300

004424



1 APPEARANCES, cont'd.:

2 For the Official Committee Matthew A. Clemente  
3 of Unsecured Creditors: SIDLEY AUSTIN, LLP  
4 One South Dearborn Street  
Chicago, IL 60603  
(312) 853-7539

5 Recorded by: Michael F. Edmond, Sr.  
6 UNITED STATES BANKRUPTCY COURT  
7 1100 Commerce Street, 12th Floor  
Dallas, TX 75242  
(214) 753-2062

8 Transcribed by: Kathy Rehling  
9 311 Paradise Cove  
Shady Shores, TX 76208  
10 (972) 786-3063

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1 DALLAS, TEXAS - JUNE 25, 2021 - 9:36 A.M.

2 (Transcript excerpt begins at 11:33 a.m.)

3 THE CLERK: All rise.

4 THE COURT: All right. Please be seated. We are  
5 back on the record, and our last motion this morning is the  
6 Motion to Reconsider filed by CLO Holdco and the DAF. Do we  
7 have Mr. Bridges and Mr. Sbaiti back with us now?

8 MR. BRIDGES: Yes, Your Honor. I have changed seats  
9 because of audio problems we're having here, but we're both  
10 here.

11 THE COURT: Okay. Well, I think we heard an  
12 agreement that you all have agreed that you're going to have  
13 an hour and a half each, and I presume that means everything:  
14 opening statements, arguments, evidence. So, we'll start the  
15 clock. Nate, it's 11:35. So, Mr. Bridges, your opening  
16 statement?

17 OPENING STATEMENT ON BEHALF OF CLO HOLDCO AND THE CHARITABLE  
18 DAF, LP

19 MR. BRIDGES: Thank you, Your Honor. We're here on a  
20 motion to modify an order that we'd submit has already been  
21 modified by the plan confirmation order, although that order  
22 has not yet become effective.

23 The modification there was to add the phrase "to the  
24 extent legally permissible" to the Court's assertion of  
25 jurisdiction in what is essentially the same gatekeeper

1 provision that's at issue here. We submit that change is an  
2 admission or at least a strong indication that the unmodified  
3 order, at least as applied in some instances, contains  
4 legally-impermissible provisions. The entire argument today  
5 from our side is about what's not legally permissible in that  
6 order.

7 And that starts with our concerns regarding the  
8 application of 28 U.S.C. § 959(a). As Your Honor knows well,  
9 959(a) is a provision of law that the Fifth Circuit and  
10 *Collier on Bankruptcy* call an exception to the *Barton*  
11 doctrine. I know from the last time we were here that the  
12 Court is already aware of what 959(a) says. It's the second  
13 sentence, I understand, which the Court pointed to in our  
14 previous hearing that creates general equity powers or  
15 authorizes the Court to use its general equity powers to  
16 exercise some jurisdiction, some control over actions that  
17 fall within the first sentence of 959(a). But that second  
18 sentence also prohibits explicitly the Court's using general  
19 equity powers to deprive a litigant of his right to trial by  
20 jury.

21 Here, we're not under *Barton*, the statutory exception to  
22 *Barton* applies, because Mr. Seery is a manager of hundreds of  
23 millions of third-party investor property. Instead, we're  
24 here under the Court's general equity powers, as authorized by  
25 959(a). And those equity powers cannot deprive the right to

1 trial by jury.

2 But the order does deprive trials by jury, first by  
3 asserting sole jurisdiction here, where jury trials are  
4 unavailable, and secondly, by abolishing any trial rights for  
5 claims that do not involve gross negligence or intentional  
6 misconduct.

7 Movants' third cause of action in the District Court case  
8 is for ordinary negligence. It comes with a Seventh Amendment  
9 jury right. But it's barred by the order because the order  
10 only allows colorable claims involving gross negligence or  
11 intentional conduct, not ordinary negligence.

12 Movants' second cause of action in the District Court case  
13 is for breach of contract. That comes with a Seventh  
14 Amendment jury right, but it's barred by the order because the  
15 order only allows colorable claims of gross negligence or  
16 intentional misconduct, not negligent or faultless breaches of  
17 contractual obligations.

18 Movants' first cause of action in the District Court case,  
19 breach of Advisers Act fiduciary duties, comes with a jury  
20 right. It's also barred by the order because the order only  
21 allows colorable claims involving gross negligence or  
22 intentional misconduct.

23 You see there what I mean. Congress couldn't have been  
24 clearer. Courts cannot deprive litigants of their day in  
25 court before a jury of their peers by invoking general equity

1 powers. Those powers don't trump the constitutional right to  
2 a jury trial.

3 Yet this Court's order purports to do precisely that, not  
4 only for the Movants, but also for future potential litigants  
5 who may have claims that have not even accrued yet. If those  
6 claims are for ordinary negligence or breach of contract or  
7 breach of fiduciary duties and don't rise to the level of  
8 gross negligence or intentional misconduct, this order says  
9 that those claims are barred, and it would deprive them of  
10 their day in court.

11 The Court's general equity powers are simply not broad  
12 enough to uphold such an order.

13 This issue is even more problematic when the causes of  
14 action at issue fall within the mandatory withdrawal of the  
15 reference provisions of 28 U.S.C. § 157(d). As this Court  
16 knows, it lacks jurisdiction over proceedings that require  
17 consideration of non-bankruptcy federal law regulating  
18 interstate commerce. Some such claims -- Movants' Advisers  
19 Act claim, for instance -- do not involve culpability rising  
20 to the level of gross negligence or intentional misconduct,  
21 but the order purports to bar them nonetheless, despite this  
22 Court's lacking jurisdiction over the subject matter of those  
23 claims.

24 Even if there is gross negligence or intentional  
25 misconduct, the order states that this Court will have sole

1 jurisdiction over such claims. And that can't be right if  
2 withdrawal of the reference is mandatory.

3 Opposing counsel will tell you that 157(d) is inapplicable  
4 here because they think our claims in the District Court won't  
5 require substantial consideration of the Advisers Act or any  
6 other federal laws regulating interstate commerce. But their  
7 cases don't come anywhere close to making that showing, as the  
8 briefing demonstrates.

9 And in any case, that argument is beside the point. This  
10 order is contrary to 157(d) because it asserts jurisdiction  
11 over claims that 157(d) does not apply -- I'm sorry, does  
12 apply to. And that's true regardless of whether Movants'  
13 claims are among those.

14 The idea that there's no substantial consideration of  
15 federal law, however, in the District Court case is undermined  
16 by Mr. Seery's testimony in support of his appointment in  
17 which he confirmed that the Advisers Act applies to him and  
18 that he has fiduciary duties under that Act to the investors  
19 of the funds he manages.

20 Your Honor, importantly, the Advisers Act isn't the  
21 typical federal statute with loads of case law under it. It's  
22 actually an underdeveloped, less-relied-upon statute, and most  
23 -- most of the law under that Act is promulgated by regulation  
24 and supervised by the SEC. As a registered investment  
25 advisor, Mr. Seery is bound by that Act, which he admits, he

1 agrees to. But to flesh out what his duties are requires a  
2 close exam of more than three dozen regulations under 17  
3 C.F.R. Part 275.

4 The obligations include robust duties of transparency and  
5 disclosure, as well as duties against self-dealing and the  
6 necessity of obtaining informed consent, none of which are  
7 waivable, these duties.

8 The proceedings here in this Court reflect an effort to  
9 have those unwaivable duties waived. The allegations in the  
10 District Court are essentially insider trading allegations  
11 that the Debtor and Mr. Seery knew or should have known  
12 information that they had a duty under the Advisers Act to  
13 disclose to their advisees. Both under the Act and  
14 contractually, they had those duties. And, instead, they did  
15 not disclose and consummated a transaction that benefited  
16 themselves nonetheless.

17 In considering those claims, the presiding court will have  
18 to consider and apply the Advisers Act and the many  
19 regulations promulgated under it, in addition to other federal  
20 laws regulating interstate commerce. For that reason,  
21 withdrawal of the reference on the District Court action is  
22 mandatory. That's the two major -- that's two major problems  
23 out of four with the order that we're here on today.

24 First, it deprives litigants of their right to trial, to a  
25 jury trial, when Section 959(a) says that can't be done. And,

1 two, the order asserts jurisdiction -- sole jurisdiction, even  
2 -- over proceedings in which withdrawal of the reference is  
3 mandatory under 157(d).

4 The fourth major problem is what the Court called  
5 specificity at the previous hearing. The Fifth Circuit's  
6 *Applewood Chair* case holds that the rule from *Shoaf* does not  
7 apply without a "specific discharge or release," and that that  
8 release has to be enumerated and approved by the Bankruptcy  
9 Court. Thus, the order here can't exculpate Mr. Seery of  
10 liability for ordinary negligence and the like in a blanket  
11 fashion. The claims being released must be identified.

12 That's what happened in *Shoaf*. Shoaf's guaranty  
13 obligation was explicitly released. That's also what happened  
14 in *Espinosa*. Espinosa's plan listed his student loan as his  
15 only specific indebtedness. But it's not what happened here.  
16 And it couldn't happen here, because the ordinary negligence  
17 and similar claims being discharged by the order had not yet  
18 accrued and thus were not even in existence at the time the  
19 order issued.

20 Instead, what we have here is a nonconsensual, nondebtor  
21 injunction or release that's precisely what the Fifth Circuit  
22 refused to enforce in the *Pacific Lumber* case.

23 So, lack of specificity is the third major problem with  
24 the order. And that brings us to the fourth problem, which is  
25 the *Barton* doctrine. *Barton* is the only possible basis for



1 this Court to assert exclusive or sole jurisdiction over  
2 anything. Outside of *Barton*, it's plain black letter law that  
3 the District Court's jurisdiction is equal to and includes  
4 anything that this Court's derivative jurisdiction would also  
5 reach.

6 But the exception to the *Barton* doctrine in 959(a) plainly  
7 applies here, leaving no basis for exclusivity with regards to  
8 jurisdiction and the District Court. That's because Mr. Seery  
9 is carrying on the business of a debtor and managing the  
10 property of others, rather than merely administering the  
11 bankruptcy estate. The exclusive jurisdiction function of the  
12 *Barton* doctrine has no applicability because 959(a) creates  
13 that exception here.

14 Under its general equity powers, yes, 959(a) still  
15 authorizes this Court to exercise some control over actions  
16 against Mr. Seery, but short of depriving litigants of their  
17 day in court. And nothing in 959(a), that exception to  
18 *Barton*, says that the Court can nonetheless exercise  
19 exclusivity in that jurisdiction. Those general equity powers  
20 do not create exclusive or sole jurisdiction. They do not  
21 deprive the District Court of its Congressionally-granted  
22 original jurisdiction.

23 Moreover, Mr. Seery is not an appointed trustee entitled  
24 to the protections of the *Barton* doctrine in any case. His  
25 appointment was a corporate decision that the Court was asked

1 not to interfere with. The Court was asked to defer under the  
2 business judgment rule to the Debtor's appointment of Mr.  
3 Seery. And the Court did so.

4 As we asserted last time, no authority that we can find  
5 combines these two unrelated doctrines, the *Barton* doctrine  
6 and the business judgment rule. And they don't go together.  
7 None of the testimony or the briefing or argument, in the July  
8 order, in the January order that preceded it, none of that  
9 indicated that Mr. Seery would be a trustee or the functional  
10 equivalent of a trustee. The word "trustee" does not appear  
11 in any of those briefs or transcripts.

12 Opposing -- and because of that, the District Court suit  
13 is not about -- well, not because of that. The District Court  
14 suit simply is not about any trustee-like role that Mr. Seery  
15 may have played anyway. Opposing counsel will try to convince  
16 you otherwise, will tell you that the District Court case is a  
17 collateral attack on the settlement, but it's not. Wearing  
18 his estate administrator hat, Mr. Seery can settle claims in  
19 this court. Wearing his advisor hat, he has to fulfill his  
20 Advisers Act duties and properly advise his clients.

21 He doesn't have to wear both hats, and it seems highly  
22 unusual that he would choose to fill both of those roles  
23 simultaneously. But he has chosen both roles. And the  
24 District Court case is a hundred percent about his role as an  
25 advisor. Did he comply with the Act? Did he do the things

1 that his advisor role obligated him to do as a manager of that  
2 property?

3 The District Court suit really is only being used to  
4 illustrate the issues that we're raising here. It's  
5 important, it's timely to address those issues now because of  
6 the District Court action, but that's an illustration of the  
7 problems with the order. It is not exclusively that that  
8 action is what we're attempting to address. Rather, the order  
9 exculpating Mr. Seery from ordinary negligence liability and  
10 similar liability is problematic, is contrary to the law. On  
11 top of that, the Court is asserting jurisdiction over gross  
12 negligence and intentional misconduct claims. To the extent  
13 that 157(d) applies, it is problematic and contrary to law as  
14 well.

15 THE COURT: Okay. We're occasionally getting some  
16 breakup of your sound. So please -- I don't know what you can  
17 do to adjust, but it was just now, and intermittently we get a  
18 little bit of garbly. So if you could just say your last  
19 sentence one more time, and we'll see if it improves.

20 MR. BRIDGES: Your Honor, I'm not sure I can say this  
21 last sentence again.

22 THE COURT: Okay.

23 MR. BRIDGES: I was -- I was mentioning that the  
24 District Court case is an illustration of our argument. Our  
25 argument is not merely that the District Court case should be

1 exempted or excepted from the order. Our argument is that the  
2 order is legally infirm and that the District Court case and  
3 the claims there illustrate some of those infirmities, but  
4 that the infirmities go beyond just what's at issue in the  
5 District Court case.

6 In sum, there are four problems with the order that render  
7 parts of it legally infirm. It deprives the right of a jury  
8 trial -- in fact, of any trial -- in contravention of 959(a)  
9 for some causes of action.

10 It asserts jurisdiction -- two, it asserts jurisdiction  
11 over claims that are subject to the mandatory withdrawal of  
12 the reference provision (garbled) 157(d).

13 And three, it lacks the specificity required to discharge  
14 future claims under *Applewood*.

15 Finally, Your Honor, number four, the order relies on the  
16 *Barton* doctrine, which doesn't apply and which 959(a) creates  
17 an exception to.

18 Movants respectfully submit the order should be modified  
19 for those reasons.

20 MR. SBAITI: Tell him Mark Patrick is here, for the  
21 record.

22 THE COURT: All right. I have a couple of follow-up  
23 questions for you. I want to drill down on the issue of your  
24 client not having appealed the July 2020 order. Or the  
25 HarbourVest settlement order, for that matter. Tell me as

1 directly as possible why you don't view that as a big problem.  
2 Because it's high on my list of possible problems here.

3 MR. BRIDGES: I understand, Your Honor. The  
4 *Applewood Chair* case is our -- our defense to that argument,  
5 that without providing specifics as to the claims being  
6 discharged in the July order, that *Shoaf* cannot apply to  
7 create a res judicata effect from the failure to appeal that  
8 order.

9 THE COURT: But is that really what we're talking  
10 about, a discharge of certain claims? We're talking about a  
11 protocol that the Court established which wasn't appealed.

12 MR. BRIDGES: Your Honor, your order does many  
13 things. We're talking about a few of them in one paragraph of  
14 the order. And in that order -- in that paragraph, yes, it  
15 creates a protocol for determining the colorability of some  
16 claims, claims that rise to the level of gross negligence or  
17 intentional misconduct. It does not create a protocol for  
18 claims that fall below that threshold, claims for ordinary  
19 negligence, as an example.

20 THE COURT: Okay.

21 MR. BRIDGES: For breach of contract that's not  
22 intentional, is not grossly negligent, it's just a breach of  
23 contract. It can even be faultless. There's still liability.  
24 There's still a jury right under the Seventh Amendment for  
25 faultless breach of contract.

1           The protocols in the order do not address such claims  
2 other than to bar them. To discharge them. And thus, yes,  
3 it's a release, it's a discharge of those claims. It can be  
4 viewed as a permanent injunction against bringing such claims.  
5 It's what's -- it's what's not allowed by the *Applewood Chair*  
6 case and by *Pacific Lumber*.

7           THE COURT: All right. So you're arguing that was --  
8 the wording of the order was not specific enough to apprise  
9 affected parties of what they were releasing, they're  
10 releasing claims based on ordinary negligence against Mr.  
11 Seery? That's not specific enough?

12           MR. BRIDGES: Correct. Future unproved claims, the  
13 factual basis for which has not happened yet. Those cannot be  
14 and were not disclosed with any specificity in this order.

15           If we compare it to *Shoaf* and to *Espinosa*, in *Shoaf* what  
16 we had was a guaranty, Shoaf's guaranty on a transaction that  
17 was listed in the actual release, describing what the  
18 transaction was that was being -- that the guaranty was being  
19 released for.

20           In *Espinosa*, what we had was a student loan --

21           THE COURT: Right.

22           MR. BRIDGES: -- that was listed in the plan  
23 specifically, as the only specific indebtedness.

24           Here, we don't have any of that specificity. What we have  
25 is a notice to the entire world, Your Honor, that for an

1 unlimited period of time any claim for ordinary negligence,  
2 for ordinary breach of contract or fiduciary duty against Mr.  
3 Seery is barred if it relates to his CEO role. And his CEO  
4 role means as a manager of property, exactly precisely what  
5 959(a) is talking about.

6 Those jury rights (garbled) claims cannot be released,  
7 discharged, expunged, done away with, in an order that isn't  
8 explicit.

9 On top of that, even in an explicit order, 959(a) tells  
10 the Court it cannot deprive a litigant of its jury trial  
11 right.

12 THE COURT: Well, as anyone knows who's been around a  
13 while in this case, my brain sometimes goes down an unexpected  
14 trail, and maybe this one is one of those situations. Are  
15 there contracts that your clients would rely on in potential  
16 litigation?

17 MR. BRIDGES: Yes, Your Honor.

18 THE COURT: What are those contracts?

19 MR. BRIDGES: It is a management contract. I don't  
20 think I can give you the specifics at this moment, but I  
21 probably can before we're done here today. A management  
22 contract in which the Debtor provides advisory and management  
23 services to the DAF --

24 THE COURT: Well, you know, the shared services  
25 agreements that we heard so much about in this case? A shared

1 service agreement? I can't remember, you know, which entities  
2 have them and which do not at times. So, --

3 MR. BRIDGES: The shared services agreement is one of  
4 those contracts, Your Honor.

5 THE COURT: Okay.

6 MR. BRIDGES: It's not the only one.

7 THE COURT: And what are the others?

8 MR. BRIDGES: There's -- the other is the investment  
9 advisory agreement.

10 THE COURT: Those two?

11 MR. BRIDGES: (no response)

12 THE COURT: Those are the only two?

13 MR. BRIDGES: There may be one other, Your Honor.  
14 I'm not sure.

15 THE COURT: Are they in evidence?

16 MR. BRIDGES: I can find out shortly.

17 THE COURT: Are they in evidence? We haven't talked  
18 about evidence yet, but are they going to be in evidence,  
19 potentially?

20 MR. BRIDGES: They are referenced in the District  
21 Court case, the complaint, which is in evidence.

22 THE COURT: I'm asking, are --

23 MR. BRIDGES: But those contracts I don't believe are  
24 listed as exhibits here in this motion, no.

25 THE COURT: They are not? Okay.



1 Well, what my brain is thinking about here is, of the  
2 umpteen agreements I've seen -- more than umpteen -- of the  
3 many, many agreements I've seen over time in this case, so  
4 often there's a waiver of jury trial rights, as I recall, as  
5 well as an arbitration clause. I just was curious, hmm, you  
6 know, you talked a lot about your clients' jury trial rights:  
7 do we know that these agreements have not waived those?

8 MR. BRIDGES: Your Honor, I think I can answer that  
9 by the end of our hearing. I don't have an answer off the top  
10 of my head. What I can tell you is a jury right has been  
11 demanded in the federal court complaint, which is in evidence,  
12 and that opposing counsel has brought no evidence indicating  
13 that they have the defense of our having waived the right to a  
14 jury trial here.

15 THE COURT: Okay. Well, I just --

16 MR. BRIDGES: Or arbitra...

17 THE COURT: -- would think that you would know that.  
18 Does anyone know that on the Debtor's side off the top of your  
19 head?

20 MR. POMERANTZ: I do not, Your Honor.

21 THE COURT: Uh-huh.

22 MR. POMERANTZ: And to Mr. Bridges' last point, we  
23 have filed a motion to dismiss. We have not answered the  
24 complaint. So any time to object to their jury trial right  
25 would be in the context of the answer. So the implication

1 that we have not raised the issue and therefore it doesn't  
2 exist is just not a correct implication and connection he's  
3 trying to draw.

4 THE COURT: Okay. All right.

5 Well, let me also ask you about this. I'm obsessing a  
6 little over the *Barton* doctrine and your insistence that it  
7 does not provide authority or an analogy here.

8 Well, for one thing, is there anything in the Fifth  
9 Circuit case *Sherman v. Ondova* that you think either helps you  
10 or hurts you on that point? I'm intimately familiar with it,  
11 although I haven't read it in a while, because it was my  
12 opinion that the Fifth Circuit affirmed. And I spent a lot of  
13 time thinking about that. It was a trustee, a traditional --  
14 well, no, a Chapter 11 trustee and his counsel. But anything  
15 from that case that you think is worthy of pointing out here?

16 MR. BRIDGES: No, Your Honor. I'm not -- nothing  
17 comes to mind. That case is not fresh on my mind.

18 What I would tell you is that *Barton* doctrine and the  
19 business judgment rule are incompatible, and the appointment  
20 of a trustee never involves application of the business  
21 judgment rule or deference to the Debtor or another party in  
22 terms of making that appointment.

23 The *Barton* doctrine, as it applies to trustees, is viewed  
24 as an extension, to some extent, of judicial immunity to the  
25 trustee, who is chosen by, selected by the Court and assigned

1 by the Court to carry out certain functions. That --

2 THE COURT: Well, let me --

3 MR. BRIDGES: -- quasi-immunity --

4 THE COURT: -- stop you there. You say it's an  
5 extension of immunity. But isn't it, by nature, really a  
6 gatekeeping provision? It's a gatekeeping provision, right?  
7 Before you even get to immunity, maybe, in a lawsuit, it's a  
8 gatekeeping function that the Supreme Court has blessed, you  
9 know, obviously in the context of a receiver, but appellate  
10 courts have blessed it in the bankruptcy context. The  
11 Bankruptcy Court can be the gatekeeper on whether the trustee  
12 or someone I think in a similar position can get sued or not.

13 And then we had that Fifth Circuit case after *Ondova*. It  
14 begins with a *V, Villegas* or something like that. Didn't  
15 that, I don't know, further ratify, if you will, the whole  
16 *Barton* doctrine by saying, oh, just because they're noncore  
17 claims, state law or non-bankruptcy law claims, doesn't mean,  
18 after *Stern*, the Bankruptcy Court still cannot serve the  
19 gatekeeper function.

20 Tell me what you disagree. That's my kind of combined  
21 reading of all of that.

22 MR. BRIDGES: Your Honor, I have to parse it out.  
23 There's a lot to unpack there. If I can make sure to get in  
24 the follow-ups, I can start with saying it's okay for the  
25 Court in many instances to act as a gatekeeper.

1 THE COURT: Okay.

2 MR. BRIDGES: Both under *Barton* -- under *Barton*, or  
3 when the *Barton* exception in 959(a) applies, under the Court's  
4 general equitable powers, that gatekeeping functions are not  
5 across-the-board prohibited, --

6 THE COURT: Okay.

7 MR. BRIDGES: -- and we aren't trying to argue that  
8 they're prohibited across the board.

9 THE COURT: Okay.

10 MR. BRIDGES: Now, to try to dig into that a little  
11 deeper, the order does two things: gatekeeping as to some  
12 claims, and, frankly, discharging or barring other claims.  
13 Those are two separate functions.

14 The first one, the gatekeeping, may be, in some  
15 circumstances, which we'll come to, many circumstances, may be  
16 allowable, may be even mandatory under *Barton*, not even  
17 requiring an order from this Court, for the gatekeeping of  
18 *Barton* to apply. But nonetheless, allowable in many instances  
19 under the Court's general equity powers under 959(a). That  
20 part is right about gatekeeping.

21 It does not create jurisdiction in this Court where 157(d)  
22 deprives this Court of jurisdiction. Just because it's  
23 related to bankruptcy isn't enough to say that the Court  
24 therefore has jurisdiction if, one, if mandatory withdrawal of  
25 the reference is required.

1           Furthermore, Your Honor, that gatekeeping function, under  
2 the equity powers authorized by 959(a), will not allow a court  
3 to discharge or -- or deprive, is the word I'm looking for --  
4 deprive a litigant of their right to a trial -- a specific  
5 kind of trial, a jury trial -- but a trial. And by crafting  
6 an order that says certain kinds of claims that do (garbled)  
7 jury rights are barred, rather than just providing a  
8 gatekeeper provision, flat-out bars them, that doesn't -- that  
9 doesn't comply with 959.

10           THE COURT: Okay.

11           MR. BRIDGES: Your Honor, if I could add one last  
12 thing.

13           THE COURT: Go ahead.

14           MR. BRIDGES: The Supreme Court's *Stern* case points  
15 out that -- that it's -- well, actually, it's the *Villegas*  
16 case from the Fifth Circuit --

17           THE COURT: The one I mentioned.

18           MR. BRIDGES: -- points out that *Stern* -- *Stern* --  
19 yes, you did. *Stern* did not create an exception to the *Barton*  
20 doctrine. And that gives -- that endorses a *Barton* court's  
21 ability to perform gatekeeping, even over claims that *Stern*  
22 says there would not be jurisdiction over.

23           Contrast that with 959(a), which *Collier on Bankruptcy* and  
24 the Fifth Circuit have held is an exception to the *Barton*  
25 doctrine. Because of that exception, *Barton* no longer

1 applies, and what you're using in invoking a gatekeeper order  
2 is the Court's inherent equitable powers, its general powers  
3 in equity. And those equity powers are cabined. They're  
4 broad, but they're cabined by 959(a)'s prohibition of doing  
5 away with a litigant's right to a trial, a jury trial.

6 Now, I also -- counsel is telling me I should note for the  
7 record that Mr. Mark Patrick is here as a representative of  
8 our clients. But Your Honor, I'll -- I will quit now unless  
9 you have further questions for me.

10 THE COURT: All right. I do not at this time. Mr.  
11 Morris or Mr. Pomerantz, who's going to make the argument?

12 MR. POMERANTZ: It's me, Your Honor.

13 OPENING STATEMENT ON BEHALF OF THE DEBTOR

14 MR. POMERANTZ: And I'll start with the jury trial  
15 right. In the last few minutes, we have been able to  
16 determine that the Second Amended and Restated Investment  
17 Advisory Agreement between the DAF and the Debtor has a broad  
18 jury trial waiver under 14(f). And in addition, as I will  
19 include in my discussion, there is no private right of action  
20 under the Investment Advisers Act.

21 I think those two points are fatal to Movants' argument,  
22 and probably I can get away with not even responding to the  
23 others. But since I prepared a lengthy presentation to  
24 address the issues that were raised today, and also the half  
25 hour that Mr. Bridges spent with Your Honor on June 8th in

1 which was his first opening statement on the motion for  
2 reconsideration, I'll now proceed.

3 THE COURT: All right.

4 MR. POMERANTZ: The arguments that the Movants made  
5 in the original motion essentially boil down to one legal  
6 proposition, that the Court did not have jurisdiction to enter  
7 the July 16th order because those orders impermissibly  
8 stripped the District Court from jurisdiction, in violation of  
9 (inaudible) Supreme Court precedent and 28 U.S.C. Section  
10 157(d).

11 As with all things Dondero, the arguments continue to  
12 morph, and you heard argument at the contempt hearing on June  
13 8th and further argument today that now the prospective  
14 exculpation for negligence in the order is also unenforceable  
15 and should be modified.

16 Movants continue to try to distance themselves from the  
17 January 9th order and argue that it is not relevant because  
18 they seek to pursue claims against Mr. Seery as CEO and not as  
19 an independent director. Movants ignore, however, that the  
20 January 9th order not only protects Mr. Seery in his role as  
21 the independent director, but also as an agent of the board.  
22 I will walk the Court through my arguments on that issue in a  
23 few moments.

24 Of course, the Movants had no explanation, Your Honor, for  
25 the question of why it took them until May of 2021, 10 months

1 after the entry of the July 16th order that appointed Mr.  
2 Seery as CEO and CRO, and 16 months after the Court appointed  
3 the independent board, with Mr. Dondero's blessing and  
4 consent, as a substitute for what would have surely been the  
5 imminent appointment of a Chapter 11 trustee.

6 Movants try to distance themselves from the prior orders  
7 by essentially arguing that the DAF is a newcomer to the  
8 Chapter 11 and is not under Mr. Dondero's control but is  
9 rather managed separately and independently by Mr. Patrick,  
10 who recently replaced Mr. Scott.

11 The Movants admit, as they must, that the DAF is the  
12 parent and the sole shareholder of CLO Holdco and conducts its  
13 business through CLO Holdco, and both entities conduct their  
14 business through one individual. It was Grant Scott then;  
15 it's Mark Patrick now. So even if Mr. Dondero does not  
16 control the DAF and CLO Holdco, which issue was the subject of  
17 lengthy testimony in connection with the DAF hearing, both the  
18 DAF and the CLO Holdco are bound by the Debtor's res judicata  
19 argument, which I will discuss shortly.

20 In any event, I really doubt the Court is convinced that  
21 the DAF operates truly independently of Mr. Dondero any more  
22 than the Court has been convinced that the Advisors, the  
23 Funds, Dugaboy and Get Good, all operate independently from  
24 Mr. Dondero. The only explanation for the delay is that Mr.  
25 Dondero has been and continues to be unhappy with the Court's



1 rulings and has now hired a new set of lawyers in a desperate  
2 attempt to evade this Court's jurisdiction. Having failed in  
3 their attempt to recuse Your Honor from the case, this is  
4 essentially their last hope.

5 And these new lawyers, Your Honor, have not only filed  
6 this DAF lawsuit in the District Court which is the subject of  
7 the contempt motion and today's motion, but they also filed  
8 another lawsuit in the District Court on behalf of an entity  
9 called PCMG, another Dondero entity, challenging yet another  
10 of Mr. Seery's postpetition decisions.

11 And there's no doubt that this is only the beginning. Mr.  
12 Dondero recently told Your Honor at a hearing that there were  
13 many more sets of lawyers waiting in the wings. And as the  
14 Court remarked at the hearing on the Trusts' motion to compel  
15 compliance with Rule 2015.3, the Trusts were trying through  
16 that motion to obtain information about the Debtor's control  
17 entities so that they could file more lawsuits against the  
18 Debtor, a concern that Mr. Draper unconvincingly denied.

19 I would like to focus the Court preliminarily on exactly  
20 what the January 9th and July 16th orders do, because Movants  
21 try to confuse things by casting the entire order with a broad  
22 brush of their jurisdictional overreach arguments, and they  
23 misinterpret Supreme Court and Fifth Circuit precedent.

24 I would like to put up on the screen the language of  
25 Paragraph 10 of the January 9th order and Paragraph 35

1 (garbled) of the July 16th.

2 Your Honor is very familiar with these orders, I'm sure,  
3 having dealt with them in connection with confirmation and in  
4 prior proceedings. But to recap, the orders essentially do  
5 three things.

6 First, they require the parties to first come to the  
7 Bankruptcy Court before commencing or pursuing a claim against  
8 certain parties.

9 Second, they provided the Court with the sole jurisdiction  
10 to make a finding of whether the party has asserted a  
11 colorable claim of negligence -- of willful misconduct or  
12 gross negligence.

13 And lastly, the orders provided the Court with exclusive  
14 jurisdiction over any claims that the Court determined were  
15 colorable.

16 The protected parties under the January 9th order are the  
17 independent directors, their agents and advisors, which, as I  
18 mentioned earlier, includes Mr. Seery -- who, at least as of  
19 March 2020, was acting as the agent on the board's behalf as  
20 the CEO -- for any actions taken under their direction.

21 The protected parties under the July 16th order are Mr.  
22 Seery, as the CEO and CRO, and his agents and advisors.

23 Movants spend a lot of time in their moving papers and  
24 reply arguing that the Court may not assert exclusive  
25 jurisdiction over any claims that pass through the gate. They

1 also spend a lot of time arguing that the Bankruptcy Court  
2 does not even have jurisdiction at all to assert -- to  
3 adjudicate claims against Mr. Seery because such claims are  
4 subject to mandatory withdrawal under Section 157(d).

5 The Debtor doesn't agree, and has briefed why mandatory  
6 withdrawal of the reference is inapplicable. The Debtor has  
7 also filed in the District Court a motion to enforce the  
8 reference in effect in this district which refers cases in  
9 this district arising under, arising in, or related to Chapter  
10 11 to the Bankruptcy Court.

11 The motion to enforce the reference, Your Honor, which  
12 extensively briefs this issue, is contained in Exhibit 3 of  
13 the Debtor's exhibits.

14 We were somewhat surprised that the complaint filed in the  
15 District Court wasn't automatically referred to this Court  
16 under the standing order in effect in this district, given the  
17 related bankruptcy case, the Court's prior approval of the  
18 HarbourVest settlement, and the appeal in the District Court  
19 of the HarbourVest settlement.

20 When we dug a little further, we found out that Movants  
21 filed a civil case cover sheet accompanying the complaint in  
22 the District Court. They neglected in that initial filing to  
23 point out that there was any related case to the lawsuit they  
24 filed.

25 Mr. Bridges fell on his sword at the contempt hearing on

1 June 8th and took complete responsibility for the oversight.  
2 I commend him for not trying to argue that the bankruptcy  
3 case, the HarbourVest settlement, and the District Court  
4 appeal are not related cases that would require disclosure, an  
5 argument that surely would have been unsupportable.

6 But as I said at the contempt hearing, I find it curious  
7 that such an important issue was overlooked, an issue which  
8 would have likely changed the entire trajectory of the  
9 proceedings and landed the DAF lawsuit in this Court rather  
10 than the District Court.

11 And this Tuesday, Your Honor, Movants filed a revised  
12 civil cover sheet with the District Court. Although they  
13 referenced the bankruptcy case as a related case, they didn't  
14 bother to mention the appeal already pending in the District  
15 Court regarding the HarbourVest settlement -- surely, a  
16 related case.

17 Your Honor also asked Mr. Bridges at the June 8th hearing  
18 whether it was an oversight or intentional that he didn't  
19 mention 28 U.S.C. Section 1334 as a basis for jurisdiction in  
20 his complaint. Mr. Bridges had no answer for Your Honor then,  
21 and has given no answer now. His only comment at the hearing  
22 last time was that it must have been Ms. Sbaiti that wrote it  
23 because he had no recollection of it.

24 So, Your Honor, it's no surprise that Movants conveniently  
25 found themselves in the District Court, which was their

1 ultimate strategy from the get go.

2 In any event, Your Honor, we have briefed the withdrawal  
3 of the reference issue. A response by the Movants is due --  
4 CLO Holdco and DAF is due on June 29th. And we hope the  
5 District Court will decide soon thereafter whether to enforce  
6 the reference.

7 While I'm happy to argue why Movants' mandatory withdrawal  
8 of the reference argument is [not] persuasive, I don't think  
9 it's necessary, but I do, again, want to highlight that there  
10 is no private right of action under the Investment Advisers  
11 Act.

12 Your Honor, it's not really relevant to today's hearing,  
13 since we have argued in opposition to the motion before Your  
14 Honor that resolving the issue of the Bankruptcy Court's  
15 jurisdiction to adjudicate claims contained in the complaint  
16 as they relate to Mr. Seery is premature at this point. The  
17 January 9th and July 16th orders first require the Court to  
18 determine whether a claim is colorable. It's not until this  
19 Court determines if a claim is colorable that the decision on  
20 where the lawsuit should be tried is relevant.

21 Having said that, Your Honor, we read the Movants' reply  
22 brief very carefully and noticed in Footnote 6 that the  
23 Movants state that modifying the exclusive grant of  
24 jurisdiction to adjudicate any claims that pass through the  
25 gate to include the language "to the extent permissible by

1 law," in the same way the Debtor modified the plan, would  
2 resolve the motion. So let's look at the provision as it  
3 exists in the plans.

4 Ms. Canty, if you can put up the next demonstrative,  
5 please.

6 This provision provides that the Bankruptcy Court will  
7 have sole and exclusive jurisdiction to determine whether a  
8 claim or cause of action is colorable, and, only to the extent  
9 legally permissible and provided in Article XI, shall have  
10 jurisdiction to determine -- to adjudicate the underlying  
11 colorable claim or cause of action.

12 The Movants request in their reply brief in Footnote 6  
13 that the July 16th order be given the plan treatment. That  
14 treatment: sole authority to determine colorability and  
15 jurisdiction, and, to the extent legally permissible, to  
16 adjudicate underlying claim, only if jurisdiction existed.

17 After reviewing the reply brief and prior to the June 8th  
18 hearing, we decided that we would agree to modify both the  
19 January 9th and the July 16th orders to provide that the  
20 Bankruptcy Court would only have jurisdiction to adjudicate  
21 claims that pass through the colorability gate to the extent  
22 permissible by law.

23 Prior to the June 8th hearing, Mr. Morris and I had a  
24 conversation with Mr. Bridges. We conferred about a potential  
25 resolution and a proposed modification. Mr. Bridges indicated

1 they were interested in exploring a resolution and wanted to

2 --

3 MR. BRIDGES: Objection, Your Honor.

4 THE COURT: There's an objection?

5 MR. BRIDGES: Objection, Your Honor. There's a Rule

6 408 settlement discussion. He's welcome to talk about the

7 results, but he shouldn't be talking about what was -- what

8 was proposed by opposing counsel in a settlement conversation.

9 THE COURT: Okay. I overrule.

10 MR. POMERANTZ: Your Honor, this was not --

11 THE COURT: I don't think this is a 408 issue.

12 Continue.

13 MR. BRIDGES: Thank you.

14 MR. POMERANTZ: The stipulation and order which we  
15 provided to counsel is attached to my declaration, which is  
16 found at Document 2418, and it was filed in connection with a  
17 Notice of Revised Proposed Orders that we filed at Docket  
18 2417. And I would like to put up on the screen the relevant  
19 paragraphs of the order that we provided to the Movants.

20 So, you see, we agreed to modify each of the orders at the  
21 end to do what the plan says. The Court would only have  
22 jurisdiction for claims passing through the gate if the Court  
23 had jurisdiction and it was legally permissible.

24 Movants' counsel, however, responded with a mark-up that  
25 went beyond -- went beyond what Movants proposed in Footnote 6

1 and sought to fundamentally change the January 9th and July  
2 16th orders in ways that were not acceptable to the Debtor and  
3 not even contemplated by the original motion.

4 Ms. Canty, can you put up on the screen the relevant  
5 paragraphs of the response we received?

6 Specifically, Your Honor, you see at the first part they  
7 wanted to provide that the only -- the order only applied to  
8 claims involving injury to the Debtor, presumably as opposed  
9 to alleged injuries to affiliated funds or third parties.  
10 They also provided that the Court's ability to make the  
11 initial colorability determination was also qualified by "to  
12 the extent permissible by law" in the way that the Court --  
13 that the Debtor agreed to modify the ultimate adjudication  
14 jurisdiction provision.

15 Your Honor, Movants haven't even talked about this back  
16 and forth. They haven't talked about their about-face. And  
17 I'll leave it for Your Honor to read their Footnote 6 that  
18 said it would resolve their motion, the back and forth, our  
19 proposal, and now Mr. Bridges' modified, morphed arguments  
20 that now point out other issues.

21 In any event, Your Honor, we made the change, and we think  
22 it should resolve the motion, or at least it resolves part of  
23 the motion. There can't be any argument that the Court is  
24 trying to exert exclusive jurisdiction on claims that pass  
25 through the gate.



1           What apparently remains from the arguments raised by the  
2 Movants is the argument that the Court does not even have  
3 jurisdiction to act as a gatekeeper in the first place because  
4 it doesn't have jurisdiction of the underlying lawsuit. And  
5 on June 8th and today, they've added a new argument, that the  
6 orders impermissibly exculpate Mr. Seery and others, violate  
7 their jury trial rights, and are contrary to the Fifth Circuit  
8 precedent.

9           Movants claims that the orders are a jurisdictional  
10 overreach, a violation of constitutional proportions, a  
11 violation of due process, and inconsistent with several U.S.  
12 Supreme Court cases. But, of course, they cite no cases whose  
13 facts are even remotely similar to this one. Instead, they  
14 are content to rely on general statements regarding bankruptcy  
15 jurisdiction, how it is derived from district court  
16 jurisdiction and is constitutionally limited, legal  
17 propositions which are not terribly controversial or even  
18 applicable to these facts.

19           There are several arguments -- I mean, there are several  
20 reasons, Your Honor, why Movants' arguments fail. Initially,  
21 Movants have not cited any authority, any statute, or any rule  
22 which would allow this Court to revisit the January 9th and  
23 July 16th orders. As I will discuss in a moment, Your Honor,  
24 *Republic v. Shoaf*, a case the Court is very familiar in and  
25 relied on in connection with plan confirmation, bars a

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

**In Re: Highland Capital Management, L.P.** § Case No. **19-34054-SGJ-11**

The Charitable DAF Fund LP §

Appellant § 22-03052

vs. §

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

Appellee § **3:22-CV-02280-S**

**[43] Order granting amended motion to dismiss adversary proceeding with prejudice (related document # 19) Entered on 9/30/2022**

**APPELLANT RECORD**

**VOLUME 22**

SBAITI & COMPANY PLLC  
Mazin A. Sbaiti (TX Bar No. 24058096)  
Jonathan Bridges (TX Bar No. 24028835)  
J.P. Morgan Chase Tower  
2200 Ross Avenue, Suite 4900W  
Dallas, TX 75201  
T: (214) 432-2899  
F: (214) 853-4367

*Counsel for The Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

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

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
THE CHARITABLE DAF FUND, L.P.	§	
	§	
Plaintiff,	§	Adversary Proceeding No.
	§	
vs.	§	22-03052-sgj11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	
	§	

*INDEX*

**APPELLANT’S SECOND AMENDED STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. (“Appellant”) hereby designates the following items to be included in the record and identifies the following issues with respect to its appeal of the Order Granting Defendant’s Amended Motion to Dismiss Adversary Proceeding [Doc.43] which

was entered by the United States Bankruptcy Court for the Northern District of Texas on September 30, 2022.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

Whether the Bankruptcy Court erred in granting Defendant's Amended Motion to Dismiss Adversary Proceeding.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

*Vol. 1  
000001*

*000004*

*000032*

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 46].
2. The judgment, order, or decree appealed from: Order Granting Amended Motion to Dismiss Adversary Proceeding [Doc. 43].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: None.
3. Docket Sheet kept by the Bankruptcy Clerk.
4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 22-03052-sgj.

*Vol. 2*

*000040*

*000058*

No.	Date Filed	Docket No.	Description/Document Text
1	5/25/22 (7/22/21)	1	(18 pgs; 4 docs) Adversary case 22-03052. ORDER REFERRING CASE 3:21-CV-1710-N from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division and Complaint by Charitable DAF Fund, LP against Highland Capital Management, L.P. Fee Amount \$350 (Attachments: # <u>1</u> Original Complaint # <u>2</u> Civil Cover Sheet # <u>3</u> Docket Sheet from 21-CV-1710). Nature(s) of suit: 02 (Other (e.g., other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, Marcey)
2	5/25/22 (10/5/21)	8	(8 pgs; 2 docs) MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) Attorney Zachery Z. Annable added to party Highland Capital Management LP(pty: dft) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #8 ON

<p><i>Vol. 2</i></p> <p><i>000066</i></p> <p><i>000081</i></p> <p><i>Thru Vol. 6</i></p>			<p>10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>3 5/25/22 (10/5/21) 9 (15 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #9 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>4 5/25/22 (10/5/21) 10 (1012 pgs; 28 docs) Appendix in Support filed by Highland Capital Management LP re 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #10 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION](Okafor, Marcey)</p>
<p><i>Vol. 7</i></p> <p><i>001093</i></p> <p><i>001101</i></p> <p><i>001111</i></p>			<p>5 5/25/22 (10/5/21) 11 (8 pgs; 2 docs) MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) filed by Highland Capital Management LP (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #11 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>6 5/25/22 (10/5/21) 12 (10 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #12 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)</p> <p>7 5/25/22 (10/5/21) 13 ((238 pgs; 4 docs) Appendix in Support filed by Highland Capital Management LP re 11 MOTION to Dismiss (Highland Capital Management, L.P.'s Motion to Dismiss) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710</p>

Vol. 8			AS #13 ON 10/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001349	8 5/25/22 (10/27/21)	15	(3 pgs) RESPONSE filed by Charitable DAF Fund LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Sbaiti, Mazin) [ORIGINALLY FILED IN 21-CV-1710 AS #15 ON 10/27/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001352	9 5/25/22 (11/5/21)	16	(7 pgs) REPLY filed by Highland Capital Management LP re: 8 MOTION for Reconsideration re 7 Order on Motion to Stay (Highland Capital Management, L.P.'s Motion for Reconsideration of Stay Order) (Annable, Zachery) [ORIGINALLY FILED IN 21-CV-1710 AS #16 ON 11/05/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, Marcey)
001359	10 5/25/22 (11/21/21)	18	(2 pgs) ORDER re: 8 Motion for Reconsideration. The Court grants Defendant's motion, lifts the stay, and refers this case to Judge Stacey G.C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, to be adjudicated as a matter related to the Chapter 11 Bankruptcy of HCM., Chapter 11 Case No. 10-34054. The Clerk of this Court and the Clerk of the Bankruptcy Court to which this case is referred are directed to take such actions as are necessary to docket this matter as an Adversary Proceeding associated with the aforementioned consolidated bankruptcy case. (Ordered by Judge David C Godbey on 5/19/2022) (oyh) (Main Document 18 replaced on 5/23/2022) (twd). (Entered: 05/20/2022) [ORIGINALLY FILED IN 21-CV-1710 AS #18 ON 11/21/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (*ERROR IN ENTRY: CORRECT CASE NUMBER IS: 19-34054*) (Okafor, Marcey)
001361	11 5/27/22	19	(8 pgs; 2 docs) Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments:# <u>1</u> Exhibit A--Proposed Order) (Annable, Zachery)
001369	12 5/27/22	20	(12 pgs) Brief in support filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
001381	13 5/27/22	21	(637 pgs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Amended</i>

Thru Vol. 10



				<i>Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Annable, Zachery)
Vol. 11	14	6/1/22	23	(6 pgs; 2 docs) Notice of hearing filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Hearing to be held on 8/3/2022 at 02:30 PM at <a href="https://us.courts.webex.com/meet/jerniga">https://us.courts.webex.com/meet/jerniga</a> for <u>19</u> and for <u>19</u> , (Attachments: # <u>1</u> Exhibit A)(Hayward, Melissa)
002018	15	7/5/22	30	(12 pgs) Response opposed to (related document(s): <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) filed by Plaintiff Charitable DAF Fund, LP . (Ecker, C.) (Entered: 07/06/2022)
002024	16	7/26/22	31	(15 pgs) Reply to (related document(s): <u>30</u> Response filed by Plaintiff Charitable DAF Fund, LP) filed by Defendant Highland Capital Management, L.P.. (Annable, Zachery)
002036	17	7/26/22	32	(865 pgs) Support/supplemental document ( <i>Amended Appendix in Support of Highland Capital Management, L.P.'s Amended Motion to Dismiss</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>21</u> Support/supplemental document). (Annable, Zachery)
002051 Thru Vol 14	18	8/1/22	34	(867 pgs; 23 docs) Witness and Exhibit List ( <i>Reorganized Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on August 3, 2022</i> ) filed by Defendant Highland Capital Management, L.P. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22) (Annable, Zachery)
Vol. 15 002916 Thru Vol. 18	19	8/3/22	40	(1 pg) Court admitted exhibits date of hearing August 3, 2022 (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A--Proposed Order)) COURT ADMITTED EXHIBIT 17. COURT TOOK JUDICIAL NOTICE OF EXHIBITS 1-13, 21 AND 22. (Ellison, T.) (Entered: 08/04/2022)
Vol. 19 003783 Thru Vol. 22				

001.22 004651	20	9/30/22	42	(28 pgs) Memorandum of opinion regarding Defendant's amended motion to dismiss adversary proceeding (RE: related document(s) <u>19</u> Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, L.P.). Entered on 9/30/2022 (Okafor, Marcey)
004679	21	8/4/22	41	41 Transcript regarding Hearing Held 08/03/2022 (45 pages) RE: Motion to Dismiss Adversary Proceeding (19). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/2/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 37 Hearing held on 8/3/2022. (RE: related document(s) <u>19</u> Amended Motion to dismiss adversary proceeding (related document(s): <u>11</u> ) filed by Defendant Highland Capital Management, L.P.) (Appearances: G. Demo and Z. Annabel for Movant/Highland; J. Bridges for Respondant/Charitable DAF. Evidentiary hearing. Motion granted. Court to issue Opinion and Order.)). Transcript to be made available to the public on 11/2/2022. (Rehling, Kathy)

Dated: November 28, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

*/s/ Mazin A. Sbaiti*

**Mazin A. Sbaiti**

Texas Bar No. 24058096

**Jonathan Bridges**

Texas Bar No. 24028835

JPMorgan Chase Tower

2200 Ross Avenue – Suite 4900W

Dallas, TX 75201

T: (214) 432-2899

F: (214) 853-4367

E: mas@sbaitilaw.com

jeb@sbaitilaw.com

**Counsel for Appellant**



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 28<sup>th</sup> day of November, 2022.

/s/ Mazin A. Sbaiti  
Mazin A. Sbaiti

1 collateral attack on these orders under the doctrine of res  
2 judicata.

3 Similarly, as the Court remarked on June 8th, the Supreme  
4 Court's *Espinosa* decision, which rejected an attack based upon  
5 Federal Rule of Civil Procedure 60(b)(4) to a prior order that  
6 may have been unlawful, prohibits the Court from now  
7 reconsidering the January 9th and July 16th orders.

8 But even if Your Honor rules that res judicata does not  
9 apply, there are two independent reasons why the orders were  
10 not an unlawful extension of the Court's jurisdiction. The  
11 first is because the Court had jurisdiction to enter both of  
12 those orders as the ability to determine the colorability of  
13 claims is within the jurisdiction of the Court. The second is  
14 because the orders are justified by the *Barton* doctrine.

15 Lastly, Your Honor, Movants' argument that the Court may  
16 not act as a gatekeeper to determine the colorability of a  
17 claim for which it may not have jurisdiction is incorrect, and  
18 as Your Honor has mentioned and as Mr. Bridges unconvincingly  
19 tried to distinguish, the Fifth Circuit *Villegas v. Schmidt*  
20 case is a case on point and resolves that issue.

21 Turning to res judicata, Your Honor, it prevents the Court  
22 from revisiting these governance orders. CLO Holdco had  
23 formal notice of the Seery CEO motion and the opportunity to  
24 respond. It failed to do so. It is clearly bound.

25 As reflected on Debtor's Exhibit 4, CLO Holdco is a

1 wholly-owned subsidiary of the DAF. The DAF is its sole  
2 shareholder. There is no dispute about that. Importantly, at  
3 the time of both the January and July orders, Grant Scott was  
4 the only human being authorized to act on behalf of CLO Holdco  
5 and the DAF. The DAF did not respond to the Seery CEO motion,  
6 either.

7 And why is that important, Your Honor? It's because  
8 Movants argue in their reply that the DAF cannot be bound by  
9 res judicata because they did not receive notice of the July  
10 16th order. However, Your Honor, that is not the law. Res  
11 judicata binds parties to the dispute and their privies, and  
12 the DAF is bound to the prior orders even though it did not  
13 receive notice.

14 There are several cases, Your Honor, that stand for this  
15 unremarkable proposition. First I would point Your Honor to  
16 the Fifth Circuit's opinion of *Astron Industrial Associates v.*  
17 *Chrysler*, found at 405 F.2d 958, a Fifth Circuit case from  
18 1968. In that case, Your Honor, the Fifth Circuit held that  
19 the appellant was barred by the doctrine of res judicata from  
20 bringing a claim because its parent, which was its sole  
21 shareholder, would have been bound by res judicata.

22 *Astron* is consistent with the 1978 Fifth Circuit case of  
23 *Pollard v. Cockrell*, 578 F.2d 1002 (1978). And the Northern  
24 District of Texas in 2000 case of *Bank One v. Capital*  
25 *Associates*, 2000 U.S. Dist. LEXIS 11652, found that a parent

1 and a sole shareholder of an entity couldn't assert res  
2 judicata as a defense when those claims could have been  
3 brought against its wholly-owned subsidiary.

4 And lastly, Your Honor, the 2011 Southern District of  
5 Texas case, *West v. WRH Energy Partners*, 2011 LEXIS 5183, held  
6 that res judicata applied with respect to a partnership's  
7 general partner because the general partner was in privity  
8 with the partnership.

9 These cases are spot on and make sense. DAF is CLO  
10 Holdco's parent. Grant Scott was the only live person to  
11 represent these entities in any capacity at the relevant  
12 times. Accordingly, just as CLO Holdco is bound, DAF is  
13 bound.

14 Allowing DAF to assert a claim when its wholly-owned and  
15 controlled subsidiary is barred would allow entities to  
16 transfer claims amongst their related entities in order to  
17 relitigate them and they would never be finality. And, of  
18 course, Jim Dondero, as we know, consented to the January 9th  
19 order, which provided Mr. Seery protection in a variety of  
20 capacities.

21 And as Your Honor has pointed out, and as Mr. Bridges  
22 didn't have an answer for, neither CLO Holdco nor the DAF or  
23 any other party appealed any of the governance orders. And  
24 nobody challenged the validity of these orders at the  
25 confirmation hearing, where the terms of these orders were

1 front and center.

2 And importantly, Your Honor, the orders are clear and  
3 unambiguous. They require a Bankruptcy Court [sic] to seek  
4 Bankruptcy Court approval before they commence or pursue an  
5 action against the independent board, the CEO, CRO, or their  
6 agents. And they clearly and unambiguously set the standard  
7 of care for actions prospectively: gross negligence or  
8 willful misconduct.

9 The Bankruptcy Court had jurisdiction to enter the  
10 governance orders, which, as expressly indicated in the  
11 orders, were core proceedings dealing with the administration  
12 of the estate. No one challenged this finding of core  
13 jurisdiction. And as I will discuss later, the failure to  
14 challenge core jurisdiction is waived under applicable Supreme  
15 Court and Fifth Circuit precedent.

16 Your Honor, the Court [sic] does not argue that Movants  
17 have waived their right to seek adjudication of a lawsuit that  
18 passes through the colorability gate by an Article III Court.  
19 The issue is not before the Court, but the changes to the  
20 order that the Debtor agreed to make clearly -- clearly will  
21 provide Mr. Bridges' clients the ability to make that  
22 determination.

23 The Debtor is, however, arguing that the Movants have  
24 waived their right to contest the core jurisdiction of the  
25 Bankruptcy Court to make the determination that the claims are

1 colorable in the first place, and to challenge the exculpation  
2 provisions provided to the beneficiaries of those orders.

3 Accordingly, Your Honor, the elements of res judicata are  
4 satisfied. Both proceedings involve the same parties. The  
5 prior judgment was entered by a court of competent  
6 jurisdiction. The prior order was a final judgment on its  
7 merits. And they involved the same causes of action.

8 Importantly, the members of the independent board,  
9 including Jim Seery, relied on the protections contained in  
10 the January 9th and July 16th orders and would not have  
11 accepted these appointments if the protections weren't  
12 included. And how do we know this? Because each of them,  
13 both Mr. Seery and Mr. Dubel, both testified at the  
14 confirmation hearing on this very topic.

15 And I would like to put up on the screen an excerpt from  
16 Mr. Seery's testimony at confirmation, which is testimony  
17 included in the February 2nd, 2021 transcript, which is  
18 Exhibit 2 of the Debtor's exhibits.

19 THE COURT: Okay.

20 MR. POMERANTZ: And I would like to just read this,  
21 Your Honor.

22 "Q Okay. You mentioned that there were certain  
23 provisions of the January 9th order that were important  
24 to you and the other independent directors. Do I have  
25 that right?"

1 MR. POMERANTZ: A little bit later on, Mr. Seery  
2 testifies:

3 "A And then ultimately there'll be another provision  
4 in the agreement here, I don't see it off the top of my  
5 head, but a gatekeeper provision. And that provision"  
6 --

7 "Q Hold on one second, Mr. Seery."

8 MR. POMERANTZ: Please scroll.

9 "Q So, Paragraph 4 and 5, were those -- were those --  
10 were those provisions put in there at the insistence of  
11 the prospective independent directors?

12 "A Yes.

13 "Q Okay. Can we go to Paragraph 10, please? There  
14 you go."

15 Mr. Morris: Is this the other provision that you were  
16 referring to?

17 "A This is -- it's become to be known as the  
18 gatekeeper provision, but it's a provision that I  
19 actually got from other cases -- again, another very  
20 litigious case -- that I thought it was appropriate to  
21 bring it into this case. And the concept here is that  
22 when you are dealing with parties that seem to be  
23 willing to engage in decade-long litigation and  
24 multiple forums, not only domestically but even  
25 throughout the world, it seemed important and prudent

1 to me and a requirement that I set out that somebody  
2 would have to come to this Court, the Court with  
3 jurisdiction over these matters, and determine whether  
4 there was a colorable claim. And that colorable claim  
5 would have to show gross negligence and willful  
6 misconduct -- i.e., something that would not otherwise  
7 be indemnifiable" --

8 MR. POMERANTZ: Hold on one second.

9 "A So, basically, it set an exculpation standard for  
10 negligence. It exculpates the directors from  
11 negligence, and if somebody wants to bring a cause  
12 against the directors, they have to come to this Court  
13 first to get a finding that there's a colorable claim  
14 for gross negligence or willful misconduct."

15 "Q Would you have accepted the engagement as an  
16 independent director without the Paragraphs 4, 5, and  
17 10 that we just looked at?

18 "A No, these were very specific requests. The  
19 language here has been smithed, to be sure, but I  
20 provided the original language for Paragraph 10 and  
21 insisted on the guaranty provisions above to ensure  
22 that the indemnity would have some support.

23 "Q And ultimately did the Committee and the Debtor  
24 agree to provide all the protections afforded by  
25 Paragraphs 4, 5, and 10?



1 "A Yes."

2 MR. POMERANTZ: So, Your Honor, these -- this  
3 testimony also applied to as well as the CEO.

4 The testimony was echoed by Mr. Dubel, another member of  
5 the board. And I'm not going to put his testimony on the  
6 screen, but it can be found at Pages 272 to 281 of Exhibit 2,  
7 which is the February 2nd transcript.

8 Movants argue, however, that res judicata doesn't apply  
9 because the Court didn't have jurisdiction to enter these  
10 orders. And they argue that the order stripped the District  
11 Court of this jurisdiction. As I previously described, the  
12 Debtor is prepared to modify the governance orders to provide  
13 that the Court shall retain jurisdiction to -- on claims that  
14 pass through the gate only to the extent legally permissible.  
15 The modification does not appear to be good enough for the  
16 Movants. They continue to argue that the Bankruptcy Court  
17 can't even act as the exclusive gatekeeper to determine  
18 whether such actions are colorable as a prerequisite for  
19 commencing or pursuing an action.

20 The problem Movants run into is the Fifth Circuit's  
21 opinion of *Republic v. Shoaf* and various Supreme Court  
22 decisions, including *Espinosa*.

23 In *Shoaf*, the Fifth Circuit held that a party cannot  
24 subsequently challenge a confirmed plan that clearly and  
25 unambiguously released a third party, even if the Bankruptcy

1 Court lacked jurisdiction to approve the release in the first  
2 place. Movants' proper recourse was to appeal the governance  
3 orders, not to seek to collaterally attack them.

4 In *Shoaf*, the Fifth Circuit held that the confirmed plan  
5 was res judicata with respect to a suit by the creditor  
6 against the guarantor. And in so ruling, the Fifth Circuit  
7 says that the prong of res judicata standard that requires an  
8 order, prior order to be made by a court of competent  
9 jurisdiction is satisfied regardless of whether the issue was  
10 actually litigated. This is because whenever a court enters  
11 an order, it does so by implicitly making a finding of its  
12 jurisdiction, a determination that can't be attacked. And in  
13 fact, in the January 9th and the July 16th orders, it wasn't  
14 implicit, the Court's jurisdiction; it was set out that the  
15 Court had core jurisdiction.

16 Movants try to brush *Shoaf* aside, arguing that is the only  
17 case the Debtor cites to support res judicata argument and is  
18 a narrow opinion that has been questioned and distinguished.  
19 That's just not correct, Your Honor. Movants ignore that we  
20 have cited two United States Supreme Court cases, *Stoll v.*  
21 *Gottlieb* and *Chicot County Drainage District*, upon which the  
22 Fifth Circuit based its *Shoaf* decision. In each case, the  
23 U.S. Supreme Court gave res judicata effect to a Bankruptcy  
24 Court order that made a ruling party -- that a ruling party  
25 later claimed was beyond the Court's jurisdiction to do so.

1 In *Stoll*, it was a release of guaranty without jurisdiction,  
2 like *Shoaf*. In *Chicot*, it was an extinguishment of a bond  
3 claim without jurisdiction.

4 Similarly, Your Honor, the U.S. Supreme Court held in  
5 *Espinosa* that a party was not entitled to reconsideration of a  
6 Bankruptcy Court order under Federal Rule of Civil Procedure  
7 60(b)(4) discharging a student loan without making the  
8 required statutory finding of undue hardship in an adversary  
9 proceeding. And the Supreme Court reasoned in that opinion as  
10 follows: A judgment is not void, for example, simply because  
11 it may have been erroneous. Similarly, a motion under  
12 60(b)(4) is not a substitute for a timely appeal. Instead,  
13 60(b)(4) applies only in the rare instance where a judgment is  
14 premised either on a certain type of jurisdictional error or a  
15 violation of due process that deprives a party of notice or  
16 the opportunity to be heard.

17 Federal courts considering Rule 60(b)(4) motions that  
18 assert a judgment is void because of a jurisdictional defect  
19 generally have reserved it only for the exceptional case in  
20 which the court that rendered the judgment lacked even an  
21 arguable basis for jurisdiction. This case is not the  
22 exceptional -- exceptional circumstance that was referred to  
23 by *Espinosa*.

24 In addition, we argue in our brief, and I'll get to in a  
25 few moments, that both of the orders are justified under the

1 Barton doctrine.

2 Actually, before I go to that, Your Honor, I think Movants  
3 are really trying to distinguish *Espinosa* by arguing that the  
4 Court's order exculpating Mr. Seery for negligence liability  
5 did not provide people, mom-and-pop investors, with the due  
6 process informing them that they would not be able to assert  
7 duty claims based upon mere negligence. I think that's the  
8 core of Mr. Bridges' argument, that, hey, you entered an  
9 order, you gave this exculpation, it was inappropriate, and it  
10 couldn't be done.

11 There are several problems with Movants' argument. First,  
12 Movants mischaracterize both the facts and the law in  
13 connection with the Debtor's relationship with its investors.  
14 The Debtor is the registered investment advisor for HCLOF as  
15 well as approximately 15 to 18 CLOs. The only investor in  
16 HCLOF other than the Debtor is CLO Holdco. The investors in  
17 the CLOs are the retail funds advised by the Dondero advisors  
18 and the other -- and other institutional investors.  
19 Accordingly, the thousands of investors, the mom-and-pop  
20 investors whose due process rights have allegedly been  
21 trampled by the January 9th and July 16th orders, are not  
22 investors in any funds managed by the Debtor.

23 And, of course, I have mentioned, as I've mentioned  
24 before, no non -- non-Dondero investor, be it a mom-and-pop  
25 investor, another institutional investor, anyone unrelated to

1 Mr. Dondero, has ever appeared in this Court to challenge the  
2 Debtor's activities.

3 But more fundamentally, Your Honor, the Debtor does not  
4 owe fiduciary duties to investors in any of the funds that the  
5 Debtor advises. The fiduciary duty that the Debtor owes is to  
6 the funds themselves, not the investors in the funds.

7 And while Movants point to Mr. Seery's prior testimony to  
8 support the argument that the Debtor owes a duty to investors,  
9 Mr. Seery was not testifying as a lawyer and his testimony  
10 just cannot change the law.

11 As to each of the funds that the Debtor manages, HCLOF and  
12 the CLOs, they were each provided with actual notice of the  
13 January 16th -- the July 16th order and didn't object. And as  
14 Your Honor will recall, the Trustees for the CLOs, the party  
15 that could potentially have claims for breach of fiduciary  
16 duty, they participated in the January 9th hearing. They came  
17 to the Court and were concerned about the protocols that the  
18 Debtor was agreeing to with the Committee. We revised them.  
19 The Trustees didn't object. They didn't object then; they  
20 didn't object now. And, in fact, they consented to the  
21 assumption of the contracts between the Debtor and the CLOs.

22 So the argument that the orders, by having this  
23 exculpation for future conduct, violated due process rights of  
24 anyone and is the type -- essentially, the type of order that  
25 *Espinosa* would have contemplated could be attacked, is --

1 relies on faulty legal and factual premises. No duty to  
2 investors. No private right of action. And both -- and all  
3 the funds received due process.

4 In addition, Your Honor, as we argue in our brief and I'll  
5 get to in a few moments, both of the orders are justified  
6 under the *Barton* doctrine, as Mr. Seery is entitled to  
7 protection based upon how courts around the country have  
8 interpreted the *Barton* doctrine. As such, Mr. Seery is  
9 performing his role both as an agent of the independent board  
10 under the January 9th order, as a CEO under the July 16th  
11 order, as a quasi-judicial officer. And as Your Honor  
12 examined in the *Ondova* opinion which you mentioned, trustees  
13 are entitled to qualified immunity for damage to third parties  
14 resulting from simple negligence, provided that the trustee is  
15 operating within the scope of his duties and is not acting in  
16 an *ultra vires* manner.

17 So, exculpating the independent directors, their agents,  
18 and the CEO in the January 9th and July 16th orders was a  
19 recognition by this Court that they would be entitled to  
20 qualified immunity, much in the same way trustees are.

21 No doubt that Movants contend that this was error and that  
22 the Court overreached. However, the remedy for that overreach  
23 was an appeal, not a reconsideration 16 months later. The  
24 Court's orders based upon the determination that in this  
25 highly contentious case that these court officers needed to be

1 protected from negligence suits is not the exceptional case  
2 where the Court lacked any arguable basis for jurisdiction.  
3 Accordingly, this Court must follow *Espinosa*, *Shoaf*, *Stoll*,  
4 and *Chicot* and reject the attack on the prior court orders.

5 The only case Movants cite to challenge the Supreme  
6 Court's decision -- to challenge the Supreme Court precedent I  
7 mentioned and the Fifth Circuit's *Shoaf* decision is the  
8 *Applewood* case. *Applewood* is totally consistent with *Shoaf*.  
9 *Applewood* also involved a plan that purported to release a  
10 guaranty claim that the guarantor argued was res judicata in  
11 subsequent litigation regarding the guaranty. The Fifth  
12 Circuit held in that case that the plan was not res judicata.  
13 It made that ruling because the plan did not contain clear and  
14 unambiguous language releasing the guaranty. In that way, the  
15 Fifth Circuit distinguished *Shoaf*.

16 *Applewood* and *Shoaf* are consistent. A Bankruptcy Court  
17 order will be given res judicata effect, even if the Court  
18 didn't have jurisdiction to enter it, if the order was clear  
19 and unambiguous. In *Shoaf*, the release was. In *Applewood*, it  
20 wasn't.

21 Movants argued on June 8th and argue now that the  
22 *Applewood* case really argues -- really deals with prospective  
23 exculpation of claims. I went back and read Mr. Bridges'  
24 comments carefully of June 8th. He said *Applewood*,  
25 exculpation. Well, that's just not correct. *Applewood* is all

1 about requiring specificity of a (garbled) to give it res  
2 judicata effect. Claims that existed at that time, were they  
3 described clearly and unambiguously? Yes? *Shoaf* applies.  
4 No? *Applewood* does -- applies.

5 So how should the Court apply these principles here? The  
6 Court approved a procedure for certain claims in the  
7 governance orders. The procedure: come to Bankruptcy Court  
8 before pursuing a claim against the independent directors and  
9 Seery or their agents so that the Court can make a  
10 colorability determination. Clear and unambiguous. The  
11 governance orders each provide that the Bankruptcy Court had  
12 jurisdiction to enter the orders, and the orders were not  
13 appealed.

14 Movants attempt to confuse the Court and argue *Applewood*  
15 is on point because the January 9th and July 16th orders do  
16 not clearly identify specific claims that Movants now have  
17 that are being released. And because they're not specific,  
18 then basically it's an ambiguous release and *Applewood*  
19 applies.

20 The problem with the Movants' argument is that neither the  
21 January 9th or July 16th orders released claims that existed  
22 at that time. If they did, and if there wasn't an adequate  
23 description, I might agree with Mr. Bridges that *Applewood*  
24 applied. But there were no claims. It was prospective. It  
25 was a standard of care. The Court clearly and unambiguously



1 said what the standard of care would be going forward.

2 Clearly, under *Shoaf* and Supreme Court precedent, they are  
3 entitled to res judicata because it's a clear and unambiguous  
4 provision. *Applewood* just simply doesn't apply.

5 Mr. Phillips at the last hearing made an impassioned plea  
6 to the Court for a narrow interpretation of the exculpation  
7 provisions in the January 9th and July 16th orders, and he  
8 argued that the Court could not possibly have intended for the  
9 exculpation for negligence to apply on a go forward basis. He  
10 thus argued to the Court that the Court should construe the  
11 exculpation narrowly and only apply it to potential claims of  
12 harm caused to the Debtor, as opposed to harm caused to third  
13 parties, which he said included thousands of innocent  
14 investors.

15 Of course, Mr. Phillips made those arguments unburdened by  
16 the actual facts and the prior proceedings which led to the  
17 entry of these orders, because, as he was the first to admit,  
18 he only became involved in the case a month ago.

19 As the Court recalls, and as reinforced by Mr. Seery's and  
20 Mr. Dubel's testimony I just mentioned, the exculpation  
21 provisions were included precisely to prevent Mr. Dondero,  
22 through any one of the entities he's owned and controlled, the  
23 Movants being two of those, from asserting baseless claims  
24 against the beneficiaries of those orders, exactly the  
25 situation Mr. Seery now finds himself in.

1           And, again, it bears emphasizing: throughout this case,  
2 not one of the purported public investors Mr. Phillips  
3 lamented would be prevented from holding Mr. Seery responsible  
4 for his conduct has ever appeared in this case to object about  
5 anything. And none of the directors of the funds, the funds  
6 where the Debtor acts as an investment adviser, have ever  
7 stepped foot in this court, either.

8           Even if the Court declines to apply res judicata, Your  
9 Honor, to prevent challenges to the governance orders, the  
10 Court has the jurisdiction, had the jurisdiction to include  
11 the gatekeeping provisions in those orders. The Bankruptcy  
12 Court derives its jurisdiction from 28 U.S.C. Section 157, and  
13 bankruptcy jurisdiction is divided into two parts: core  
14 matters, which are those arising in or arising under Title 11,  
15 and noncore matters, those matters which are related to a  
16 Chapter 11 case.

17           Bankruptcy Courts may enter final orders in core  
18 proceedings, and with the consent of parties, noncore  
19 proceedings. If a party does not consent to a final judgment  
20 in the noncore matters or waives its right to consent, then  
21 the Bankruptcy Court -- or does not waive its right to  
22 consent, then the Bankruptcy Court issues a report and  
23 recommendation to the District Court.

24           The seminal Fifth Circuit case on bankruptcy court  
25 jurisdiction is the 1987 case of *Wood v. Wood*, 825 F.2d 90.

1 There, the Fifth Circuit held that the Bankruptcy Court has  
2 related to jurisdiction over matters if the outcome of that  
3 proceeding could conceivably have any effect on the estate  
4 being administered in the bankruptcy.

5 More recently, the Fifth Circuit, in the 2005 case, in  
6 *Stonebridge Tech's*, elaborated on when a matter has a  
7 conceivable effect on the estate such as to confer Bankruptcy  
8 Court jurisdiction. There, the Fifth Circuit held that an  
9 action is related to bankruptcy if the outcome could alter the  
10 debtor's rights, liabilities, options, or freedom of action,  
11 either positively or negatively, and which in any way impacts  
12 upon the handling and the administration of the bankruptcy  
13 estate. It is against this backdrop, Your Honor, that the  
14 Court should evaluate its jurisdiction to have entered the  
15 orders.

16 So, again, what did the orders do? They established  
17 governance over the Chapter 11 debtor with new independent  
18 directors being approved. They established the procedures and  
19 protocols of how transactions were going to be presented to  
20 and approved by the Committee. They vested in the Committee  
21 certain related-party claims, and they provided for the  
22 procedures parties would have to follow to assert any claims  
23 against the independent directors and the CRO and the agents  
24 and advisors.

25 Your Honor, it's hard to imagine that there is a more core

1 order than the entry of these orders. At the time the orders  
2 were entered, the Court was well aware of the potential for  
3 acrimony from Mr. Dondero and his related entities, and  
4 included the gatekeeper provisions to prevent the Debtor's  
5 estate from being embroiled in frivolous litigation against  
6 the board and the CEO.

7 Such protections were clearly within the Court's  
8 jurisdiction, both to protect the administration of the estate  
9 but also under applicable Fifth Circuit law dealing with  
10 vexatious litigants, as set forth in the *Baum and Carroll*  
11 cases that the Court cited in its confirmation order.

12 Not that it was hard to predict, but the last several  
13 months have reinforced how important the gatekeeping  
14 provisions in the order are and how important similar  
15 provisions in the plan are.

16 The Court heard extensive testimony at the confirmation  
17 hearing regarding the havoc continued litigation by Mr.  
18 Dondero and his related entities would cause, which  
19 predictions have unfortunately been borne out by the  
20 unprecedented blizzard of litigation involving Mr. Dondero and  
21 his related entities that has consumed the Court over the last  
22 several months and caused the estate to incur millions of  
23 dollars in fees that could have been used to pay its  
24 creditors.

25 And these attacks are continuing. As I mentioned before,

1 in addition to the DAF lawsuit, Sbaiti & Co. filed an action  
2 against the Debtor on behalf of PCMG, another related entity,  
3 alleging postpetition mismanagement of the Select Fund.

4 And to complete the hat trick, they are the lawyers  
5 seeking to sue Acis in the Southern District of New York for  
6 allegedly post-confirmation matters.

7 The Court knew then and certainly knows now that the  
8 potential for sizable indemnification claims could consume the  
9 estate. The Court used that as the potential basis for  
10 determining that the orders were within its jurisdiction, just  
11 as it used that potential to justify the exculpation  
12 provisions in the plan as being consistent with *Pacific*  
13 *Lumber*.

14 Movants also ignore the cases -- and we cited in our  
15 opposition -- where courts in this district, including Judge  
16 Lynn in *Pilgrim's Pride* in 2010 and Judge Houser in the *CHC*  
17 *Group* in 2016, approved gatekeeper provisions that provided  
18 the Bankruptcy Court with exclusive jurisdiction to adjudicate  
19 claims against postpetition fiduciaries.

20 Movants also ignore cases outside this district, including  
21 *General Motors* and *Madoff*, which we cited in our brief as  
22 examples of cases where Bankruptcy Courts have been used as  
23 gatekeepers to determine if claims are colorable or being  
24 asserted against the correct entity.

25 And there's another reason, Your Honor, why Movants may

1 now not contest the Court's jurisdiction to have entered those  
2 orders. Each of those orders, as I said before, include a  
3 finding that the Court had core jurisdiction to enter the  
4 orders. No party contested that finding or refused to consent  
5 to the core jurisdiction.

6 Under well-established Supreme Court precedent, parties  
7 can waive their right to challenge the Bankruptcy Court's  
8 jurisdiction, core jurisdiction, by failing to object. In  
9 *Wellness v. Sharif* in 2015, the Supreme Court expressly held  
10 that Article III was not violated if parties knowingly and  
11 voluntarily consented to adjudication of *Stern v. Marshall*-  
12 type alter ego claims, and that the consent need not be  
13 express, so long as it was knowing and voluntary.

14 And *Wellness* confirmed the pre-*Stern* opinion of the Fifth  
15 Circuit in the 1995 *McFarland* case, which held that a person  
16 who fails to object to the Bankruptcy Court's assumption of  
17 core jurisdiction is deemed to have consented to the entry of  
18 a final order by the Bankruptcy Court.

19 Your Honor, I'd now like to turn to the *Barton* doctrine.  
20 The Court also has jurisdiction to have entered the orders  
21 based upon the *Barton* doctrine. The *Barton* doctrine dates  
22 back to an old United States Supreme Court case and provides  
23 as a general rule that, before a suit may be brought against a  
24 trustee, consent from the appointing court must be obtained.

25 Movants essentially make two arguments why the *Barton*

1 doctrine doesn't apply.

2 First, Movants, without citing any authority, argue that  
3 it does not apply to Mr. Seery because he is not a trustee or  
4 receiver and was not appointed by the Court. Although the  
5 doctrine was originally applied to receivers, it has been  
6 extended over time to cover various court-appointed  
7 fiduciaries and their agents in bankruptcy cases, including  
8 debtors in possession, officers and directors of the debtor,  
9 and the general partner of the debtor. And although Mr.  
10 Bridges says he couldn't find one case that applied the *Barton*  
11 doctrine to a court-retained professional, I will now talk  
12 about several such cases.

13 In *Helmer v. Pogue*, a 2012 case cited in our brief, the  
14 District Court for the Northern District of Alabama  
15 extensively analyzed the *Barton* doctrine jurisprudence from  
16 the Eleventh Circuit and beyond and concluded that it applied  
17 to debtors in possession. The *Helmer* Court relied in part on  
18 a prior 2000 decision of the Eleventh Circuit in *Carter v.*  
19 *Rodgers*, which held that the doctrine applies to both court-  
20 appointed and court-approved officers of the debtor, which is  
21 consistent with the law in other circuits.

22 And subsequently, the Eleventh Circuit again considered --  
23 and in that case, the distinction of a court-appointed as a  
24 court-retained professional was -- was not persuasive to the  
25 Court, and the Court held that a court-retained professional

1 can still have *Barton* protection, notwithstanding that he  
2 wasn't appointed, the argument that Mr. Bridges tries to make.

3 And subsequently, --

4 THE COURT: I wonder, was that -- was that Judge  
5 Clifton Jessup, by chance? Or maybe Bennett?

6 MR. POMERANTZ: Your Honor, this was -- this was the  
7 Eleventh Circuit *Carter v. Rodgers*, so I think Judge Jessup  
8 was --

9 THE COURT: Oh, I thought you were still talking  
10 about the Alabama case. No?

11 MR. POMERANTZ: Yeah, the Alabama -- well, the  
12 Alabama case referred to the Eleventh Circuit case, *Carter v.*  
13 *Rodgers*, --

14 THE COURT: Okay.

15 MR. POMERANTZ: -- and the appointment and -- or  
16 retention issue was discussed in the *Carter v. Rodgers* case.

17 THE COURT: Okay.

18 MR. POMERANTZ: And subsequently, the Eleventh  
19 Circuit again considered the contours of the *Barton* doctrine  
20 in *CDC Corp.*, a 2015 case, 2015 U.S. App. LEXIS 9718. In that  
21 case, which Your Honor referenced in your *Ondova* opinion,  
22 which I will discuss in a few moments, the Eleventh Circuit  
23 held that a debtor's general counsel who had been approved by  
24 the Court, who was appointed by a chief restructuring officer  
25 who was also approved by the Court, was covered by the *Barton*



1 doctrine for acts taken in furtherance of the administration  
2 of the estate and the liquidation of the assets.

3 And the Eleventh Circuit last year, in *Tufts v. Hay*, 977  
4 F.3d 204, reaffirmed that court-approved counsel who function  
5 as the equivalent of court-appointed officers are entitled to  
6 protection under *Barton*. While the Court in that case  
7 ultimately ruled that counsel could be sued without first  
8 going to the Bankruptcy Court, it did so because it determined  
9 that the suit between two sets of lawyers would not have any  
10 effect on the administration of the estate.

11 So, Your Honor, not only is there authority, there is  
12 overwhelming authority that Mr. Seery is entitled to the  
13 protections.

14 In *Gordon v. Nick*, a District -- a case from 1998 from the  
15 Fourth Circuit, the Court that the *Barton* doctrine applied to  
16 a lawsuit against a general partner who was responsible for  
17 administering the bankruptcy estate.

18 And as I mentioned, Your Honor, and as Your Honor  
19 mentioned, Your Honor had reason to look at the *Barton*  
20 doctrine in length and in depth in the 2017 *Ondova* opinion.  
21 And in the course of the opinion, Your Honor discussed one of  
22 the policy rationales for the doctrine, which you took from  
23 the Seventh Circuit's *Linton* opinion, and you said as follows:  
24 "Finally, another policy concern underlying the doctrine is a  
25 concern for the overall integrity of the bankruptcy process

1 and the threat of trustees being distracted from or  
2 intimidated from doing their jobs. For example, losers in the  
3 bankruptcy process might turn to other courts to try to become  
4 winners there by alleging the trustee did a negligent job."

5 Here, the independent board was approved by the Court as  
6 an alternative to the appointment of a Chapter 11 trustee.  
7 And it and its agent, including Mr. Seery as the CEO, even  
8 before the July 16th order, were provided protections in the  
9 form of the gatekeeper order and exculpation.

10 I'm sure the Court has a good recollection of the January  
11 9th hearing -- we've talked about it a lot in the proceedings  
12 before Your Honor -- where the Debtor and the Committee  
13 presented the governance resolution to Your Honor. And as  
14 Your Honor will recall, the appointment of the board was a  
15 hotly-contested issue among the Debtor and the Committee and  
16 was heavily negotiated. And the appointment of the  
17 independent board was even contested by the United States  
18 Trustee at a hearing on January 20th, 2020.

19 I refer the Court to the transcripts of the hearings on  
20 January 9th and January 20th of 2020, which clearly  
21 demonstrate that appointing this board and giving it the  
22 rights and protections and its agents the rights and  
23 protections was not your typical corporate governance issue,  
24 but it was essentially the Court's alternative to appointing a  
25 trustee. And recognizing that the members of the independent

1 board were essentially officers of the Court, the Court  
2 approved the gatekeeper provision, requiring parties first to  
3 come and seek the Court's permission before suing them, in  
4 order to prevent them from being harassed by frivolous  
5 litigation.

6 And the independent board was given the responsibility in  
7 the January 9th order to retain a CEO it deemed appropriate,  
8 and it did so by retaining Mr. Seery.

9 Recognizing the *Barton* doctrine as it applies to Mr. Seery  
10 is consistent with a legion of cases throughout the United  
11 States, and Movants' argument that Mr. Seery is not court-  
12 appointed is just wrong.

13 Second, Your Honor, Movants cite without any authority,  
14 argue that even if the *Barton* doctrine applied there is an  
15 exception which would allow it to pursue a claim against Mr.  
16 Seery without leave of the Court.

17 The Debtor agrees the 28 U.S.C. § 959 is an exception to  
18 the *Barton* doctrine. Section 959(a) provides that trustees,  
19 receivers, or managers of any property, including debtors in  
20 possession, may be sued without leave of the court appointing  
21 them with respect to any of their acts or transactions in  
22 carrying on business connected with such property.

23 As the Court also pointed out at the June 8th hearing, and  
24 Mr. Bridges alluded to in his argument, the last sentence of  
25 959(a) provides that such actions -- clearly referring to

1 actions that may be pursued without leave of the appointing  
2 court -- shall be subject to the general equity power of such  
3 court, so far as the same may be necessary to the ends of  
4 justice.

5 And Mr. Bridges made a plea, saying you can't take away my  
6 jury trial right there. You just cannot do that. Well, I  
7 have two answers to that, Your Honor. One, they relinquished  
8 their jury trial right. We've established that. Okay?

9 The second is allowing Your Honor to act as a gatekeeper  
10 has nothing to do with their jury trial right. Allowing Your  
11 Honor to act as a gatekeeper allows you to determine whether  
12 the action could go forward, and it'll either go forward in  
13 Your Honor's court or some other court.

14 And the argument that the exculpation was essentially a  
15 violation of 959 is just -- is just -- it just is twisting  
16 what happened. You have an exculpation provision. We already  
17 went through the authority the Court had to give an  
18 exculpation. With respect to these litigants who are before  
19 Your Honor -- we're not talking about anyone else who's coming  
20 in to try to get relief from the order; we're talking about  
21 these litigants -- we've already established that they were  
22 here, they're bound by res judicata. So their 959 argument  
23 goes away.

24 And as the Court -- and separate and apart from that, the  
25 issue at issue in the District Court litigation is -- is not

1 even subject to 959.

2 Mr. Bridges says, well, of course it is because it deals  
3 with the administration of the estate. I'd like to refer to  
4 what the Court said -- this Court said in its *Ondova* opinion:  
5 The exception generally applies to situations in which the  
6 trustee is operating a business and some stranger to the  
7 bankruptcy process might be harmed, such as a negligence claim  
8 in a slip-and-fall case, and is inapplicable to suits based  
9 upon actions taken to further the administering or liquidating  
10 the bankruptcy estate.

11 And your *Ondova* opinion is consistent with the Third and  
12 Eleventh Circuit opinions Your Honor cited in your opinion, as  
13 well as numerous other --

14 (Interruption.)

15 MR. POMERANTZ: -- from the -- from around the  
16 country, including cases from the First, Second, Sixth,  
17 Seventh, and Ninth Circuits. And I'm not going to give all  
18 the cites to those cases, but it's not a -- it's not a  
19 remarkable proposition that Your Honor relied on in *Ondova*.

20 In addition, several of these cases, including the  
21 Eleventh Circuit's *Carter* opinion, have been cited with  
22 approval by the Fifth Circuit in *National Business Association*  
23 *v. Lightfoot*, a 2008 unpublished opinion for this very point.  
24 The *Barton* exception of 959 does not apply to actions taken in  
25 the administration of the case and the liquidation of assets

1 in the estate.

2 Suffice it to say that it's clear that the Section 959  
3 exception to *Barton* has no applicability in this case.  
4 Movants, hardly strangers to the bankruptcy case, want to sue  
5 Mr. Seery for acts taken relating to a settlement of very  
6 complex and significant claims against the estate. They want  
7 to sue a court-appointed fiduciary for doing his job,  
8 resolving claims against the estate and his management of the  
9 bankruptcy estate. And they want to do this outside of the  
10 Bankruptcy Court.

11 Settlement of the HarbourVest claim, which is where this  
12 claim arises under -- whether it's a collateral attack now or  
13 not, and we say it is, is for another issue -- but it clearly  
14 arises in the context of settlement of the HarbourVest claim,  
15 is the quintessential act to further the administration and  
16 liquidation of the bankruptcy estate, and certainly doesn't  
17 fall within the 959 exception.

18 Movants seem to be arguing that 959(a) makes a distinction  
19 between claims against Mr. Seery that damaged the Debtor and  
20 claims against Mr. Seery that damaged third parties. However,  
21 the Movants make up that distinction, and it's not in the  
22 statute, it's not in the case law. The focus is not on who  
23 the conduct damages, but it's rather on whether the conduct  
24 was taken in connection with the administration or the  
25 liquidation of the estate.

1           And even if the Debtor is wrong, Your Honor, which it's  
2 not, the savings clause allows the Court to determine whether  
3 leave to be -- sue will be granted. Given that these claims  
4 are asserted by Dondero-related entities, if not controlled  
5 entities, no serious argument exists that the equities do not  
6 permit this Court to determine if leave to sue is appropriate.

7           Accordingly, Movants' argument that the orders create this  
8 tension with 959 is simply an over-dramatization. And in any  
9 event, Your Honor, there's a basis independent of *Barton* that  
10 supports the jurisdiction to enter the orders, as I mentioned.

11           But even if the orders only relied on *Barton*, there is an  
12 easy fix to Movants' concerns: let them come to court and  
13 argue that the type of suit they are bringing allegedly falls  
14 within the exception of 959.

15           Your Honor, Movants argue that the Bankruptcy Court may  
16 not act as a gatekeeper if it would not have jurisdiction to  
17 deal with the underlying action. They essentially argue that  
18 an Article I judge may not pass on the colorability of a  
19 claim, that it should be decided by an Article III judge.  
20 This is the same argument, Your Honor, that Your Honor  
21 rejected in connection with plan confirmation and which I  
22 touched on earlier.

23           And the reason why Your Honor rejected it is because  
24 there's no law to support it. In fact, there is Fifth Circuit  
25 law that holds to the contrary. And we talked about a little

1 bit the Fifth Circuit case decided is *Villegas v. Schmidt* in  
2 2015. And *Villegas* is a simple case. Schmidt was appointed  
3 trustee over a debtor and liquidated its estate and the  
4 Bankruptcy Court approved his final fees. Four years later,  
5 Villegas and the prior debtor sued Schmidt in District Court,  
6 the district in which the Bankruptcy Court was pending,  
7 arguing that he was negligent in the performance of his  
8 duties. The District Court dismissed the case because  
9 Villegas failed to obtain Bankruptcy Court approval to bring  
10 the suit under the *Barton* doctrine.

11 On appeal, Villegas argued *Barton* didn't apply for two  
12 reasons. First, that *Stern v. Marshall* created an exception  
13 to the *Barton* doctrine for claims that the Bankruptcy Court  
14 would not have the jurisdiction to adjudicate. And second,  
15 that *Barton* did not apply if the suit is brought in the  
16 District Court, which exercises supervisory authority over the  
17 Bankruptcy Court that appointed the trustee. Pretty much the  
18 argument that was made by Movants at the contempt hearing.

19 The Fifth Circuit rejected both arguments. It held that  
20 the existence of a *Stern* claim does not impact the Bankruptcy  
21 Court's authority because *Stern* did not overrule *Barton* and  
22 the Supreme Court had cautioned circuit courts against  
23 interpreting later cases as impliedly overruling prior cases.

24 More importantly, the Fifth Circuit pointed to a post-  
25 *Stern* 2014 case, *Executive Benefits v. Arkison*, 573 U.S. 25



1 (2014), which held that *Stern* does not decide how a Bankruptcy  
2 Court or District Courts should proceed when a *Stern* creditor  
3 is identified, as support for the argument that *Barton* is  
4 still good law, even dealing with a *Stern* claim.

5 Second, the Fifth Circuit, joining every circuit to have  
6 addressed the issue, ruled that the District Court and the  
7 Bankruptcy Court are distinct from one another and the  
8 Bankruptcy Court has the exclusive authority to determine the  
9 colorability of *Barton* claims and that the supervisory  
10 District Court does not.

11 Movants didn't address *Villegas* in their reply. Briefly  
12 tried to distinguish it, unconvincingly, today. The bottom  
13 line is *Villegas* is directly applicable. Your Honor cited it  
14 in the *Ondova* opinion for precisely the proposition that  
15 *Barton* applies whether or not the Court has authority to  
16 adjudicate the claim.

17 Accordingly, Your Honor, it was within the Court's  
18 jurisdiction to require a party to seek approval of Your Honor  
19 on the colorability of a claim before an action may be  
20 commenced or pursued against the protected parties, even if  
21 Your Honor wouldn't have authority to adjudicate the claim at  
22 the end of the day.

23 In fact, some courts have even addressed the proper  
24 procedure for doing so, requiring the putative plaintiff to  
25 not only seek leave of Bankruptcy Court but also to provide a

1 draft complaint and a basis for the Court to determine if the  
2 claim is colorable.

3 Movants have done neither, and they should not be  
4 permitted to modify the final orders of the Court as a  
5 workaround.

6 Your Honor, that concludes my presentation. I'm happy to  
7 answer any questions Your Honor may have.

8 THE COURT: All right. Not at this time. All right.  
9 I'm going to figure out, do we need a break or not, depending  
10 on what Mr. Bridges tells me. I assume we're just doing this  
11 on argument today. I think that's what I heard. No witnesses  
12 or exhibits.

13 MR. BRIDGES: That is correct, Your Honor.

14 THE COURT: Okay. Mr. Bridges, how long do you  
15 expect your rebuttal to take so I can figure out does the  
16 Court need a break?

17 MR. BRIDGES: Fifteen minutes plus whatever it takes  
18 to submit agreed-to exhibits.

19 THE COURT: Okay. Let's take a five-minute bathroom  
20 break. We'll come back. It's -- what time is it? It's 1:11  
21 Central time. We'll come back in five minutes.

22 THE CLERK: All rise.

23 (A recess ensued from 1:11 p.m. until 1:17 p.m.)

24 THE CLERK: All rise.

25 THE COURT: All right. Please be seated. We're

1 going back on the record in the Highland matters.

2 Mr. Bridges, time for your rebuttal. I want to ask you a  
3 question right off the bat. Mr. Pomerantz pointed out  
4 something that was on my list that I forgot to ask you when  
5 you made your initial presentation. What is the authority  
6 you're relying on? You did not cite a statute or a rule *per*  
7 *se*, but I guess we can probably all agree that Bankruptcy Rule  
8 9024 and Federal Rule 60 is the authority that would govern  
9 your motion, correct?

10 MR. BRIDGES: I don't agree, Your Honor. I don't  
11 believe this is a final order that we're contesting here. And  
12 I think that's demonstrated by the Court's final confirmation  
13 -- plan -- plan confirmation order that seeks to modify this  
14 order or will modify this order upon being -- being effective.  
15 So I don't think so.

16 In the alternative, if we are challenging a final order,  
17 then I think you're right as to the rules that would be  
18 controlling.

19 THE COURT: All right. Well, let me back up. Why  
20 exactly do you say this would be an interlocutory order as  
21 opposed to a final order?

22 MR. BRIDGES: Because of its nature, Your Honor.  
23 While the appointment in the order or the approval of the  
24 appointment in the order might, as a separate component of the  
25 order, have -- have finality, the provisions -- the provisions

1 in it relating to gatekeeping and exculpation are, we think,  
2 by their very nature, quite obviously interlocutory and not  
3 permanent. They don't seem to indicate an intention by any of  
4 the parties that, 30 years from now, if Mr. Seery is still CEO  
5 at Highland, long after the bankruptcy case has ended, that  
6 nonetheless parties would be prohibited from bringing claims,  
7 strangers to this action would be prohibited from bringing  
8 claims related to his CEO role.

9 I think the nature of it demonstrates that, the  
10 modifications to it, and even the inclusion of it in the final  
11 plan confirmation, as well as -- can't read that.

12 THE COURT: Can you give me some authority? Because  
13 as we know, there's a lot of authority out there in the  
14 bankruptcy universe on what discrete orders are interlocutory  
15 in nature that a bankruptcy judge might routinely enter and  
16 which ones are final. You know, it would just probably, if I  
17 flipped open *Collier's*, I could -- you know, it would be mind-  
18 numbing.

19 So what authority can you rely on? I mean, is there any  
20 authority that says an employment order is not a final order?  
21 That would be shocking to me if you have cases to that effect,  
22 but, I mean, of course, sometimes we do interim on short  
23 notice and then final. But this would be shocking to me if  
24 there is case authority to support the argument this is not a  
25 final order. But I learn something new every day, so maybe I

1 would be shocked and there is.

2 MR. BRIDGES: Your Honor, I'd point you to *In re*  
3 *Smyth*, 207 F.3d 758, and *In re Royal Manor*, 525 B.K. 338  
4 [sic], for the proposition that retaining a bankruptcy  
5 professional is an interlocutory order.

6 THE COURT: Okay. Stop for a moment. The *Smyth*  
7 case. Which court is that?

8 MR. BRIDGES: Fifth Circuit.

9 THE COURT: Okay. So tell me the facts. I'm  
10 surprised I don't know about this case. But, again, I don't  
11 know every case. So, it held that an employment order is an  
12 interlocutory order?

13 MR. BRIDGES: Appointing counsel. A professional in  
14 the bankruptcy context, Your Honor.

15 THE COURT: Counsel for a debtor-in-possession? An  
16 order approving counsel was an interlocutory order?

17 MR. BRIDGES: Yes, or the Trustee's counsel.

18 THE COURT: Or the Trustee's counsel? Okay. What  
19 were the circumstances? Was this on an expedited basis and  
20 there wasn't a follow-up final order, or what?

21 MR. BRIDGES: Your Honor, I don't have -- I don't  
22 have that at the tip of my memory. I'm sorry.

23 THE COURT: Okay. And the other one, 525 B.R. 338,  
24 what court was that?

25 MR. BRIDGES: It's a Bankruptcy Court within the

1 Sixth Circuit. I'm not certain which district.

2 THE COURT: All right. Well, maybe one of you two  
3 over there can look them up and give me the context, because  
4 that is surprising authority. Or other lawyers on the WebEx  
5 maybe can do some quickie research.

6 Okay. We'll come back to that. But assuming that this  
7 was a final order, which I have just been presuming it was,  
8 Rule 60 is the authority you're going under? 9024 and Rule  
9 60, correct?

10 MR. BRIDGES: Your Honor, we have not invoked those  
11 rules. Alternatively, I think you're right that they would  
12 control if we are wrong about the interlocutory nature of the  
13 order.

14 THE COURT: Well, you have to be going under certain  
15 -- some kind of authority when you file a motion. So I'm --

16 MR. BRIDGES: As an alternative --

17 THE COURT: I'm approaching this exactly, I assure  
18 you, as the District Court or a Court of Appeals would. You  
19 know, you start out, what is the legal authority that is being  
20 invoked here?

21 MR. BRIDGES: Well, --

22 THE COURT: So I just assume Rule 60. I can't, you  
23 know, come up with anything else that would be the authority.

24 MR. BRIDGES: Yes, Your Honor. You also have  
25 inherent power to modify orders that are in violation of the

1 law. And we pointed you to --

2 THE COURT: Now, is that right? Is that really  
3 right? Why do we have Rule 60 if I can just willy-nilly, oh,  
4 I feel like I got that wrong two years ago? I can't do that,  
5 can I? Rule 60 is the template for when a court can do that.  
6 Parties are entitled to rely on orders of courts. And that's  
7 why we have Rule 60, right? So, --

8 MR. BRIDGES: Your Honor, I think -- I think that  
9 we're miscommunicating. I'm trying not to rely on Rule 60 in  
10 the first instance because in the first instance we view this  
11 as not a final order. So, in the first instance, --

12 THE COURT: I got that. And I've got my law clerks  
13 looking up your cases to see if they convince me. But I'm  
14 asking you to go to layer two. Assuming I don't agree with  
15 you these are final orders, what is your authority for the  
16 relief you're seeking?

17 MR. BRIDGES: Yes, Your Honor. Rule 60 would apply  
18 in the alternative.

19 THE COURT: All right.

20 MR. BRIDGES: That's correct.

21 THE COURT: So, which provision? Which provision of  
22 Rule 60? (b) what?

23 MR. BRIDGES: Your Honor, I'm not prepared to concede  
24 any of them. I don't have the rule in front of me.

25 THE COURT: You're not prepared to concede what?

1 MR. BRIDGES: Any of the provisions of Rule 60. Just  
2 (b) (1), (b) (2), especially, but I'm -- I'm -- Rule 60 is our  
3 basis, as is the particulars (b) (1), (2), (6) --

4 (Garbled audio.)

5 THE COURT: Okay. You're breaking up. Can you  
6 restate?

7 MR. BRIDGES: (b) (1), (2), and (6), as -- as well as  
8 any other provision, Your Honor, of Rule 60.

9 THE COURT: Okay. Well, so (1), mistake,  
10 inadvertence, surprise, excusable neglect. Which one of  
11 those?

12 MR. BRIDGES: All of the above, Your Honor.

13 THE COURT: Surprise? Who's surprised?

14 MR. BRIDGES: Your Honor, I think every potential  
15 litigant who discovers that your order purports to bar  
16 prospective unaccrued claims at the time the order issued  
17 would be surprised.

18 Frankly, I think Mr. Seery would be surprised, given his  
19 testimony that he owes fiduciary duty -- duties that he must  
20 abide by and that he appears to have, as I continue to  
21 represent to clients, to advisees, and to the SEC, that those  
22 duties are owing.

23 THE COURT: Okay. I'm giving you one more chance  
24 here to make clear on the record what provision of Rule 60(b)  
25 are you relying on, okay? I need to know. It's not in your



1 pleading.

2 MR. BRIDGES: Your Honor, --

3 THE COURT: So tell me specifically. I can only --

4 MR. BRIDGES: -- (b) (1) --

5 THE COURT: -- come up with a result here if I know  
6 exactly what's being presented.

7 MR. BRIDGES: Your Honor, (b) (1), (b) (2), and (b) (6)

8 --

9 THE COURT: Which, okay, there are multiple parts to  
10 (1). You're saying somebody's surprised by the ruling. I  
11 don't know who. Really, all that matters is your client, the  
12 Movants. You're saying, even though they participated, --

13 MR. BRIDGES: Yes, Your Honor.

14 THE COURT: -- got notice, they're somehow surprised?  
15 Why are they surprised?

16 MR. BRIDGES: Yes, Your Honor.

17 THE COURT: Do you have evidence of their surprise?

18 MR. BRIDGES: Your Honor, our brief shows the  
19 intentions of all involved were not the interpretation of that  
20 order being advanced at this -- at this point in time. And  
21 so, yes, I believe that is evidence. The transcripts of the  
22 hearings I believe evidence that as well, that the  
23 understanding of everyone involved was not that future --  
24 unspecified future claims that had not accrued yet would be  
25 released under (b) (1). Yes, Your Honor.

1 THE COURT: Okay.

2 MR. BRIDGES: Under (b) (2), --

3 THE COURT: I don't have any evidence of that. All I  
4 have is the clear wording of the order. Okay. Let me just --  
5 just let me go through this.

6 Assuming Rule 60 (1) through (6) are what you're arguing  
7 here, what about Rule 60(c): a motion under Rule 60(b) must  
8 be made within a reasonable time? We're now 11 months --

9 MR. BRIDGES: Your Honor, --

10 THE COURT: We're now 11 months past the July 2020  
11 order. What is your authority for this being a reasonable  
12 time?

13 MR. BRIDGES: Yes, Your Honor. If I may back up one  
14 step before answering your question. Under (b) (2), we're  
15 relying on newly-discovered evidence that was discovered in  
16 late March and caused both the filing of this motion and the  
17 filing of the District Court action.

18 Under (b) (4), we believe that the order is --

19 THE COURT: Let me stop. Let me stop. What is my  
20 evidence that you're putting in the record that's newly  
21 discovered?

22 MR. BRIDGES: The evidence is detailed in the  
23 complaint that is in the record. You know, --

24 THE COURT: That's not evidence.

25 MR. BRIDGES: -- honestly, Your Honor, --

1 THE COURT: That is not evidence. Okay? A lawyer-  
2 drafted complaint in another court is not evidence. Okay?

3 MR. BRIDGES: Your Honor, I think, to be technical,  
4 that there is not a record yet, that we have evidence yet to  
5 be admitted on our exhibit list. I believe in this  
6 circumstance -- I understand that, in general, allegations in  
7 a pleading are not evidence. In this instance, when we're  
8 talking about whether or not new facts led to the filing of a  
9 lawsuit, I do believe that the allegations in the lawsuit are  
10 evidence of those new facts.

11 THE COURT: All right. Go on.

12 MR. BRIDGES: Under (b) (4), we believe the order is,  
13 in part, void. It is void because of the jurisdictional and  
14 other defects noted in our argument.

15 And also, under (b) (6) (garbled) ground for relief that  
16 we're appealing to the equitable powers of this Court to  
17 correct errors and manifest injustice towards not just the  
18 litigants here but to correct the order of the Court to make  
19 it comply with -- with the law, with the statutes promulgated  
20 by Congress and to respect the jurisdiction of the District  
21 Court.

22 THE COURT: All right. Do you agree with Mr.  
23 Pomerantz that the case law standard for Rule 60(b) (4) is  
24 exceptional circumstances? It's only applied so that a  
25 judgment is voided in exceptional circumstances. Do you

1 disagree with that case authority?

2 MR. BRIDGES: I would -- I would agree, in part, that  
3 unusual circumstances is not the ordinary case. I'm not  
4 entirely sure what you mean by exceptional, but I think we're  
5 on the same page.

6 THE COURT: Okay. It's not what I mean. That's just  
7 the case law standard. And I'm asking, do you agree with Mr.  
8 Pomerantz that that is the standard set forth in case law when  
9 applying 60(b)(4)? There have to be some sort of exceptional  
10 circumstances where there's just basically no chance the Court  
11 had authority to do what it did.

12 MR. BRIDGES: Out of the ordinary would be the phrase  
13 I would use, Your Honor.

14 THE COURT: Okay. So I guess then I'll go from  
15 there. Is it your argument that gatekeeping provisions in the  
16 bankruptcy world are out of the ordinary?

17 MR. BRIDGES: The exculpation of Mr. Seery for  
18 liability falling short of gross negligence or intentional  
19 wrongdoing in connection with his continuing to conduct the  
20 business of the Debtor as an investment advisor subject to the  
21 Advisers Act, yes, I would say that is out of the ordinary,  
22 that it is extraordinary, that it is --

23 THE COURT: Okay. What is your authority or evidence  
24 on that? Because this Court approves exculpation provisions  
25 regularly in connection with employment orders, and pretty

1 much every judge I know does. In fact, I'm wondering why this  
2 isn't just a term of compensation. You know, he's going to do  
3 x, y, z in the case. His compensation is going to be a, b, c,  
4 d, e. And by the way, we're going to set a standard of  
5 liability for his performance as CEO or investment banker,  
6 financial advisor, whatever, so that no one can sue him  
7 regarding his performance of his job duties unless it rises to  
8 the level of gross negligence, willful misconduct.

9 It's a term of employment that, from my vantage point,  
10 seems to be employed all the time. So it would be anything  
11 but exceptional circumstances. Do you have authority or  
12 evidence --

13 MR. BRIDGES: Your Honor, frankly, --

14 THE COURT: -- to the contrary?

15 MR. BRIDGES: Your Honor, frankly, I'm astonished at  
16 your view of that situation, that it would merely be a term of  
17 his employment, that vitiates the entire fiduciary duty  
18 standard created by the Advisers Act that tells him, with  
19 hundreds of millions of dollars of assets under management for  
20 people he's advising as a registered investment advisor,  
21 people he's advising who believe that he has a fiduciary duty  
22 to them and that it's enforceable, that the SEC, who monitors,  
23 believes he has an enforceable fiduciary duty to those people,  
24 and that he's testified that he has fiduciary duties to those  
25 people, and that Your Honor is saying no, just as a regular

1 term of employment we have undone the Advisers Act's  
2 imposition of an unwaivable fiduciary duty.

3 Your Honor, the order is void to the extent that it  
4 attempts to do so.

5 This is not an ordinary employment agreement, Your Honor.  
6 This is an attempt to exculpate someone from the key thing  
7 that our entire investment system depends upon, regulation by  
8 the SEC and the requirement in investment advisors to act as  
9 fiduciaries when they manage the money of another.

10 It would be the equivalent of telling lawyers who are  
11 appointed in a bankruptcy proceeding that they don't have any  
12 duties to their client, or at least not fiduciary duties.  
13 That the lawyers merely owe a duty not to be grossly negligent  
14 to their clients. That's not an ordinary term of employment,  
15 Your Honor.

16 THE COURT: All right. So I guess we're back to my  
17 question, was this brought within a reasonable time under Rule  
18 60(c)?

19 MR. BRIDGES: It was brought very quickly after the  
20 new evidence was discovered at the end of March, Your Honor,  
21 yes.

22 THE COURT: Okay. Well, I guess I'll just ask you  
23 one more question before you continue on with your rebuttal  
24 argument. I mean, again, I want your best argument of why  
25 *Villegas* doesn't absolutely permit the gatekeeping provisions

1 that you're challenging. And many cases were cited by Mr.  
2 Pomerantz in his brief where courts have extended the *Barton*  
3 doctrine to persons other than trustees. And so what is your  
4 best rebuttal to that?

5 MR. BRIDGES: Your Honor, we've already given it.  
6 I'm afraid --

7 THE COURT: Okay. If you don't want to say more, --

8 MR. BRIDGES: -- what I have is not --

9 THE COURT: -- I'm not going to make you say more.

10 MR. BRIDGES: I --

11 THE COURT: I'm just telling you what's on my brain.

12 MR. BRIDGES: I do. I want to -- I am apologizing in  
13 advance for repeating, but yes, *Villegas, Villegas*, however  
14 that case is pronounced, says that *Stern* is not an exception  
15 to the *Barton* doctrine.

16 THE COURT: Uh-huh.

17 MR. BRIDGES: 959(a) is an exception to the *Barton*  
18 doctrine. You are not operating under the *Barton* doctrine  
19 here. Even counsel's brief, the Debtor's brief, doesn't say  
20 *Barton* applies. It says it's consistent with *Barton*.

21 Your Honor, in our previous hearing, you directed me to  
22 the second sentence of 959(a) because you believe it's what  
23 empowers you to do the gatekeeping. It limits the gatekeeping  
24 that you can do by protecting jury rights, the right to trial,  
25 says you cannot discharge, undo, deprive a litigant of their

1 right to a trial, a jury trial.

2 THE COURT: Well, you mentioned it again, jury trial  
3 rights. Do you have any argument --

4 MR. BRIDGES: Yes, Your Honor.

5 THE COURT: -- of why that hasn't flown out the  
6 window?

7 MR. BRIDGES: Yes, Your Honor. I am told that  
8 Section 14(f) that counsel for the Debtor referred to is not a  
9 waiver of jury rights at all. It is an arbitration agreement.  
10 Your Honor is probably familiar how arbitration agreements  
11 work, is that they need not be elected. They need not be  
12 invoked by the parties. When they are, they create a  
13 situation where arbitration may be required. But a waiver of  
14 a jury right outside of arbitration is not part of this  
15 arbitration clause, or of any. The issue is not briefed or in  
16 evidence before the Court. We're relying on representations  
17 of counsel as to what that provision contains. That Mr. Seery  
18 wasn't even a party to that agreement, the advisory agreement,  
19 with the Charitable DAF. The arbitration agreement is subject  
20 to defenses that are not at issue here before the Court. That  
21 Movants' rights, their contractual rights to invoke the  
22 arbitration clause, also appear to be terminated by the  
23 orders' assertion of sole jurisdiction in this matter.

24 Your Honor, yes, our jury rights survive Section 14(f) in  
25 the advisory agreement with the DAF for all of those potential



1 reasons.

2 On top of that, it doesn't go to all of our causes of  
3 action. It goes to the contract cause of action. And to the  
4 extent they can argue that the other claims are subject to  
5 arbitration, that also is a defense and -- defensible and  
6 complex issue requiring the application of the Federal  
7 Arbitration Act, requiring consideration of the Federal  
8 Arbitration Act, which this Court doesn't have jurisdiction to  
9 do under 157(d).

10 THE COURT: What? Repeat that.

11 MR. BRIDGES: Yes. This Court does not have  
12 jurisdiction to determine whether or not arbitration --  
13 arbitration is enforceable due to the mandatory withdrawal of  
14 the reference provisions of 157(d).

15 THE COURT: That's just not consistent with Fifth  
16 Circuit authority. *National Gypsum*. What are some of these  
17 other arbitration cases? I've written an article on it. I  
18 can't remember them. That's just not right. Bankruptcy  
19 courts look at arbitration clauses all the time. Motions to  
20 compel arbitration.

21 MR. BRIDGES: Your Honor, under 157(d), in the  
22 circumstances of this case, if the Court is going to take into  
23 consideration an arbitration clause under the Federal  
24 Arbitration Act, when that clause is not in evidence and is  
25 not before the Court, then Movants respectfully move to

1 withdraw the reference of your consideration of that issue and  
2 of any proceeding and ask that you would issue only a report  
3 and recommendation rather than an order on that issue.

4 THE COURT: Okay. I regret that we even got off on  
5 this trail. I'm sorry. So just proceed with your rebuttal  
6 argument as you had envisioned it, Mr. Bridges.

7 MR. BRIDGES: Thank you, Your Honor.

8 Debtor's counsel says there's no private right of action  
9 under the Advisers Act. That is both inaccurate and  
10 misleading. The Advisory Act creates, imposes fiduciary  
11 duties that state law provides the cause of action for. It is  
12 a state law breach of fiduciary duty claim regarding --  
13 regarding fiduciary duties imposed as a matter of law by the  
14 Investment Advisers Act that is Count One in the District  
15 Court action.

16 Furthermore, that Act does create a private right of  
17 action for rescission. That would be rescission of the  
18 advisory agreement with the Charitable DAF, not rescission of  
19 the HarbourVest settlement.

20 Second, Your Honor, the notion that this Court has related  
21 to jurisdiction is irrelevant and beside the point. I would  
22 like to note for the record that the District Court civil  
23 cover sheet that omitted to state that this was a related  
24 action has been corrected, has been amended, and that that has  
25 taken place.

1 Counsel for the Debtor also appears to agree with us that  
2 the order ought to be modified for having asserted exclusive  
3 jurisdiction over colorable claims to the extent it's not  
4 legally permissible to do. And in trying to invoke the  
5 discussions between us as to how the orders might be fixed,  
6 what counsel does is tries to cabin the legally-permissible  
7 caveat to just the second half of the paragraph at issue. It  
8 is both -- both portions, the gatekeeping and the subsequent  
9 hearing of the claims, that should be limited to the extent it  
10 would be impermissible legally for this Court to make those  
11 decisions.

12 On top of that, Your Honor, merely stating "to the extent  
13 legally permissible" would result in a considerable amount of  
14 ambiguity in the order that would lead it, I fear, to be  
15 unenforceable as a matter of law.

16 Next, Your Honor, when Debtor's counsel talks about the  
17 authority in this case, it feels like we're ships passing in  
18 the night. He says that we're wrong in asserting that no case  
19 we can find involves both the *Barton* doctrine and the  
20 application of the business judgment rule where the Court is  
21 asked to defer, and he mentions cases that apply the *Barton*  
22 doctrine to an approval rather than an appointment. The Court  
23 is asked to --

24 (Garbled audio.)

25 THE COURT: I lost you for a moment. Could you

1 repeat the last 30 seconds?

2 MR. BRIDGES: Thank you, Your Honor. Yes. He points  
3 -- opposing counsel points us to case law where the *Barton*  
4 doctrine has been applied despite the Bankruptcy Court having  
5 merely approved rather than appointed the trustee or the, I'm  
6 sorry, the professional. But in doing so, he doesn't  
7 reference any case that has done so in the context of business  
8 judgment rule deference. It's like we're ships passing in the  
9 night.

10 What we're saying isn't that a mere approval can never  
11 rise to the level of the *Barton* doctrine. What we're saying  
12 is that, in combination with the business judgment rule  
13 deference, the two cannot go together. There's no authority  
14 for saying that they do.

15 We -- I further feel like we're ships passing in the night  
16 when he talks about *Shoaf*. Counsel says that in *Shoaf* there  
17 was a confirmed final plan and it specifically identified the  
18 released guaranty. And yeah, that distinguishes it from this  
19 case, just as it distinguished -- just as the *Applewood Chair*  
20 case distinguished it when there's not that specific  
21 identification. And here, we don't even have a final plan  
22 confirmation at the time these orders are being issued.  
23 Without that express -- express notion of what the claims are  
24 being discharged, *Shoaf* doesn't apply.

25 There, there was a guaranty to a party on a specific

1 indebtedness that was listed, identified with specificity, and  
2 disappeared as a result of the judgment, as a result of the  
3 judgment in the underlying case. Here, we're talking about  
4 any potential claim that might arise in the future. As of the  
5 July order's issuance, it didn't apply on its -- either it  
6 didn't apply to future claims that had not yet accrued or else  
7 in violation of *Applewood Chair*, it was releasing claims  
8 without identifying them.

9       Who does Seery owe a fiduciary duty to? Is it, as  
10 Debtor's counsel says, only to the funds and not to the  
11 investors, or does he also owe those duties to the investors  
12 as well? Your Honor, that is going to be a hotly-contested  
13 issue in this litigation, and it involves -- it requires  
14 consideration of the Advisers Act and the multitude of  
15 accompanying regulations. To just state that his fiduciary  
16 duties are limited in a way that couldn't affect anyone that  
17 is -- whose claims are precluded by the July order is both  
18 wrong on the law and is invoking something that will be a  
19 hotly-contested issue that falls under 157(d), where, again,  
20 this Court doesn't have the jurisdiction to decide that, other  
21 than in a report and recommendation.

22       The order is legally infirm because it's issued without  
23 jurisdiction for doing that as well.

24       Finally, Your Honor, I think (garbled) wrong direction  
25 with a statement that suggests that Mr. Seery is an agent of

1 the independent directors under the January order. He is, in  
2 fact, not an independent agent -- not an agent of any of the  
3 independent directors, but, at most, of the company that is  
4 controlled by the board, not -- not of individual directors  
5 who could confer on him -- who could confer on him any  
6 immunity that they have obtained from the January order just  
7 by having appointed him.

8 The proposed order from the other side failed to address  
9 either the ambiguity in the order or its attempt to exculpate  
10 Mr. Seery from the liability, including liability for which  
11 there is a jury trial right, and it is not a fix to the  
12 problem for that reason.

13 In order to make the order enforceable and to fix its  
14 infirmities, the Court would have to do significantly more.  
15 It would have to both apply the caveat from the final  
16 confirmation plan order, rope that caveat to the first part of  
17 the relevant paragraph, as well as the second part, and it  
18 would have to provide directive clarity to be enforceable  
19 rather than too vague.

20 Your Honor, I think that's all I have.

21 THE COURT: Okay. Just FYI, my law clerk pulled the  
22 *Smyth* case from 21 years ago from the Fifth Circuit. And  
23 while it more prominently deals with the issue of whether  
24 trustees -- in this case, it was a Chapter 11 trustee -- could  
25 be subjected to personal liability for damages to the

1 bankruptcy estate --

2 (Echoing.)

3 THE COURT: Someone, put your phone on mute. I don't  
4 know who that is.

5 It dealt with, you know, the standard of liability, that  
6 the trustee could not be sued for matters not to the level of  
7 gross negligence.

8 But it does say, in the very last paragraph, to my shock  
9 and amazement, that -- it's just one sentence in a 10-page  
10 opinion -- orders appointing counsel -- and it was talking  
11 about the trustee's lawyer he hired to handle appeals to the  
12 Fifth Circuit -- orders appointing counsel under the  
13 Bankruptcy Code are interlocutory and are not generally  
14 considered final and appealable. And it cites one case from  
15 1993, the Middle District of Florida. Live and learn. There  
16 is one sentence in that opinion that says that. But I don't  
17 know that it's hugely impactful here, but I did not know about  
18 that opinion and I'm rather surprised.

19 All right. You were going to walk me through evidence,  
20 you said?

21 MR. BRIDGES: Well, do I -- Your Honor, do you want  
22 to do that first before I submit --

23 THE COURT: Yes, please.

24 MR. BRIDGES: -- my rebuttal argument?

25 THE COURT: Please.

1 MR. BRIDGES: Okay.

2 THE COURT: Uh-huh.

3 MR. BRIDGES: Your Honor, we would submit and offer  
4 Exhibits 1 through 44, with the exception of those that have  
5 been withdrawn, that are 2, 13 --

6 THE COURT: Okay. Slow down. Slow down. I need to  
7 get to the docket entry number we're talking about. Are we  
8 talking -- are your -- the Debtor's exhibits are at 2412. But  
9 Nate, I misplaced my notes. Where are Charitable DAF and  
10 Holdco's?

11 THE CLERK: I have 2411.

12 THE COURT: 2411? Is that it?

13 MR. BRIDGES: 2420, Your Honor.

14 THE COURT: 2420? Okay. Give me a minute. (Pause.)  
15 2420?

16 MR. BRIDGES: Yes, Your Honor.

17 THE COURT: Okay, I'm there. And it's which  
18 exhibits?

19 MR. BRIDGES: It's Exhibits 1 through 44, Your  
20 Honor, with four exceptions. We have agreed to withdraw  
21 Exhibit 2, 13, 14, and 29.

22 THE COURT: All right.

23 MR. BRIDGES: Also, Your Honor, we'd like to submit  
24 Debtor's Exhibit 1, which is under Exhibit 49 on our list,  
25 would be anything offered by the other side. But we'd like



1 to make sure that Debtor's Exhibit 1 gets in the record as  
2 well.

3 THE COURT: Let me back up. When I pull up the  
4 docket entry you just told me, I have Exhibits 44, 45, and 46  
5 only. Am I misreading this?

6 MR. BRIDGES: I have a chart showing Exhibits 1  
7 through 49 titled Docket 2420 filed 6/7/21.

8 THE COURT: Okay. The docket entry number you told  
9 me, 2420, it only has three exhibits: 44, 45, and 46. So,  
10 first off, I understand -- are you offering 45 and 46 or not?

11 MR. BRIDGES: No, Your Honor.

12 THE COURT: Okay. So you said you were offering 1  
13 through 44 minus certain ones. 44 is here.

14 MR. BRIDGES: Yes.

15 THE COURT: But I've got to go back to a different  
16 docket number.

17 THE CLERK: It's actually 2411.

18 THE COURT: It's at 2411. That has all the others?

19 THE CLERK: Yes.

20 THE COURT: Okay.

21 So, Mr. Pomerantz, do you have any objection to Exhibits  
22 1 through 44, which he's excepted out 2, 13, 14, and 29, and  
23 then he's added Debtor's Exhibit 1? Any objection?

24 MR. POMERANTZ: I don't believe so. I just would  
25 confirm with John Morris, who has been focused on the

1 exhibits, just to confirm.

2 THE COURT: Mr. Morris?

3 MR. MORRIS: No objection, Your Honor. It's fine.

4 THE COURT: Okay. They're admitted.

5 (Movants' Exhibits 1, 3 through 12, 15 through 28, and 30  
6 through 44 are received into evidence. Debtor's Exhibit 1 is  
7 received into evidence.)

8 THE COURT: So, any --

9 MR. BRIDGES: Thank you, Your Honor.

10 THE COURT: Anything you wanted to call to my  
11 attention about these?

12 MR. BRIDGES: Your Honor, the things that we  
13 mentioned in the argument, for sure, but especially that the  
14 word "trustee" is not used in the January hearing's  
15 transcript, nor is it under discussion in that transcript  
16 that it would be a trustee-like role being played by the  
17 Strand directors, as well as the transcript of the July  
18 hearing on the order at issue here, Your Honor, where you are  
19 asked to defer both in that transcript and in the motion, the  
20 motion that was at issue in that hearing, you are asked to  
21 defer to the business judgment of the company.

22 And finally, Your Honor, I'd ask you to look at the  
23 allegations in the District Court complaint.

24 THE COURT: All right.

25 Mr. Pomerantz or Morris, let's see what exhibits you're

1 wanting the Court to consider. Your exhibits, it looks like,  
2 are at Docket Entry 2412.

3 MR. MORRIS: As subsequently amended at 2423.

4 THE COURT: Oh. All right. So which ones are you  
5 offering?

6 MR. MORRIS: We're offering all of the exhibits on  
7 2423, which is 1 through 17.

8 (Echoing.)

9 THE COURT: Whoops. We got some distortion there.  
10 Say again?

11 MR. MORRIS: Yeah. All of the exhibits that are on  
12 2423, which are Exhibits 1 through 17. But I want to make  
13 sure that, as I did earlier, that that has the exhibits that  
14 we're relying on. Does that --

15 (Pause.)

16 THE COURT: Okay. Let me make sure I know what's  
17 going on here. You're double-checking your exhibits, Mr.  
18 Morris?

19 MR. MORRIS: Yes, Your Honor.

20 THE COURT: Okay.

21 (Pause.)

22 MR. MORRIS: Your Honor, we start with Docket No.  
23 2419, --

24 THE COURT: Okay.

25 MR. MORRIS: -- which was the amended exhibit list.

1 And that actually had Exhibits 1 through 17. And then that  
2 was amended at Docket 2423. So, the exhibits on both of  
3 those lists.

4 THE COURT: Well, they're one and the same, it looks  
5 like, right?

6 MR. MORRIS: Yes.

7 THE COURT: Okay. So you're offering those?

8 MR. MORRIS: I think -- yeah.

9 THE COURT: Any objection?

10 MR. BRIDGES: No objection.

11 THE COURT: All right. They're admitted.

12 (Debtor's Exhibits 1 through 17 are received into  
13 evidence.)

14 MR. POMERANTZ: Your Honor, if I may take a few  
15 moments to respond to Mr. Bridges' reply?

16 THE COURT: All right. Is he still within his hour  
17 and a half?

18 THE CLERK: At an hour and one minute.

19 THE COURT: Okay. All right. You have a little  
20 time left, so go ahead.

21 MR. POMERANTZ: Thank you, Your Honor.

22 So look, I -- it sort of was really not fair to us. Mr.  
23 Bridges was really making things up on the fly. He was  
24 changing the theories of his case and responding to Your  
25 Honor. But I'm going to do my best to respond to the

1 arguments made, many of which I sort of anticipated.

2 I'll first start with the issue that Your Honor raised,  
3 which was whether this is under Rule 60 or not. Mr. Bridges  
4 identified a couple of cases, said that the order was  
5 interlocutory, said that somehow the orders have anything to  
6 do with a plan confirmation order. They do not. Your Honor  
7 didn't hear that argument at the plan confirmation. The  
8 January 9th and July 16th orders are old and cold. There's  
9 an exculpation provision in the plan. There's a gatekeeper  
10 in the plan. The provisions do not overlap entirely. The  
11 gatekeeper applies prospectively. The exculpation provision  
12 includes additional parties.

13 So the arguments that basically the plan had anything to  
14 do -- and the fact that the plan is not a final order -- has  
15 anything to do with the January 9th and July 16th orders is  
16 just wrong. It's just wrong.

17 More fundamentally, Your Honor, as Your Honor pointed  
18 out, the *Smyth* case is a professional employment order. And  
19 ironically, if you abide by the *Smyth* case, that order is  
20 never appealable because it's interlocutory.

21 But more fundamentally, Your Honor, that's dealing with  
22 327 professionals. And again, there's not much analysis in  
23 the *Smyth* case, but we're not dealing with a 327  
24 professional. We're dealing with orders that were approved  
25 under 363.

1           So the premise of the argument that Rule 60(b) -- 60  
2 doesn't apply and they have other arguments just doesn't make  
3 any sense.

4           Okay. So now that gets us to Rule 60. And Your Honor,  
5 Your Honor hit the nail on the head. They haven't presented  
6 any evidence. Allegations in a complaint aren't evidence.  
7 They can't stand up there and say surprise evidence. They  
8 had the opportunity -- and this hearing's been continued a  
9 few weeks -- they had the opportunity to bring it up, and  
10 it's -- they had the opportunity to claim that there was  
11 surprise, but they just didn't. Okay?

12           So to go on to the Rule 60 arguments. Surprise.  
13 Surprise and reasonable delay are really -- go hand in hand  
14 with Mr. Bridges' argument. He says, well, we didn't find  
15 out that -- months after the order was entered that he  
16 violated a duty to us, so we are surprised by that, and it's  
17 a reasonable time. Well, Your Honor, the order provided for  
18 an exculpation. CLO Holdco and DAF knew that it applied to  
19 an exculpation. They were bound. They knew based upon that  
20 order that they would not be able to bring claims for normal  
21 negligence. There is no surprise.

22           If you take Mr. Bridges' argument to its conclusion, he  
23 could wait until the end of the statute of limitations after  
24 an order and have come in four years from now and say, Your  
25 Honor, we just found out facts so we should go back four

1 years before. That, Your Honor, that's not how the surprise  
2 works. That's not how the reasonable time works.

3 Mr. Bridges did not contest that they're bound by res  
4 judicata. He did not contest that the exculpation itself was  
5 clear and unambiguous. Of course he argued Your Honor  
6 couldn't enter an order saying there was exculpation, again,  
7 with no authority. And he seemed surprised, as I suspect he  
8 should, since he's not a bankruptcy lawyer, that retention  
9 orders, whether it's investment bankers, financial advisors,  
10 include exculpations all the time. So there's no grounds  
11 under surprise.

12 There's no grounds -- the motions are late under 60(c).

13 And they're not void. I went through a painstaking  
14 analysis, Your Honor, and I described in detail what the  
15 *Espinosa* case held, and the exceptional circumstances which  
16 Mr. Bridges tried to get away from as much as he could.  
17 Maybe he can try to get away from language in a district  
18 Court opinion, in a Bankruptcy Court opinion, in a Circuit  
19 Court opinion. You can't get away from language in a Supreme  
20 Court opinion. The Supreme Court opinion said exceptional  
21 circumstances, where there was arguably no basis for  
22 jurisdiction for what the Court did. They have not even come  
23 close to convincing Your Honor that there was absolutely no  
24 basis.

25 Now, they disagree. We granted, we think it's a good-

1 faith disagreement, but they haven't come close to  
2 establishing the *Espinosa* standard, so their motion under 60  
3 does not -- it fails.

4 And I don't think -- look, these are good lawyers. Mr.  
5 Bridges and Mr. Sbaiti are good lawyers. They didn't just  
6 inadvertently not mention Rule 60. They never mentioned it  
7 because they knew they had no claim under Rule 60.

8 Your Honor, Mr. Bridges has made comments about the  
9 fiduciary duty of Mr. Seery, about what the Investor's Act  
10 provides. He's just wrong on the law. Now, Your Honor  
11 doesn't have to decide that. Whichever court adjudicates the  
12 DAF lawsuit will have to decide it. But there is no private  
13 cause of action for damages. There are no fiduciary duties to  
14 the investors.

15 And what Mr. Bridges doesn't even mention, in that the  
16 investment agreement that's so prominent in his complaint,  
17 they waived claims other than willful misconduct and gross  
18 negligence against Highland. They waived those claims. So  
19 for Mr. Bridges to come in here and argue that there's some  
20 surprise, when he hasn't even bothered to look at the document  
21 that's underlying the contractual relationship between the DAF  
22 and the Debtor, is -- you know, I'll just say it's  
23 inadvertence.

24 Your Honor, Mr. Bridges tried to argue that Mr. Seery is  
25 not a beneficiary of the January 9th order. He's not an



1 agent. Well, again, Your Honor, Mr. Bridges wasn't there.  
2 Your Honor and we were. On January 9th, an independent board  
3 was picked, and at the time Mr. Dondero ceased to become the  
4 CEO. So you have three gentlemen coming in -- Mr. Seery, Mr.  
5 Dubel, and Mr. Nelms -- coming in to run Highland, in a very  
6 chaotic time. They had to act through their agents. There  
7 was no expectation that this board was going to actually run  
8 the day-to-day operations of the Debtor. Of course not. They  
9 needed someone to run. And they picked Mr. Seery. And the  
10 argument that well, he's an agent of the company, he's not an  
11 agent of the board, that just doesn't make sense. The  
12 independent board had to act. The directors had to act. And  
13 the directors, how do they deal with that? They acted through  
14 Mr. Seery. So he is most certainly governed by the January  
15 9th order.

16 Your Honor, I want to talk about the jury trial right.  
17 Mr. Bridges said that Paragraph 14 is an arbitration clause  
18 and not a jury trial waiver. Now, again, I will forgive Mr.  
19 Bridges because I assume he didn't read the provision, okay,  
20 and he -- somebody told him that, and that person just got it  
21 wrong. But what I would like to do is read for Your Honor  
22 Paragraph 14(f). It doesn't have to do with arbitration.  
23 It's a waiver of jury trial. 14(f), Jurisdiction Venue,  
24 Waiver of Jury Trial. The parties hereby agree that any  
25 action, claim, litigation, or proceeding of any kind

1 whatsoever against any other party in any way arising from or  
2 relating to this agreement and all contemplated transactions,  
3 including claims sounding in contract, equity, tort, fraud,  
4 statute defined as a dispute shall be submitted exclusively to  
5 the U.S. District Court for the Northern District of Texas, or  
6 if such court does not have subject matter jurisdiction, the  
7 courts of the State of Texas, City of Dallas County, and any  
8 appellate court thereof, defined as the enforcement court.

9 Each party ethically and unconditionally submits to the  
10 exclusive personal and subject matter jurisdiction of the  
11 enforcement court for any dispute and agrees to bring any  
12 dispute only in the enforcement court. Each party further  
13 agrees it shall not commence any dispute in any forum,  
14 including administrative, arbitration, or litigation, other  
15 than the enforcement court. Each party agrees that a final  
16 judgment in any such action, litigation, or proceeding is  
17 conclusive and may be enforced through other jurisdictions by  
18 suit on the judgment or in any manner provided by law.

19 And then the kick, Your Honor, all caps, as jury trial  
20 waiver always are: Each party irrevocably and unconditionally  
21 waives to the fullest extent permitted by law any right it may  
22 have to a trial by jury in any legal action, proceeding, cause  
23 of action, or counterclaim arising out of or relating to this  
24 agreement, including any exhibits, schedules, and appendices  
25 attached to this agreement or the transactions contemplated

1 hereby. Each party certifies and acknowledges that no  
2 representative of the owner of the other party has represented  
3 expressly or otherwise that the other party won't seek to  
4 enforce the foregoing waiver in the event of a legal action.  
5 It has considered the implications of this waiver, it makes  
6 this waiver knowingly and voluntarily, and it has been induced  
7 to enter into this agreement by, among other things, the  
8 mutual waivers and certifications in this section.

9 Your Honor, I will forgive Mr. Bridges. I assume he just  
10 did not read that. But to represent to the Court that that  
11 language does not contain a jury trial waiver is -- is just  
12 wrong.

13 THE COURT: All right. I'm going to stop right  
14 there. And you were reading from the Second Amended and  
15 Restated Shared Services Agreement between Highland --

16 MR. POMERANTZ: Not shared services. I'm reading  
17 from the Second Amended and Restated Investment Advisory  
18 Agreement --

19 THE COURT: Investment --

20 MR. POMERANTZ: -- between the Charitable DAF, the  
21 Charitable DAF GP, and Highland Capital Management. The  
22 agreement whereby the Debtor was the investment advisor to the  
23 Charitable DAF Fund and the Charitable DAF GP.

24 THE COURT: All right. Well, Mr. Bridges, I'm going  
25 to bounce quickly back to you. This is your chance to defend

1 your honor.

2 MR. BRIDGES: Yeah, we're -- we're looking at a  
3 different agreement, where -- where literally the words that  
4 were read to you are not in the agreement in front of us and  
5 it is news to me. So, Your Honor, this is a problem --

6 THE COURT: What is the agreement you're looking at?

7 MR. BRIDGES: It is the Amended -- I assume that  
8 means First Amended -- Restated Advisory Agreement.

9 MR. POMERANTZ: Your Honor, we are happy to file this  
10 agreement with the Court so the Court has the benefit of it in  
11 connection with Your Honor's ruling.

12 THE COURT: Okay. I would like you to do that. Uh-  
13 huh.

14 MR. BRIDGES: I'd like -- I'd like to request -- I'll  
15 withdraw that.

16 THE COURT: Okay. Go on, Mr. Pomerantz.

17 MR. POMERANTZ: Mr. Bridges, if you could put us on  
18 mute. If you could put us on mute, Mr. Bridges, so I don't  
19 hear your feedback. Thank you.

20 Mr. Bridges also complains about the language "to the  
21 extent permissible by law." As Your Honor knows and as has  
22 been my practice over 30 years, that language is probably in  
23 every plan where there's a retention of jurisdiction: to the  
24 extent permissible by law. And Mr. Bridges says that this  
25 will create ambiguity in the order that couldn't be enforced.

1 There's no basis for that. Our including the language "to the  
2 extent permissible by law" in the orders, as we are prepared  
3 to do, is consistent with the plan confirmation order where we  
4 addressed that issue. And we addressed that issue because we  
5 didn't want to put Your Honor in a position where thereby Your  
6 Honor may have an action before Your Honor that passes the  
7 colorability gate that Your Honor may not be able to assert  
8 jurisdiction. And since jurisdiction can't be waived in that  
9 regard, we will agree to amend that.

10 There's nothing ambiguous about that, and there's no  
11 reason, though, that clause has to modify the Court's ability  
12 to act as a gatekeeper, because, as we've argued *ad nauseam*,  
13 gatekeeper provisions where the Court has that ability is not  
14 only part of general bankruptcy jurisprudence but also part of  
15 the Bankruptcy Code.

16 Counsel says that *Barton* doesn't apply because the  
17 business judgment of Your Honor was used in retaining Mr.  
18 Seery as opposed to in some other capacity. There's no basis  
19 for that, Your Honor. A court-appointed -- a court-approved  
20 CEO, CRO, professional, they are all entitled to protection  
21 under the *Barton* act. And the argument -- and again, this is  
22 separate and apart from whether he's entitled to protection  
23 under the January 9th order. But the argument that because it  
24 was the business judgment -- again, business judgment in doing  
25 something that Your Honor expressly contemplated under the

1 January 9th corporate governance order -- there's just no law  
2 to support that. And I guess he's trying to get around the  
3 plethora of cases that deal with the situation where *Barton*  
4 has been extended.

5 Your Honor, Mr. Bridges, again, in arguing that we're  
6 ships passing in the night on *Shoaf* and *Applewood* and  
7 *Espinosa*, no, we're not ships passing in the night. We have a  
8 difference in agreement on what these cases stand for. These  
9 cases stand for the proposition that a clear and unambiguous  
10 provision, plain and simple, if it's clear and unambiguous, it  
11 will be given res judicata effect. The release in *Shoaf*,  
12 clear and unambiguous. The release in *Applewood*, not. The  
13 issue here is the exculpation language. That was clear and  
14 unambiguous. It applied prospectively. The argument makes no  
15 sense that we didn't identify -- we didn't identify claims  
16 that might arise in the future, so therefore an exculpation  
17 clause doesn't apply? That doesn't make any sense.

18 Your Honor clearly exculpated parties. Mr. Dondero knew  
19 it. CLO Holdco knew it. The DAF knew it. So the issue Your  
20 Honor has to decide is whether that exculpation was a clear  
21 and unambiguous provision such that it should be entitled to  
22 res judicata effect. And we submit that the answer is  
23 unequivocally yes.

24 That's all I have, Your Honor.

25 THE COURT: All right. Well, --

1 MR. MORRIS: Your Honor? I apologize.

2 THE COURT: Okay.

3 MR. MORRIS: This is John Morris.

4 THE COURT: Yes?

5 MR. MORRIS: I just want to, with respect to the  
6 exhibits, I know there was no objection, but I had cited to  
7 Docket Nos. 2419 and 2423. The original exhibit list is at  
8 Docket No. 2412. So it's the three of those lists together.  
9 2412, as amended by 2419, as amended by 2423. Thank you very  
10 much.

11 THE COURT: All right. Thank you. All right.

12 MR. BRIDGES: Your Honor, I still have no objection  
13 to that, but may I have the last word on my motion?

14 THE COURT: Is there time left?

15 THE CLERK: Yes.

16 THE COURT: Okay. Go ahead.

17 MR. BRIDGES: I just need a minute, Your Honor. They  
18 agreed to change the order. They proposed it to us. They  
19 proposed it in a proposed order to you. They can't also say  
20 that it cannot be changed.

21 Secondly, Your Honor, in *Milic v. McCarthy*, 469 F.Supp.3d  
22 580, the Eastern District of Virginia points out that the  
23 Fourth Circuit treats appointment of estate professionals as  
24 interlocutory orders as well.

25 That's all. Thank you, Your Honor.

1 THE COURT: All right. Here's what we're going to  
2 do. We've been going a very long time. I'm going to take a  
3 break to look through these exhibits, see if there's anything  
4 in there that I haven't looked at before and that might affect  
5 the decision here. So we will come back at 3:00 o'clock  
6 Central Time -- it's 2:22 right now -- and I will give you my  
7 bench ruling on this. All right.

8 So, Mike, they can all stay on the line, right?

9 Okay. You can stay on, and we'll be back at 3:00 o'clock.

10 THE CLERK: All rise.

11 (A recess ensued from 2:22 p.m. to 3:04 p.m.)

12 THE CLERK: All rise.

13 THE COURT: All right. Please be seated. All right.  
14 Everyone presented and accounted for. We're going back on the  
15 record.

16 MR. POMERANTZ: Your Honor, before you start, this is  
17 Jeff Pomerantz. We had sent to your clerk, and hopefully it  
18 got to you, a copy of the Second Amended and Restated  
19 Investment Advisory Agreement. We also copied Mr. Sbaiti with  
20 it as well. And we would also like to move that into  
21 evidence, just so that it's part of the Court's record.

22 THE COURT: All right.

23 MR. BRIDGES: We would object to that, Your Honor.  
24 We haven't had an opportunity to even verify its authenticity  
25 yet.



1 THE COURT: All right. Well, I'll tell you what.  
2 I'm going to address this in my ruling. So it's not going to  
3 be part of the record for this decision, and yet -- well, I'll  
4 get to it.

5 All right. So we're back on the record in Case Number 19-  
6 34054, Highland Capital. The Court has deliberated, after  
7 hearing a lot of argument and allowing in a lot of documentary  
8 evidence, and the Court concludes that the motion of CLO  
9 Holdco, Ltd. and The Charitable DAF to modify the retention  
10 order of James Seery, which was entered almost a year ago, on  
11 July 16th, 2020, should be denied.

12 This is the Court's oral bench ruling, but the Court  
13 reserves discretion to supplement or amend in a more fulsome  
14 written order what I'm going to announce right now, pursuant  
15 to Rule 7052.

16 First, what is the Movants' authority to request the  
17 modification of a bankruptcy court order that has been in  
18 place for so many months, which was issued after reasonable  
19 notice to the Movants, and after a hearing, which was not  
20 objected to by the Movants, or appealed, when the Movants were  
21 represented by sophisticated counsel, I might add, and which  
22 order was relied upon by parties in this case, most notably  
23 Mr. Seery and the Debtor, and in fact was entered after  
24 significant negotiations involving a sophisticated court-  
25 appointed Unsecured Creditors' Committee with sophisticated

1 professionals and sophisticated members, and after negotiation  
2 with an independent board of directors, court-appointed, one  
3 of whose members is a retired bankruptcy judge? What is the  
4 Movants' authority?

5 Movants fumbled a little on that question, in that the  
6 exact authority wasn't set forth in the motion. But Movants'  
7 primary argument is that Movants think the Seery retention  
8 order was an interlocutory order and that the Court simply has  
9 the inherent authority to modify it as an interlocutory order.

10 The Court disagrees with this analysis. I do not think  
11 the Fifth Circuit's *Smyth* case dictates that the Seery  
12 retention order is still interlocutory. The Seery retention  
13 order was an order entered pursuant to Section 363 of the  
14 Bankruptcy Code, not a Section 327 professionals to a debtor-  
15 in-possession, professionals to a trustee employment order  
16 such as the one involved in the *Smyth* case.

17 But even if the Seery retention order is interlocutory --  
18 the Court feels strongly that it's not, but even if it is --  
19 the Court believes it would be an abuse of this Court's  
20 inherent discretion or authority to modify that order almost a  
21 year after the fact and under the circumstances of this case.

22 Now, assuming Rule 60(b) applies to the Movants' request,  
23 the Court determines that the Movants have not made their  
24 motion anywhere close to within a reasonable time, as Rule  
25 60(c) requires, nor do I think the Movants have demonstrated

1 any exceptional circumstances to declare the order or any of  
2 its provisions void. The Movants have put on no evidence that  
3 constitutes surprise or constitutes newly-disputed evidence.  
4 So why are there no exceptional circumstances here such that  
5 the Court might find, you know, a void order or void  
6 provisions of an order?

7 First, this Court concludes that there's no credible  
8 argument that the Court overreached its jurisdiction with the  
9 gatekeeping provisions in the order. Gatekeeping provisions  
10 are not only very common in the bankruptcy world -- in  
11 retention orders and in plan confirmation orders, for example  
12 -- but they are wholly consistent with the *Barton* case, the  
13 U.S. Supreme Court's *Barton's* case, and its progeny that has  
14 become known collectively as the *Barton* doctrine. Gatekeeping  
15 provisions are wholly consistent with 28 U.S.C. Section  
16 959(a)'s complete language.

17 The Fifth Circuit has blessed gatekeeping provisions in  
18 all sorts of contexts. It has blessed them in the situation  
19 of when *Stern* claims are involved in the *Villegas* case. It  
20 even blessed Bankruptcy Courts' gatekeeping functions a long  
21 time ago, in 1988, in a case that I don't think anyone  
22 mentioned in the briefing, but as I've said, my brain  
23 sometimes goes down trails, and I'm thinking of the *Louisiana*  
24 *World Exposition* case in 1988, when the Fifth Circuit blessed  
25 there a procedure where an unsecured creditors' committee can

1 bring causes of action against persons, such as officers and  
2 directors or other third parties, if they first come to the  
3 Bankruptcy Court and show a colorable claim. They have to  
4 come to the Bankruptcy Court, show they have a colorable claim  
5 and they're the ones that should be able to pursue them. Not  
6 exactly on point, but it's just one of many cases that one  
7 could cite that certainly approve gatekeeper functions of  
8 various sorts of Bankruptcy Courts.

9 It doesn't matter which court might ultimately adjudicate  
10 the claims; the Bankruptcy Court can be the gatekeeper.

11 And the Court agrees with the many cases cited from  
12 outside this circuit, such as the case in Alabama, in the  
13 Eleventh Circuit, and there was another circuit-level case, at  
14 least one other, that have held that the *Barton* doctrine  
15 should be extended to other types of case fiduciaries, such as  
16 debtor-in-possession management, among others.

17 Finally, as I pointed out in my confirmation ruling in  
18 this case, gatekeeping provisions are commonplace for all  
19 types of courts, not just Bankruptcy Courts, when vexatious  
20 litigants are involved. I have commented before that we seem  
21 to have vexatious litigation behavior with regard to Mr.  
22 Dondero and his many controlled entities.

23 Now, as far as the Movants' argument that there was not  
24 just improper gatekeeping provisions but actually an improper  
25 discharge in the Seery retention order of negligence claims or

1 other claims that don't rise to the level of gross negligence  
2 or willful misconduct, again, I reiterate there's nothing  
3 exceptional in the bankruptcy world about exculpation  
4 provisions like this. They absolutely are a term of  
5 employment very often. Just like compensation, they're  
6 frequently requested, negotiated, and approved. They are  
7 normal in the corporate governance world, generally. They are  
8 normal in corporate contracts between sophisticated parties.  
9 And most importantly of all, even if this Court overreached  
10 with the exculpation provisions in the Seery retention order,  
11 even if it did, res judicata bars the attack of these  
12 provisions at this late stage, under cases such as *Shoaf*,  
13 *Republic Supply v. Shoaf* from the Fifth Circuit, the *Espinosa*  
14 case from the U.S. Supreme Court, and even *Applewood*, since  
15 the Court finds the language in this order was clear,  
16 specific, and unambiguous with regard to the gatekeeping  
17 provisions and the exculpation provisions.

18 Last, and this is the part where I said I'm going to get  
19 to this agreement that has been submitted, the Second Amended  
20 and Restated Investment Advisor Agreement or whatever the  
21 title is. I am more than a little disturbed that so much of  
22 the theme of the Movants' pleadings and arguments, and I think  
23 even representations to the District Court, have been they  
24 have these sacred jury trial rights, these inviolate jury  
25 trial rights, and an Article I Court like this Court should

1 have no business through a gatekeeping provision impinging on  
2 the possible pursuit of an action where there's a jury trial  
3 right.

4 I was surprised initially when I thought about this. I  
5 thought, wow, I've seen so many agreements over the months. I  
6 can't say every one of them waived the jury trial right, but I  
7 just remembered seeing that a lot, and seeing arbitration  
8 provisions, and so that's why I asked. It just was lingering  
9 in my brain. So I'm going to look at what is submitted. I'm  
10 not relying on that as part of my ruling. As you just heard,  
11 I had a multi-part ruling, and whether there's a jury trial  
12 right or not is irrelevant to how I'm choosing to rule on this  
13 motion. But I do want to see the agreement, and then I want  
14 Movants within 10 days to respond with a post-hearing trial  
15 brief either saying you agree that this is the controlling  
16 document or you don't agree and explain the oversight, okay?  
17 Because it feels like a gross omission here to have such a  
18 strong theme in your argument -- we have a jury trial right,  
19 we have a jury trial right, by God, the gatekeeping  
20 provisions, among other things, impinge on our sacred pursuit  
21 of our jury trial right -- and then maybe it was very  
22 conspicuous in the controlling agreement that you'd waived  
23 that, the Movants had waived that.

24 So, anyway, I'm requiring some post-hearing briefing, if  
25 you will, on whether omissions, misrepresentations were made

1 to the Court.

2 Anyway, so I reserve the right to supplement or amend this  
3 ruling with a more fulsome written order. I am asking Mr.  
4 Pomerantz to upload a form of order that is consistent with  
5 this ruling, and --

6 MR. POMERANTZ: Your Honor, we will do so. I do have  
7 one thing to bring to the Court's attention, unrelated to the  
8 motion, before Your Honor leaves the bench.

9 THE COURT: All right. So just a couple of follow-up  
10 things. Have you -- I'm not clear I heard what you said about  
11 this agreement. Did you email it to my courtroom deputy or  
12 did you file it on the docket?

13 MR. POMERANTZ: We emailed it to your courtroom  
14 deputy. We're happy to file it on the docket. And we also  
15 provided a copy to Mr. Sbaiti.

16 I would note for the Court that it's signed both by The  
17 Charitable DAFs by Grant Scott, just for what it's worth.

18 THE COURT: Okay. All right. Well, I'm trying to  
19 think what I want -- I do want you to file it on the docket,  
20 and I'm trying to think of what you label it. Just call it  
21 Post-Hearing Submission or something and link it to the motion  
22 that we adjudicated here today. And then, again, you've got  
23 10 days, Mr. Bridges, to say whatever you want to say about  
24 that agreement.

25 I guess the last thing I wanted to say is we sure devoted

1 a lot of time to this motion today. We have -- this is a  
2 recurring pattern, I guess you can say. We have a lot of  
3 things that we devote a lot of time to in this case that I get  
4 surprised, but it is what it is. You file a motion. I'm  
5 going to give it all the attention Movants and Respondents  
6 think it warrants. I'm going to develop a full record,  
7 because, you know, there's a recurring pattern of appeals  
8 right now, 11 or 12 appeals, I think, not to mention motions  
9 to withdraw the reference. If we're going to have higher  
10 courts involved in the administration of this case, I'm going  
11 to make a very thorough record so nobody is confused about  
12 what we did, what I considered, what my reasoning was.

13 So I kind of think it's unfortunate for us to have to  
14 spend case resources and so much time and fees on things like  
15 this, but I'm going to make sure a Court of Appeals is not  
16 ever confused about what happened and what we did. So that's  
17 just the way it's going to be. And I feel like we have no  
18 choice, given, again, the pattern of appeals.

19 All right. So, with that, Mr. Pomerantz, you had one  
20 other case matter, you said?

21 MR. POMERANTZ: Yes. But before I get to that, Your  
22 Honor, I assume that, in response to the Movants' submission  
23 on the agreement, that we would have right at four or seven  
24 days to respond if we deem it's appropriate?

25 THE COURT: I think that's reasonable. That's



1 reasonable.

2 MR. POMERANTZ: Okay. Thank you, Your Honor.

3 THE COURT: So let me think of how I want to do this.  
4 I'll just do a short scheduling order of sorts that just, it  
5 says in one or two paragraphs, at the hearing on this motion,  
6 the Court raised questions about the jury trial rights and the  
7 Debtor has now submitted the controlling agreements, I'm  
8 giving the Movants 10 days to respond to whether this is  
9 indeed a controlling agreement, and why, if it is, the Movants  
10 have heretofore taken the position they have jury trial  
11 rights. And then I will give you seven days thereafter to  
12 reply, and then the Court will set a further status conference  
13 if it determines it's necessary. Okay?

14 So, Nate, we'll do a short little order to that effect.  
15 Okay?

16 MR. POMERANTZ: Thank you, Your Honor.

17 I -- again, before I raise the other issue, I want to pick  
18 up on a comment Your Honor just made towards the end. I know  
19 the Court has been frustrated with the time and effort we've  
20 been spending. The Debtor and the creditors have been  
21 extremely frustrated, because in addition to the time and  
22 effort everyone's spending, we're spending millions of  
23 dollars, millions of dollars on litigation that --

24 THE COURT: It's one of the reasons you needed an  
25 exit loan, right?

1 MR. POMERANTZ: Right. No, exactly. That's  
2 frivolous, that we think is made in bad faith.

3 And Your Honor, and everyone else who's hearing this on  
4 behalf of Mr. Dondero, should understand we're looking into  
5 what appropriate authority Your Honor would have to shift some  
6 of the costs. Your Honor did that in the contempt motion.  
7 Your Honor can surely do that in connection with the notes  
8 litigation. But all this other stuff that is requiring us to  
9 spend hundreds and hundreds of hours and spend millions of  
10 dollars, we are clearly looking into whether it would be  
11 appropriate and what authority there is. I just wanted to let  
12 Your Honor know that.

13 And in connection with that, the last point, Your Honor, I  
14 can't actually even believe I'm saying this, but there was  
15 another lawsuit filed -- we just found out in the break -- on  
16 Wednesday night by the Sbaiti firm on behalf of Dugaboy in the  
17 District Court.

18 Now, to make matters worse, Your Honor, the litigation  
19 relates to alleged improper management by the Debtor of Multi-  
20 Strat. If Your Honor will recall, at many times I've told  
21 this Court what Dugaboy's claims they filed in this case.  
22 Dugaboy has a claim that is filed in this case for  
23 mismanagement postpetition of Multi-Strat. Now the Sbaiti  
24 firm, in addition to representing CLO Holdco, in addition to  
25 representing the DAF, and whatever the Plaintiffs' lawyers are

1 in that other District Court, PCMG, and in connection with the  
2 Acis matter, they've decided they haven't had enough. They've  
3 now filed another motion that -- you know, why they filed it  
4 in District Court and there's a proof of claim on the same  
5 issues, I don't know. But I thought Your Honor should know.  
6 I'm not asking Your Honor to do anything about it. But we  
7 will act aggressively, strongly, and promptly.

8 Thank you, Your Honor.

9 THE COURT: All right. Well, you've reminded me of  
10 what came out earlier today about the entity -- I left my  
11 notepad in my chambers -- PMC or PMG or something.

12 Mr. Bridges, we're not going to have a hearing right now  
13 on me doing anything, but what are you thinking? What are you  
14 doing?

15 MR. BRIDGES: Your Honor, I'm not trying to duck your  
16 question. I literally have no involvement with any other  
17 claim, and we would have to ask Mr. Sbaiti to answer your  
18 questions.

19 THE COURT: All right. Is he there?

20 MR. BRIDGES: He is.

21 THE COURT: I'll listen.

22 MR. BRIDGES: I'll switch seats and give him this  
23 chair.

24 MR. SBAITI: Sorry, Your Honor. We had two computers  
25 going and weren't able to use the sound on one, so we ended up

1 turning that off.

2 Your Honor, I'm not sure what the question is about when  
3 you say what are we thinking. We have a client that's asked  
4 us to file something, and when we're advised by bankruptcy  
5 counsel that it's not prohibited for us to do so, and don't  
6 know why we're precluded from doing so, and when the time  
7 comes I'm sure we'll be able to explain to Your Honor --  
8 someone will be able to explain to Your Honor why what we're  
9 doing, despite Mr. Pomerantz's exacerbation, or excuse me,  
10 exasperation, why that wasn't improper. It's our belief that  
11 it wasn't improper or a violation of the Court's rule.

12 THE COURT: Just give me a quick shorthand *Readers'*  
13 *Digest* of why you don't think it's improper.

14 MR. SBAITI: Sure. My understanding is, Your Honor,  
15 there's not a rule that says we can't file it against the  
16 Debtor for postpetition actions. So that, that's as -- that's  
17 as much as I understand. And I'm going to -- I'm not trying  
18 to duck it, either. And if I'm wrong about that and someone  
19 wants to correct me on our side offline and if we have to  
20 explain to the Court why that's so or what rule has been  
21 violated, I'm sure we'll be able to put together something for  
22 that. But that's what I've been advised.

23 THE COURT: Have you done thorough --

24 MR. POMERANTZ: Your Honor, I think what --

25 MR. SBAITI: (garbled), Your Honor.

1 THE COURT: Have you done thorough research yourself?  
2 Your Rule 11 signature is on the line, not some bankruptcy  
3 counsel you talked to. Have you done the research yourself?

4 MR. SBAITI: Well, Your Honor, I've relied on the  
5 research and advice of people who are experts, and I believe  
6 my Rule 11 obligations also allow me to do that, so yes.

7 MR. POMERANTZ: Your Honor, I think we're entitled to  
8 know if it's Mr. Draper's firm who has been representing  
9 Dugaboy. He's the bankruptcy counsel. I don't think it's an  
10 attorney-client privilege issue. If Mr. Sbaiti is going to be  
11 here and sort of say, hey, bankruptcy counsel said it was  
12 okay, I think we would like to know and I'm sure Your Honor  
13 would like to know who is that bankruptcy counsel.

14 THE COURT: Yes. Fair enough. Mr. Sbaiti?

15 MR. SBAITI: Your Honor, in consultation with Mr.  
16 Draper and with consultation with other counsel that we've  
17 spoken to, that has been our understanding.

18 THE COURT: Who's the other counsel?

19 MR. SBAITI: Well, we've talked to Mr. Rukavina about  
20 some of these things for the PCMG and the Acis case. We've  
21 talked to the people who, when they tell us you can't do this  
22 because they're bankruptcy counsel for our client, then we  
23 don't do something. So, and I'm not trying to throw anybody  
24 under the bus, but my understanding of what goes on in  
25 Bankruptcy Court is incredibly limited, so, you know, and if

1 it's a mistake then I'll own it, if I have a mistaken  
2 understanding, but I also wasn't anticipating having to make a  
3 presentation about this right here right now, so --

4 THE COURT: Well, you're filing lawsuits that involve  
5 this bankruptcy case during the hearing, so --

6 MR. SBAITI: Oh, we didn't file it during the  
7 hearing, Your Honor. It was filed last night, I believe.

8 THE COURT: Okay. Well, I assume that you're going  
9 to go back and hit the books, hit the computer, and be  
10 prepared to defend your actions, because your bankruptcy  
11 experts, they may think they know a lot, but the judge is not  
12 very happy about what she's hearing.

13 MR. POMERANTZ: Your Honor, if I may ask when Your  
14 Honor intends to issue the contempt ruling in connection with  
15 the June 8th hearing? I strongly believe -- and, obviously,  
16 this has nothing to do with the contempt hearing; this  
17 happened after -- but I strongly believe that sending a  
18 message that Your Honor is inclined to hold counsel in  
19 contempt, which obviously is one of the violators we said  
20 should be held in contempt, it may be important to do that  
21 sooner rather than later so that people know that Your Honor  
22 is serious.

23 THE COURT: All right. Well, I understand and  
24 respect that request. And let me tell you all, I had a seven-  
25 day -- okay. You all were here on that motion June 8th. I

1 had a seven-day, all-day, every-day, 9:00 to 5:00, 45-minute  
2 lunch break, in-person hearing with a dozen or so live  
3 witnesses that I just finished Tuesday at 5:00 o'clock. So  
4 you all were here on the 8th, and then -- what day was that --  
5 what was -- Tuesday, I finished. Tuesday was the 22nd. So I  
6 started on the 14th, okay? So you all were here on the 8th  
7 and I had a live jury trial -- I mean, not jury trial, a live  
8 bench trial -- live human beings in the courtroom, beginning  
9 June 14th. So you're here the 8th. June 14th through 22nd, I  
10 did my trial. And here we are on the 25th. And guess what, I  
11 have another live human-being bench trial next week, Monday  
12 through Friday.

13 So we've been working in other things like this in between  
14 those two. So I'm telling you that not to whine, I'm just  
15 telling you that, that's the only reason I didn't get out a  
16 quick ruling on this, okay?

17 MR. POMERANTZ: And Your Honor, I was not at all  
18 making that comment to imply anything about the Court.

19 THE COURT: Well, --

20 MR. POMERANTZ: The time and effort that you have  
21 given to this case is extraordinary, --

22 THE COURT: Okay.

23 MR. POMERANTZ: -- so please don't misunderstand my  
24 comment.

25 THE COURT: Okay. And I didn't mean to express

1 annoyance or anything like that. I guess what I'm trying to  
2 do is I don't want anyone to mistake the delay in ruling on  
3 the contempt motion to mean I'm just not that -- you know, I'm  
4 not prioritizing it, other things are more serious to me or  
5 important to me, or I'm going to take two months to get to it.  
6 It's literally been I've been in trial almost all day long  
7 every day since you were here. But trust me, I'm about as  
8 upset as upset can be about what I heard on June 8th, and I'm  
9 going to get to that ruling, and I know what I'm going to do.  
10 And, well, like I said, it's just a matter of figuring out  
11 dollars and whom, okay? There's going to be contempt. I just  
12 haven't put it on paper because I've been in court all day and  
13 I haven't come up with a dollar figure. Okay?

14 So I hope -- I don't know if that matters very much, but  
15 it should.

16 All right. We stand adjourned.

17 (Proceedings concluded at 3:35 p.m.)

18 --oOo--

19

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
above-entitled matter.

23 **/s/ Kathy Rehling**

**06/29/2021**

24

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

25

004544



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX  
*Excerpt*  
11:33 a.m. to 3:35 p.m.

PROCEEDINGS	3
OPENING STATEMENTS	
- By Mr. Bridges	3
- By Mr. Pomerantz	23
WITNESSES	
-none-	
EXHIBITS	
Movants' Exhibits 1, 3 through 12, 15 through 28, and 30 through 44	Received 91
Debtor's Exhibit 1	Received 91
Debtor's Exhibits 1 through 17	Received 93
RULINGS	106
END OF PROCEEDINGS	121
INDEX	122

**EXHIBIT 22**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS (DALLAS)

IN RE:	.	Case No. 19-34054-11 (SGJ)
	.	
HIGHLAND CAPITAL	.	
MANAGEMENT, L.P.,	.	
	.	
	.	
Debtor.	.	
. . . . .	.	
	.	Adv. No. 21-03067 (SGJ)
CHARITABLE DAF FUND, LP,	.	
et al.,	.	
	.	
Plaintiffs,	.	Earle Cabell Federal Building
	.	1100 Commerce Street
v.	.	Dallas, Texas 75242
	.	
HIGHLAND CAPITAL,	.	
MANAGEMENT, L.P., et al.,	.	
	.	
Defendants.	.	Tuesday, November 23, 2021
. . . . .	.	9:40 a.m.

TRANSCRIPT OF HEARING ON  
PLAINTIFFS' MOTION TO STAY ALL PROCEEDINGS (55);  
PLAINTIFFS' MOTION TO STRIKE REPLY APPENDIX (47); AND  
DEFENDANTS' MOTION TO DISMISS COMPLAINT (26)

**BEFORE HONORABLE STACEY G. JERNIGAN  
UNITED STATES BANKRUPTCY COURT JUDGE**

TELEPHONIC APPEARANCES CONTINUED ON NEXT PAGE.

Audio Operator: Hawaii S. Jeng

Proceedings recorded by electronic sound recording, transcript  
produced by a transcript service.

---

**LIBERTY TRANSCRIPTS**  
7306 Danwood Drive  
Austin, Texas 78759  
E-mail: DBPATEL1180@GMAIL.COM  
(847) 848-4907

TELEPHONIC APPEARANCES:

For CLO Holdco, Ltd.:

Sbaiti & Company PLLC  
BY: MAZIN AHMAD SBAITI, ESQ.  
JP Morgan Chase Tower  
2200 Ross Avenue, Suite 4900 W  
Dallas, Texas 75201

For Highland Capital  
Management:

Pachulski Stang Ziehl & Jones LLP  
BY: JOHN MORRIS, ESQ.  
780 3rd Avenue, 34th Floor  
New York, NY 10017

Pachulski Stang Ziehl & Jones LLP  
BY: JEFFREY N. POMERANTZ, ESQ.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, California 90067

For Highland CLO  
Funding, Ltd.:

Brobeck Phleger & Harrison  
BY: JONATHAN W. JORDAN, ESQ.  
4801 Plaza on the Lake  
Austin, Texas 78746

King & Spalding LLP  
BY: PAUL RICHARD BESSETTE, ESQ.  
500 West 2nd Street, Suite 1800  
Austin, Texas 78701

**INDEX**

	<b><u>PAGE</u></b>
PLAINTIFFS' MOTION TO STAY ALL PROCEEDINGS (55) Court's Ruling - Denied	29
PLAINTIFFS' MOTION TO STRIKE REPLY APPENDIX (47) Court's Ruling - Denied	32
DEFENDANTS' MOTION TO DISMISS COMPLAINT (26) Court's Ruling - Under Advisement	103

1 THE COURT: Good morning. Please be seated.

2 All right. We have a setting in the Charitable DAF  
3 Fund, et al., v. Highland, Adversary 21-3067. We have three  
4 motions that are set.

5 Let me get appearances from the Plaintiffs' counsel  
6 first. Go ahead.

7 MR. SBAITI: Good morning, Your Honor. This is Mazin  
8 Sbaiti for the Plaintiffs.

9 THE COURT: Okay. Thank you.

10 Now for the Defendants, who do we have appearing?

11 MR. POMERANTZ: Good morning, Your Honor. It's Jeff  
12 Pomerantz and John Morris from Pachulski Stang Ziehl & Jones.  
13 Your Honor, before -- I understand Your Honor is going to take  
14 up the motion to stay first.

15 Before Your Honor does so, I have a procedural issue  
16 relating to that motion that I would like to address the Court  
17 after appearances are made.

18 THE COURT: All right. I assume that's all the  
19 lawyer appearances for this adversary.

20 MR. JORDAN: Your Honor?

21 THE COURT: Oh, go ahead.

22 MR. JORDAN: Your Honor, we are a nominal defendant,  
23 but John Jordan on behalf of Highland CLO Funding, Ltd.

24 THE COURT: Okay. Thank you. Sorry about that.

25 MR. BESSETTE: And, Your Honor, Paul Bessette, Mr.

1 Jordan's colleague is on the phone, as well.

2 THE COURT: Okay. Thank you.

3 All right. Anyone else I missed?

4 (No audible response)

5 THE COURT: All right. Mr. Pomerantz, your  
6 procedural issue?

7 MR. POMERANTZ: Thank you, Your Honor.

8 Your Honor, I must once again bring to this Court's  
9 attention a violation of the Court Rules by the various counsel  
10 representing Mr. Dondero. This time it's by Mr. Sbaiti.

11 When the district court entered its order granting  
12 Highland's motion to enforce the reference and referring this  
13 matter to Your Honor, there were three matters on the Court's  
14 docket, district court's docket that got transferred. First  
15 was the motion to dismiss, second was the motion to stay, and  
16 third was the motion to strike, which essentially has been  
17 rendered moot.

18 The briefing was complete with respect to the first  
19 two matters, the motion to dismiss and the motion to stay. And  
20 all that remained for the Court to do was to set a hearing and  
21 have oral argument. Your Honor, on October 13th, Your Honor  
22 set a hearing for today for each of those two motions.  
23 Nevertheless, on November 10th, almost a month after the Court  
24 set the matters for hearing and after pleadings were closed,  
25 Plaintiffs filed what they called their amended motion to stay.

1           As an initial matter, Your Honor, the amended motion  
2 was not even filed in this adversary proceeding initially. It  
3 was filed in the main case, and there was an error that Mr.  
4 Sbaiti corrected on November 18th, five days before this  
5 hearing. Plaintiff did not ask for leave of court to file any  
6 further pleadings. They did not provide the time under the  
7 local rules for response. And, in fact, they raised additional  
8 arguments in their amended motion.

9           Well, Your Honor, we can certainly argue to the Court  
10 that the amended motion constitutes a new motion, is untimely,  
11 and the hearing should be continued to allow us to file a  
12 response. We're not going to do that, Your Honor. As I will  
13 discuss when it's my time to respond substantively to the  
14 motion, the new arguments to stay the proceedings, the amended  
15 motion are equally as frivolous as the arguments contained in  
16 the original motion.

17           But I bring this to the Court's attention because,  
18 again, it's extremely frustrating to have the lawyers  
19 representing Mr. Dondero's related entities continue to act as  
20 if the rules do not apply to them. Your Honor will recall just  
21 a week or so ago, Your Honor made a -- we had a similar issue  
22 in connection with the motion to dismiss. Failure to follow  
23 the rules is unprofessional, and it's disrespectful not only to  
24 Highland's professionals but also to the Court and it  
25 interferes with Your Honor's ability to control your docket and



1 sufficiently prepare for contested matters.

2 At some point, Your Honor, there should be real  
3 consequences for the continued violation of the rules. Having  
4 said that, Your Honor, we are prepared to go forward with the  
5 motion to stay today.

6 THE COURT: All right. Mr. Sbaiti, what say you?  
7 I'm looking at Docket Entry Number 69 in the adversary  
8 proceeding that was filed last Thursday. So, obviously, very,  
9 very late in the game, shall we say. What is your response to  
10 this?

11 MR. SBAITI: Your Honor, that was not filed in the  
12 adversary as an error. When we asked one of our paralegals to  
13 file it, we're not as familiar with the bankruptcy court system  
14 and it was an error. It was corrected once the lawyers  
15 realized it, which was last -- which was on November the 18th.  
16 It was filed in, I guess in the main case. But it was simply  
17 an inadvertent error, Your Honor.

18 MR. POMERANTZ: I would add, Your Honor, the original  
19 motion filed inadvertently was November 10th. It still was not  
20 timely. I think Mr. Sbaiti needs to answer the question of why  
21 that was filed untimely, okay.

22 THE COURT: All right. Thank you, Mr. Sbaiti.

23 So, one of my pet peeves in life is people blaming  
24 paralegals, by the way. But be that as it may, as Mr.  
25 Pomerantz points out that it was still untimely the motion

1 filed in the underlying bankruptcy case November 10th. So what  
2 is your --

3 MR. SBAITI: Your Honor, when we looked at the motion  
4 and looked at the progression of the case, we filed an amended  
5 motion simply to clarify our position. And really I don't  
6 think we've changed our arguments all that much. We simply  
7 clarified our position. We've seen amended motions filed in  
8 the bankruptcy in our prior dealings, and so at that point, we  
9 felt like there wasn't a rule explicitly saying we couldn't  
10 have an amended motion.

11 But if it's untimely, Your Honor, you know, we don't  
12 think it changes the underlying arguments. As Mr. Pomerantz  
13 said, we don't think there's any prejudice to Highland either.

14 THE COURT: All right. Well, just to be clear, you  
15 know, it's one thing in an underlying bankruptcy case to file  
16 an amended motion after you've gotten a motion set for hearing  
17 that might slightly adjust, you know, facts or relief sought.  
18 And, of course, we independently look at it when it happens in  
19 an underlying case to see do we need more notice to affected  
20 parties.

21 But in an adversary proceeding, you know, you just  
22 don't do this. All right? If you have some sort of  
23 exceptional circumstances, you can file I guess a motion to  
24 amend because I got to include this new information that didn't  
25 exist. But you just don't do this, okay?

1           So I don't -- could you be clear what was the new  
2 information? What was the new information that had to be  
3 brought before the Court suddenly?

4           MR. SBAITI: Your Honor, there wasn't new  
5 information. We were simply giving notice of our understanding  
6 of where the legal arguments were going. The reason being is  
7 that after those motions were filed and recently, the debtor  
8 took the position in two other cases that they should be  
9 dismissed pursuant to the permanent injunction.

10           And so that clarified for us at least a couple of  
11 arguments that were unclear to us where the debtor stood on  
12 whether or not the permanent injunction would be a basis to  
13 dismiss or stay any of the claims that were pending. There are  
14 two other claims pending in district court. Since we had filed  
15 that motion, the debtor filed a motion to reconsider the stays  
16 that were granted in those two courts. And then they also  
17 moved to dismiss on the basis of the permanent injunction.

18           And so given that the debtor took the position that  
19 they were willing to dismiss those cases based upon the  
20 permanent injunction, it in many ways contravenes the position  
21 they took in response to our motion which is that the -- for  
22 example, they somewhat take the position in Paragraph 22, it  
23 wasn't as clear then but it's clear -- it seems clearer now  
24 that the permanent injunction is not relevant to whether or not  
25 the case can go forward in any capacity.

1           And so we simply wanted to incorporate that, but it's  
2 mainly legal argument about the choices that are before the  
3 Court. That was really it. I mean, theoretically, I would  
4 have made them for the first time during oral argument and we  
5 thought we were doing something good by giving -- apprising the  
6 Court in writing and giving notice of these arguments to the  
7 other side by filing an amended motion. We didn't add new  
8 evidence or anything like that.

9           MR. POMERANTZ: Your Honor, that argument is  
10 completely disingenuous because our motion to dismiss and  
11 motion for reconsideration that Mr. Sbaiti refers to is several  
12 weeks ago, okay. It wasn't November 10th. It was several  
13 weeks ago.

14           I will respond substantively why Mr. Sbaiti is wrong  
15 and there's no inconsistent positions when it's my time to  
16 speak. But for Mr. Sbaiti to say he was doing us a favor and  
17 he was reacting to recent new information is just wrong, Your  
18 Honor. And they should just not be continued to allowed to get  
19 away with flouting the rules.

20           THE COURT: All right. Well, let me just say I'm  
21 confused, maybe I should say baffled, about this amended  
22 motion. You know, the motion to dismiss that is before the  
23 Court for oral argument today isn't about the injunction, isn't  
24 about the plan injunction. It's about res judicata and other  
25 12(b)(6) arguments.

1           So I'm confused and I think, you know, it's been  
2 clear for many months in this adversary proceeding, in  
3 particular, the debtor's position on the plan injunction,  
4 particularly, you know, in the whole argument on the motion to  
5 leave to add Mr. Seery as a defendant.

6           So I'm confused, but we're going to go forward on the  
7 argument today, whatever argument you want to make. And you've  
8 been, I guess, forewarned. I will say that these last-minute  
9 amended motions are not going to be tolerated, are not going to  
10 be considered. And so, you know, I hope you won't do it again.  
11 Your firm has already been sanctioned once in this adversary  
12 proceeding. I'm sure we all remember.

13           So, you know, I'm just kind of baffled why you would  
14 take a chance filing an amended motion without leave or somehow  
15 getting it to the attention of the Court or running it by the  
16 other parties for their consent to you doing it. But we're  
17 going to go forward and just hear the arguments, okay. And so  
18 --

19           MR. SBAITI: Thank you.

20           THE COURT: -- I'll hear your argument.

21           I'm letting people know I don't know where this time  
22 estimate came on the calendar today, three hours. I don't know  
23 if someone specifically expressed that. But I'm letting you  
24 know at noon I have a swearing-in ceremony that I'm doing back  
25 in my chambers. So I will stop at noon Central time.

1 And so does anyone think that's going to be a  
2 problem?

3 MR. SBAITI: It should not be, Your Honor, from our  
4 perspective.

5 THE COURT: Mr. Pomerantz?

6 MR. POMERANTZ: I don't believe so. Mr. Morris is  
7 going to handle the motion to dismiss which is going to be the  
8 bulk. My presentation on the motion to stay is only going to  
9 be around ten minutes or so.

10 THE COURT: Okay. Thank you.

11 Mr. Sbaiti, your argument on the motion for stay.

12 MR. SBAITI: Thank you, Your Honor.

13 Your Honor, may I share my screen?

14 THE COURT: You may.

15 MR. SBAITI: I have a PowerPoint that can kind of --

16 THE COURT: Okay. You may.

17 MR. SBAITI: -- walk us through. Thank you.

18 Is Your Honor able to see my screen?

19 THE COURT: I can, yes.

20 MR. SBAITI: Thank you, Your Honor.

21 Your Honor, what I would point you to is, first, the  
22 injunction language. This is what Your Honor's permanent  
23 injunction says, and this is really what animates our motion to  
24 stay. Our motion to stay is derived specifically because my  
25 clients and I feel like our case has been enjoined by this

1 injunction, if not completely disposed of.

2 The language says that we're enjoined:

3 "An enjoined party is permanently enjoined from  
4 commencing, conducting, or continuing in any manner  
5 any suit, action, or other proceeding of any kind  
6 including any proceeding in a judicial, arbitral,  
7 administrative, or other forum against or affecting  
8 the debtor or the property of the debtor."

9 And then (v) of that injunction says:

10 "or acting or proceeding in any manner in any place  
11 whatsoever that does not conform to or comply with  
12 the provisions of the plan."

13 One of the things that was suggested in Paragraph 22  
14 of their response was that the DAF and Holdco are not enjoined  
15 parties. But the final plan defines an enjoined party in  
16 Article 1(b) (56) as any entity who has or -- all entities who  
17 have held, hold, or may hold claims against the debtor; any  
18 entity that has appeared and/or filed any motion, objection, or  
19 other pleading in this Chapter 11 case regardless of the  
20 capacity in which such entity appeared and any other party in  
21 interest. And, five, the related persons of each of the  
22 foregoing.

23 Article 1(b) (22) defines a claim as any claim that's  
24 defined in Section 1015 of the Bankruptcy Code. And Section  
25 1015 of the Bankruptcy Code defines a claim as a right to

1 payment whether or not such right is reduced to judgment,  
2 liquidated, unliquidated, fixed, contingent, matured,  
3 unmatured, disputed, undisputed, legal, equitable, secured, or  
4 unsecured.

5           So given this definition, when we've read this  
6 injunction, we believed that we were enjoined parties, the DAF  
7 and Holdco were both enjoined parties. They had appeared in  
8 the -- they have claims. Obviously, those are the claims being  
9 asserted here.

10           And so going back to the injunction language, we  
11 believe this lawsuit has been disposed of by this permanent  
12 injunction. We believe there's really only one or two things  
13 that should probably happen with this lawsuit. Either it could  
14 be dismissed based upon the permanent injunction or what we  
15 proposed in our motion to stay is that the Court exercise its  
16 inherent authority to simply stay the case pending the appeal  
17 of this language, which is up on appeal in the Fifth Circuit  
18 right now.

19           If that language, and if the injunction gets affirmed  
20 by the Fifth Circuit, then certainly the dismissal can happen  
21 once that affirmance happens and there's no harm, no foul, and  
22 no one's wasted any time.

23           If they're not, if it's overturned, then, obviously,  
24 the injunction would be vacated, presumably by the Fifth  
25 Circuit. And at some point, if the Court decides not to enter



1 a similar injunction that would likewise dispose of this case,  
2 then the case could proceed on the merits.

3           The issue we've identified both in our original  
4 motion and as we fleshed out in our -- as a matter of law in  
5 our amended motion to simply put a finer point on it is that  
6 the merits are now -- have been disposed of. This injunction  
7 ends this case, at least as far as we read it. It ends this  
8 case irrespective of the underlying merits of the lawsuit,  
9 which means that the lawsuit merits themselves have become moot  
10 and any opinion or any attempt to resolve it is obviously an  
11 advisory opinion by the Court.

12           So we really only see two ways that this could go  
13 right now without either gutting the injunction or  
14 circumventing it completely, which is to say that either the  
15 case should be dismissed based upon the permanent injunction or  
16 the case should be stayed based upon the permanent injunction.

17           Mr. Pomerantz or the debtors' brief suggests that,  
18 well, the injunction doesn't prevent hearing pending motions.  
19 But I would respectfully disagree with that. If you look at  
20 the language, "commencing, conducting, or continuing in any  
21 manner in any suit, action, or other proceeding against or  
22 affecting the debtor."

23           As 12(b)(6) hearing, I would imagine, was intended to  
24 fall under the umbrella of a proceeding. And us arguing a  
25 12(b)(6) motion would us be conducting and maybe even

1 continuing the suit because we're trying to protect the merits  
2 of the suit, which as I said are at this juncture already moot.

3 And so it comes down to I think a very simple  
4 question, which is what do we do at this juncture. Do we just  
5 simply dismiss the lawsuit in light of this permanent  
6 injunction or stay the lawsuit in light of this permanent  
7 injunction?

8 The debtor makes a lot of hay out of the fact that,  
9 well, there are special rules that apply when you're trying to  
10 stay a case pending appeal. But if you look at all of their  
11 case law, it has to do with different circumstances where an  
12 appeal -- where there's a matter on appeal that could  
13 substantially affect the resolution of the case, which here we  
14 think it actually could. But in those cases, those appeals  
15 would affect the resolution of the case on the merits; whereas,  
16 here, the question goes to whether or not a permanent  
17 injunction that really has stopped us all in our tracks.

18 As soon as we understood this injunction and its  
19 scope, we're the ones who reached out to the debtor's counsel  
20 and asked them on a meet-and-confer whether or not they would  
21 just agree to stay the matter. And we were a little bit  
22 surprised by their reaction when they first didn't think that  
23 this applied to our case, and we didn't understand how. And  
24 then they changed their mind, said it did apply to our case but  
25 they didn't think that we should stay the case. And they

1 didn't suggest let's just dismiss it based upon the permanent  
2 injunction.

3           So it kind of comes down to the same small -- same  
4 simple issue, Your Honor. There's this permanent injunction,  
5 and I don't think there's any way for us to get around it at  
6 this juncture.

7           THE COURT: Mr. Pomerantz:

8           MR. POMERANTZ: Yes, Your Honor.

9           I'm going to respond to several of the arguments Mr.  
10 Sbaiti made in his motion, which apparently he's abandoned  
11 because he only is focused on the injunction. And I'm also  
12 going to tell Your Honor, what our arguments are because  
13 despite Mr. Sbaiti's efforts, he's completely misquoted them.

14           So in the motion and the amended motion, the  
15 Plaintiffs make several arguments why this Court should stay  
16 the matter. First, they argue they're entitled to a stay  
17 because the exculpation provision in the plan prohibits them  
18 from proceeding against the Defendants in the action. And  
19 there are several problems with that argument.

20           First, Mr. Sbaiti and the Plaintiffs don't even  
21 attempt to meet the Fifth Circuit's standards for a stay  
22 pending appeal because, of course, they can't. Mr. Sbaiti's  
23 trying to sidestep the grounds for a stay pending appeal by  
24 arguing it doesn't apply just is incorrect.

25           They would have to show that there is a likelihood of

1 success on the merits, they would suffer irreparable harm, the  
2 debtor wouldn't suffer irreparable harm, and there is -- public  
3 interest supports a stay. They can't do any of them.

4 In fact, as Your Honor is well aware, Your Honor  
5 denied the actual appellants in that suit, in that order, the  
6 confirmation order, a stay pending appeal and that was denied  
7 by the district court and also denied by the Fifth Circuit  
8 Court of Appeals.

9 The Plaintiffs didn't object to the plan, they are  
10 not parties to the appeal, and they never sought a stay pending  
11 appeal. So they really can't explain why they as really  
12 strangers to the appeal are entitled to a stay of the  
13 effectiveness of the plan when the actual appellants to that  
14 order were denied a stay pending appeal up through the  
15 appellate ladder.

16 Second, notwithstanding Mr. Sbaiti's arguments in the  
17 motion, the exculpation provision is neither as broad nor does  
18 it affect all the parties that are subject to this litigation.  
19 There are three Defendants in the complaint. The only  
20 Defendant that is covered by the exculpation provision is the  
21 debtor. The exculpation provision does not apply HCF Advisors,  
22 and it does not apply to Highland CLO Funding.

23 Also, while the exculpation provision does apply to  
24 the debtor, it only exculpates the debtor from claims of  
25 negligence. The complaint raises a variety of causes of action

1 that have nothing to do with negligence and would not be  
2 covered by the exculpation provision.

3           But, Your Honor, the biggest problem with their  
4 argument that the exculpation provision supports a stay is that  
5 the exculpation -- the appeal of the exculpation provision has  
6 nothing to do with this case. Why? Because the Fifth Circuit  
7 appeal concerns whether the exculpation provision is  
8 appropriate for parties other than the debtor. The debtor is  
9 the only Defendant in this case that obtains the benefit of the  
10 exculpation.

11           And there is no dispute, there was no dispute at  
12 confirmation, there's no dispute in the case law, there's no  
13 dispute in Pacific Lumber, there's no dispute in the appeal  
14 that a plan can exculpate the debtor. So the Fifth Circuit  
15 appeal doesn't implicate the exculpation provision and cannot  
16 support a basis for a stay.

17           The next argument Mr. Sbaiti makes is the injunction  
18 provision, and the injunction provision is on appeal to the  
19 Fifth Circuit. But the aspect of the appeal of the injunction  
20 is not the provision that Mr. Sbaiti points to.

21           And, again, as with the exculpation provision, the  
22 same arguments about failure to obtain a stay, failure to be  
23 party to the appeals, and failure to object to the plan apply,  
24 as well. But as is the case with the exculpation provision,  
25 the resolution of the appeal of the injunction provision will

1 not affect this case in any way.

2           They point to the portion of the injunction that  
3 prohibits enjoined parties from directly or indirectly  
4 continuing, commencing, or conducting in any manner any suit or  
5 action proceeding against the debtor. They argue that they  
6 cannot proceed without violating the injunction because the  
7 injunction was intended to put all litigation against the  
8 debtor to an end.

9           But, of course, Your Honor, that is not true. That  
10 is not what the injunction is. The issue on appeal before the  
11 Fifth Circuit as it relates to the injunction is whether the  
12 injunction impermissibly enjoins parties from enforcing their  
13 rights with respect to post-effective date commercial  
14 relationships with the reorganized debtor. And, of course, we  
15 argue that it's appropriate, but it has nothing to do with the  
16 provision Mr. Sbaiti identified.

17           The appeal does not impact in any way whether a plan  
18 can enjoin prosecution of claims that arose prior to the  
19 effective date. And, of course, such a plan provision is  
20 completely appropriate and is customary. The plan provided the  
21 debtor as the plan provides all debtors with a fresh start and  
22 enjoins litigation against the debtor.

23           But importantly, Your Honor, that does not mean as  
24 Plaintiffs argue that any liability for pre-effective date  
25 conduct just goes away and that creditors are left without a

1 remedy to pursue claims against the debtor for pre-effective  
2 date conduct.

3           Rather, if they have a pre-petition claim in lieu of  
4 their litigation that's pending, they file a pre-petition claim  
5 against the estate and that matter is resolved in the claims  
6 objection procedure. Or, as in the case here, when they make  
7 an allegation that there is a post-petition claim, what do they  
8 do? They file a request for payment of an administrative  
9 claim, and this Court addresses the validity of the  
10 administration claim. The lawsuit pending in another  
11 jurisdiction stops, but the claim has to be resolved in the  
12 bankruptcy court.

13           The only conduct that the injunction really prohibits  
14 is them from proceeding with actions in other courts. It does  
15 not deny them a remedy. Accordingly, their argument that they  
16 cannot proceed with claims against the debtor because of the  
17 injunction provision just lacks any merit and can't form the  
18 basis for a stay.

19           Plaintiffs' next argument in their briefing is that  
20 if the Court refuses to stay the complaint, they will file a  
21 motion to withdraw the reference of this matter to the district  
22 court. Your Honor, this is the biggest head-scratcher of them  
23 all given how this complaint ended up before Your Honor. This  
24 exact issue and Plaintiffs' arguments as to why the reference  
25 should be withdrawn have already been fully briefed and decided

1 by the district court.

2 As Your Honor may recall, the Plaintiff filed this  
3 action in the district court, conveniently failing to include  
4 the bankruptcy case as a related case or mentioning that the  
5 bankruptcy courts have related jurisdiction in the filings.  
6 Your Honor may have had occasion to review the underlying  
7 complaint when the debtor brought a motion for contempt against  
8 counsel for Plaintiffs for pursuing a claim against Mr. Seery  
9 in violation of Your Honor's January 9th, 2020 and July 16th,  
10 2020 orders.

11 Your Honor issued an order finding counsel and  
12 various parties in contempt which order is, of course, subject  
13 to appeal. At the time we were litigating the contempt motion,  
14 we filed two motions in district court. The first was a motion  
15 to enforce the reference and have the district court send that  
16 complaint to Your Honor. And that motion to enforce the  
17 reference is now on Your Honor's docket at Number 22 and 23.

18 The second was the motion to dismiss which is before  
19 Your Honor today. Plaintiffs oppose the motion to enforce the  
20 reference arguing that mandatory withdrawal was required  
21 because the matter involved consideration of non-bankruptcy  
22 federal law, specifically federal securities laws and the  
23 Investment Advisors' Act.

24 Plaintiffs further argue to the district court why  
25 would you refer the case to the bankruptcy court if it's only



1 going to end up back in the district court upon mandatory  
2 withdrawal of the reference. They argue to the district court  
3 that would be a complete waste of time.

4 We filed our reply at Docket Number 42 explaining to  
5 the district court why mandatory withdrawal of the reference  
6 did not apply and why this case should be referred to Your  
7 Honor. And what did the district court subsequently do? It  
8 entered an order referring this action to Your Honor which is  
9 why we are here today.

10 Plaintiffs now flout the district court's order of  
11 reference by telling the Court that if the Court does not stay  
12 the matter, they will file a motion to withdraw the reference  
13 before Your Honor, and they attach virtually identical pleading  
14 that they filed in opposition to our motion to enforce the  
15 reference.

16 Plaintiffs did not disclose in their amended motion  
17 that there was a fully-briefed motion to enforce the reference  
18 before the district court. Plaintiffs' argument is  
19 disingenuous and designed to mislead the Court.

20 The district court has only agreed that mandatory  
21 withdrawal of the reference does not apply and this case  
22 belongs in Your Honor. And while we cannot stop the Plaintiffs  
23 from filing any motion before this Court, we want to put them  
24 on notice that if they do file a motion for withdrawal of the  
25 reference in light of the facts as I just stated them, we will

1 seek sanctions.

2 In any event, Your Honor, the fact that they may file  
3 a motion for withdrawal of the reference at some point in the  
4 future is not grounds to stay the matter.

5 Lastly, Your Honor, Plaintiffs argued in the opening  
6 that Highland's position today in opposing the motion to stay  
7 is inconsistent with positions Highland has taken in two other  
8 lawsuits commenced by the Sbaiti firm. Like all of their other  
9 arguments, they misrepresent the facts and are frivolous.

10 The Sbaiti firm filed a complaint on behalf of the  
11 DAF in the district court arguing that Highland mismanaged  
12 (audio drop). That complaint followed in the heels of an  
13 almost identical complaint filed by Dugaboy asserting the same  
14 claims.

15 And Your Honor may recall questioning Mr. Sbaiti at a  
16 hearing in June how Dugaboy could pursue such a claim in the  
17 district court if Dugaboy had a pending proof of administrative  
18 claim on file in the bankruptcy case. Well, soon after that  
19 hearing, Your Honor, the Dugaboy complaint was dismissed, and a  
20 few days later the DAF complaint was filed. That complaint has  
21 never been served on Highland.

22 The second lawsuit is also a lawsuit filed by the  
23 Sbaiti firm on behalf of an entity called PCMG in the district  
24 court. And PCMG previously held less than five one-hundredths  
25 of a percent interest in a certain fund managed by highland.

1 The lawsuit alleges that Highland acted improperly to sell  
2 certain assets of the fund, thereby damaging PCMG. That  
3 complaint has also never been served on Highland.

4 The Plaintiffs sought a stay of those matters before  
5 Highland could file a response, and the court -- the district  
6 court's entered stays in those matters. And Highland has filed  
7 motions for reconsideration and the motions to dismiss because  
8 they violate the injunction.

9 But, importantly, Your Honor, if you read the  
10 motions, Highland does not argue that Plaintiffs do not have a  
11 remedy for the alleged wrongs they say they suffer. Rather,  
12 Highland's argument is that any claims alleged in those  
13 lawsuits, just like any claims alleged in the lawsuit before  
14 Your Honor today, must proceed in bankruptcy court as part of  
15 the claims objection process. That's where they will have  
16 their day in court. The lawsuits don't go away. The  
17 injunction prevents them from continuing on in district court.

18 Accordingly, Highland is being totally consistent in  
19 all matters, and the litigations may not proceed there but must  
20 proceed before Your Honor. And, of course, none of these three  
21 matters are implicated by the Fifth Circuit appeal.

22 Your Honor, the amended motion was procedurally  
23 improper and is substantively without merit. And for all these  
24 reasons, we request that the Court deny the stay motion and  
25 proceed with the hearing on the motion to dismiss.

1 Thank you, Your Honor.

2 THE COURT: All right.

3 Mr. Sbaiti, you get the last word.

4 MR. SBAITI: Thank you, Your Honor.

5 Your Honor, the administrative claim process that was  
6 described as being the way that these claims were supposed to  
7 proceed, by the language of the order that we read, does not  
8 allow for these claims. Those claims are limited to a specific  
9 category of claims that don't include the claims that are  
10 alleged in this lawsuit.

11 And in any event, this lawsuit wasn't filed as an  
12 administrative claim. So if that's the case and it needs to be  
13 refiled or reasserted as an administrative claim, then I think  
14 that's a subject for another day. All I know is that we have  
15 this injunction right now that either should stay this case  
16 pending the appeal, which I'll address the issue on appeal in a  
17 moment, or it should be dismissed, perhaps without prejudice so  
18 that it can be refiled properly as an administrative claim if  
19 that's what's supposed to happen, because I guess this converts  
20 the matter.

21 The appeal, the subject of the appeal as to the  
22 injunction, Your Honor, the appeal actually encompasses many of  
23 the issues that we're talking about in this case. Now Mr.  
24 Pomerantz tries to narrow the scope of what's up on appeal, and  
25 that may indeed be the argument that they're going to present

1 to the Fifth Circuit or that they've presented to the Fifth  
2 Circuit.

3 But the actual issue up on appeal is the  
4 enforceability and validity of the order for a variety of  
5 reasons which includes the provision that we're talking about  
6 and the enforceability of the provision that we're talking  
7 about because it gets rid of particular claims. And I guess  
8 the argument back is, no, it doesn't because there's now an  
9 alternative means of going there.

10 Mr. Pomerantz says that we shouldn't have proffered a  
11 motion to enforce the reference. That proffer, however, was  
12 because Judge Boyle's reference to this Court didn't deal with  
13 our motion to -- our cross-motion to withdraw the reference.  
14 All it dealt with was their motion to enforce the reference as  
15 a -- to enforce the standing order in the district court. And  
16 that's all she ordered was she cited the standing order and the  
17 statutes, I think it's 157(a), and that's really all it did.

18 So it left open the question of whether she wanted  
19 Your Honor to deal with the withdrawal of the reference  
20 specifically as to the 12(b)(6) issue in the first instance.  
21 It didn't resolve the question. It doesn't purport to resolve  
22 that question. And it's not unheard of for the district court  
23 then to send the matter to the bankruptcy court and then to  
24 piecemeal which proceedings the withdrawal of the reference is  
25 applicable to and then all the other proceedings would stay

1 with Your Honor or with the bankruptcy court.

2           So we weren't flouting the district court's order,  
3 and we certainly weren't flouting any of the previous orders.  
4 And the threat of a sanction for simply exercising our rights  
5 in due course is not well taken.

6           Now Mr. Pomerantz says, well, the DAF and CLO Holdco  
7 are not parties to the appeal. I don't think that's relevant  
8 because if the provision is struck by the Fifth Circuit, it's  
9 not only struck for the appellants, it's struck as to all.  
10 It's either valid or it's invalid. And even if it's declared  
11 to be invalid only as to the appellants, it's not suddenly  
12 valid as to everyone else who didn't appeal. That's not  
13 generally how these appeals have worked.

14           If the Court doesn't stay this matter, Your Honor,  
15 and doesn't dismiss it, we still maintain, Your Honor, that as  
16 it stands today, the question on the merits have been mooted  
17 and we cannot proceed. I think what Mr. Pomerantz is hoping  
18 for or the debtor is hoping for is a provision where our hands  
19 are potentially tied to argue the motion.

20           And if the Court tells us they're not, then we'll  
21 certainly argue the 12(b)(6). But what I don't want to do is  
22 argue a 12(b)(6) motion that on its face appears to violate the  
23 permanent injunction and then be held in contempt for violating  
24 that injunction.

25           And so that's why we've asked for the Court to either

1 stay the matter under its inherent jurisdiction or to -- if  
2 you're going to -- if it's not going to be stayed, then we  
3 believe it has to be dismissed according to the permanent  
4 injunction as it stands right now.

5 THE COURT: All right.

6 The motion to stay is denied. The amended motion to  
7 stay is likewise denied. This is an odd argument. I guess one  
8 might say the traditional four-factor test for a stay of a  
9 proceeding has really not been the subject of the argument here  
10 for a stay.

11 So suffice it to say the four-prong test for a stay,  
12 you know, hasn't been met here. There hasn't been a showing of  
13 substantial likelihood of success on the merits or irreparable  
14 injury if the stay's not granted or a stay will not  
15 substantially harm others or the stay would serve a public  
16 interest.

17 But going on to the arguments that were focused on by  
18 movant, I just don't think that you have shown that, you know,  
19 either the exculpation clause or the injunction provisions of  
20 the plan somehow tie your hands in arguing the 12(b)(6) motion,  
21 defending against the 12(b)(6) motion today or I just think  
22 that your arguments reflect, frankly, a misunderstanding of how  
23 the injunction language and exculpation language applies here.

24 So the motion for stay is denied, and I will ask Mr.  
25 Pomerantz to submit an order reflecting the Court's ruling.

1           So it looks like we have another procedural matter,  
2 Mr. Sbaiti. You filed a motion to strike reply appendix of the  
3 Plaintiffs quite a while back. So did you want to present  
4 that?

5           MR. SBAITI: Yes, Your Honor. I think it's a very  
6 simple procedural issue.

7           Generally, a party that files a 12(b)(6) is limited  
8 to the four corners of the complaint. And if there's a  
9 contract incorporated or a document incorporated as an  
10 intrinsic part of the complaint, you know, that's usually  
11 considered under the 12(b)(6) motion.

12           What the Defendants did, what the debtor here did is  
13 they filed a bunch of evidence in their 12(b)(6), essentially  
14 attempting to argue it as a summary judgment. We raised that  
15 in our response. So as part of our response, we objected to  
16 all the evidence. But then on the reply, they filed a bunch  
17 more evidence both without leave and improperly, basically  
18 sandbagged us.

19           And so we raised two points for striking that  
20 evidence. One was akin to the first argument, which is it's  
21 not an evidentiary hearing. It's not an evidentiary process in  
22 the first instance. A 12(b)(6) motion has to assume that the  
23 facts pled are true, and then the question is whether they  
24 state a claim.

25           And, secondly, adding them to the reply is especially



1 egregious because the reply is the last word. And we didn't  
2 have an opportunity to respond, and we also don't think it's  
3 relevant nor should we have to respond to a whole bunch of  
4 extra evidence that was attached.

5 That's essentially the basis of our motion, Your  
6 Honor.

7 MR. POMERANTZ: Your Honor, the simple answer to the  
8 issue is we filed the reply of the appendix in connection with  
9 the motion to enforce the reference. We didn't file it in  
10 connection with the motion to dismiss. The motion to enforce  
11 the reference is moot. So what Mr. Sbaiti, his whole argument  
12 doesn't make any sense.

13 As a substantive matter, just there wasn't any  
14 evidence. It was pointing to court pleadings, orders, and  
15 stuff. So it's irrelevant. I don't know why it's still on the  
16 docket. It shouldn't be on the docket since it related to the  
17 motion to enforce the reference.

18 THE COURT: All right. Mr. Sbaiti, did you just  
19 simply --

20 MR. SBAITI: Your Honor, much of that evidence was --

21 THE COURT: -- misunderstand or what?

22 MR. SBAITI: I think we might have because it was  
23 filed as a separate item, and it may have been miscalendared or  
24 misapplied on our system. But the way it was presented to us  
25 when we got it was it appeared to be evidence in support of,

1 well, I guess both, but certainly evidence that was averted to  
2 in the reply.

3 But if they're saying that the Court's not going to  
4 consider it, then that moots the motion and I think we can move  
5 on.

6 MR. POMERANTZ: Yes, Your Honor. I had nothing to do  
7 with his motion. I guess there was another mistake on their  
8 end. I guess that stuff happens occasionally.

9 THE COURT: Okay. All right. So I'll deny it as  
10 based on a mistake that's been acknowledged here. And so with  
11 that, let's have an order cleaning that up, as well, Mr.  
12 Pomerantz, please.

13 With that, we'll move on to the Defendants' motion to  
14 dismiss complaint. I think, Mr. Pomerantz, you said Mr. Morris  
15 will be making this argument?

16 MR. POMERANTZ: That is correct, Your Honor.

17 THE COURT: All right.

18 Mr. Morris, I'll hear your argument.

19 MR. MORRIS: Good morning, Your Honor. John Morris  
20 for Pachulski Stang Ziehl & Jones for the reorganized debtor.  
21 Can you hear me okay?

22 THE COURT: I can. Thank you.

23 MR. MORRIS: Okay.

24 Your Honor, this is a bit like Groundhog's Day. I  
25 believe that we're going to spend the next half hour or an hour

1 discussing the very issues that were before the Court earlier  
2 this year on the HarbourVest 9019 motion.

3           As the Court will recall from the June 8 hearing,  
4 there is a complaint that's been filed ostensibly by the DAF  
5 and CLO Holdco. As Your Honor will recall, the testimony  
6 established that Mark Patrick had just been installed as the  
7 trustee, had no knowledge of the prior events, and Mr. Dondero  
8 and Mr. Sbaiti spent quite some time together formulating this  
9 particular complaint that is nothing less than a collateral  
10 attack on the Court's prior order.

11           I'd like to, if I can, just walk through a PowerPoint  
12 presentation to try to make the debtor's position quite clear,  
13 if I may.

14           THE COURT: You may.

15           MR. MORRIS: And I would ask my assistant, Ms. Canty  
16 (phonetic), to put up the first slide.

17           Your Honor, you'll recall that last December, the  
18 debtor filed its motion under Rule 9019 for court approval of a  
19 settlement. The debtor was completely and utterly transparent  
20 in what the terms of the settlement were.

21           Very briefly, as set forth in Appendix 2 or Exhibit 2  
22 which was the motion itself, in Paragraph 32, Your Honor, the  
23 debtor set forth the terms of the transaction for which it was  
24 seeking approval. Those terms included in the very first  
25 bullet point a statement that HarbourVest shall transfer its

1 entire interest in CLOF to an entity to be designated by the  
2 debtor.

3           And that's an important point that we'll talk about  
4 in a number of different contexts, Your Honor. The debtor made  
5 it very clear at the very first moment of this matter that it  
6 was not going to acquire the asset but the asset was going to  
7 be transferred to an entity to be designated by the debtor.  
8 The debtor's motion filed last December clearly stated the  
9 value of the interest that it would be acquiring in return.  
10 That was also set forth in Paragraph 32 in a footnote.

11           It didn't say that it was the fair market value. It  
12 said the method of valuation was the net asset value and gave a  
13 valuation date of December 1st so that all parties in interest  
14 who received the motion understood the economics of the deal.  
15 And the deal that the debtor was asking the Court to approve  
16 was one whereby HarbourVest would receive certain claims and in  
17 exchange for those claims, they were going to transfer their  
18 interest in CLO -- HCLOF.

19           The debtor also filed on the docket for all to see a  
20 copy of the settlement agreement. The settlement agreement  
21 sets forth the terms of the deal, including again the statement  
22 that HarbourVest "will transfer all of its rights, title, and  
23 interest in HCLOF." It actually says to an affiliate or an  
24 entity to be designated by the debtor. And the transfer  
25 agreement itself was also put on the docket.

1           So that's where things stood just before Christmas.  
2 I know that there's some due process and other type arguments  
3 that are in the Plaintiffs' opposition to the motion. But, of  
4 course, the undisputed facts are that the debtor timely filed  
5 the motion. The time period was consistent with all applicable  
6 rules. Nobody ever asked the debtor for an extension of time.  
7 Nobody ever filed a motion for an extension of time. And so  
8 those due process arguments I think carry no weight at all.

9           So the debtor filed the motion. And if we can go to  
10 the next slide, we see what the responses were, and there were  
11 several. All of the responses, the only responses were  
12 objections to the motion filed by Mr. Dondero and his certain  
13 of his affiliated entities.

14           Mr. Dondero's objection can be summarized as follows.  
15 He made the following observations and asserted the following  
16 objections to the proposed settlement. The first thing he said  
17 is that the settlement far exceeds the bounds of  
18 reasonableness. Now, of course, one cannot make a  
19 determination of reasonableness without having an understanding  
20 of value. The debtor was giving something and it was getting  
21 something.

22           And so Mr. Dondero understood that the issue of value  
23 was front and center. If there was any mistake about it, he  
24 also noted that he understood that as part of the settlement  
25 and, again, I've written this incorrectly, HarbourVest will

1 transfer its entire interest in HCLOF to the debtor. That is  
2 not what Mr. Dondero understood. In fact, Mr. Dondero  
3 understood that it would transfer its entire interest in HCLOF  
4 "to an entity to be designated by the debtor," again, making it  
5 clear that he knew exactly what the debtor was doing here. And  
6 that can be found at Appendix 4 in Footnote 3 on Page 1 if you  
7 want the exact quote from Mr. Dondero's pleading.

8           In the same footnote, he also specifically  
9 acknowledges that he understood the valuation. He understood  
10 the method valuation. He understood the valuation date of  
11 December 1st. And he urged the Court in his pleading to  
12 scrutinize the settlement to make clear that the available  
13 value of the investment should be realized by the debtor's  
14 estate.

15           And this is such a critical point, Your Honor. His  
16 concern was that by placing the value in an entity other than  
17 the debtor itself, that the Court wouldn't have jurisdiction  
18 over that asset. That was his concern. So not only did he  
19 understand that the asset was going to be transferred to an  
20 affiliate, he wanted to make sure that this Court had  
21 jurisdiction over the asset.

22           And, of course, Mr. Seery in his testimony and  
23 otherwise, we provided the Court with all the comfort it needed  
24 to know that even though it was being assigned to a special-  
25 purpose vehicle wholly-owned by the debtor, it would

1 nevertheless be subject to the Court's jurisdiction.

2 Mr. Dondero's trusts also filed an objection if we  
3 can go to the next slide.

4 Dugaboy and Get Good represented by Douglas Draper  
5 made the following observations and asserted the following  
6 objections to the HarbourVest Settlement. They, too, made  
7 clear that they understood that the asset was going to be  
8 transferred to an entity designated by the debtor. They, too,  
9 acknowledge that they understood that the debtor was valuing  
10 the asset at approximately \$22 million as of December 1st. And  
11 their objection was that the Court couldn't evaluate the  
12 settlement without knowing how the asset was valued, without  
13 knowing whether the debtor could acquire the asset, very  
14 critical point.

15 These are the points that are made in the complaint.  
16 These are the exact same points that are made in the complaint.  
17 And also the Court couldn't evaluate the settlement unless they  
18 understood that the value would be inure to the benefit of the  
19 debtor's estate, again, mimicking Mr. Dondero's concern that by  
20 placing the asset in an affiliate of the debtor, that it might  
21 not be subject to the Court's jurisdiction.

22 Finally, and most importantly, if we can go to the  
23 next slide. The Plaintiff, CLO Holdco, filed an objection to  
24 the 9019 motion. And this is just so critical. And this is  
25 the Groundhog Day aspect that I specifically speak of. CLO

1 Holdco's objection was based solely on its assertion that it  
2 had a superior right to the opportunity to acquire the asset  
3 that was being transferred by HarbourVest. It only made one  
4 argument in support of its contention that it had a superior  
5 right, but that argument was specifically premised on the  
6 membership agreement, Section 6.1 and 6.2 of the membership  
7 agreement.

8 CLO Holdco, the Plaintiff in the underlying action,  
9 argued to this Court that HarbourVest had no authority to  
10 transfer the asset without complying with the right of first  
11 refusal that would give CLO Holdco the opportunity to take the  
12 asset for itself. That's what this Court was told. CLO Holdco  
13 didn't make this argument fleetingly. They provided an  
14 extraordinarily detailed analysis of Sections 6.1 and 6.2 of  
15 the membership agreement and concluded "that HarbourVest must  
16 effectuate the right of first refusal before it can transfer  
17 its interest in HCLOF. That was the objection. Objections  
18 have consequences, as Your Honor knows.

19 If we can go to the next slide.

20 By filing an objection, CLO Holdco and the trusts and  
21 Mr. Dondero became participants in the litigation.  
22 Notwithstanding the Plaintiffs' arguments to the contrary, when  
23 they file the objections, they participate in what's called a  
24 contested matter. And in a contested matter, they had every  
25 right to take all discovery on any issue that was related to



1 the 9019 motion, including the transfer, the disposition of the  
2 asset to an affiliate of the debtor, the valuation of the asset  
3 that's being received, the merits of the settlement itself, the  
4 causes of action, whether, you know, what communications that  
5 were, the negotiations, what did Mr. Seery and Mr. Pugatch  
6 discuss? Right?

7           They could have taken any discovery they wanted. And  
8 they did avail themselves of discovery, in fact. They did -- I  
9 don't know why they did what they did, but they chose to take  
10 one deposition, and that was Mr. Pugatch, okay.

11           His deposition transcript, I think is at Exhibit 7,  
12 or Appendix Number 7, and it was a long deposition. It really  
13 was. And they asked Mr. Pugatch at the deposition if he knew  
14 what the value of the asset that was being transferred was.  
15 And he said \$22.5 million. So it wasn't just Mr. Seery or the  
16 debtor who was subscribing to this valuation. The party on the  
17 other side of an arm's length negotiation was subscribing to  
18 the exact same valuation.

19           The Plaintiffs could have taken whatever discovery  
20 they wanted. This is a full and fair opportunity to  
21 participate in the litigation. We proceeded to trial. Before  
22 we got there, actually, the debtor filed its response to CLO  
23 Holdco's objection and proffered its own very detailed and  
24 apparently very persuasive analysis that CLO Holdco's objection  
25 was without merit, that CLO Holdco had no right of first

1 refusal under the facts and circumstances as they existed, and  
2 with Grant Scott, Mr. Dondero's childhood friend at the helm,  
3 we got to Court for the contested hearing on the debtor's 9019  
4 motion, and CLO Holdco withdrew their objection.

5           And I've put up on the screen just an excerpt of the  
6 transcript because, you know, when we talk about whether or *res*  
7 *judicata* should apply, because was there a hearing on the  
8 merits? Was there a decision on the merits? Just look at the  
9 words of CLO Holdco's lawyer. "CLO Holdco has had an  
10 opportunity to review the reply briefing and after doing so has  
11 gone back and scrubbed the HCLOF corporate documents based on  
12 our analysis of Guernsey law."

13           And some of the arguments of counsel in those  
14 pleadings and our review of the appropriate documents, counsel  
15 obtained the authority from Mr. Scott to withdraw the CLO  
16 Holdco objection based on the interpretation of the member  
17 agreement. We were grateful for that and the Court  
18 specifically said in response, "That eliminates one of the  
19 major arguments that we had anticipated this morning."

20           Apparently, the Plaintiffs believe that those events  
21 have no meaning and that this Court's reliance on CLO Holdco's  
22 substantive withdrawal of its objection has no meaning. I  
23 think they're wrong, and we'll get to that in a moment.

24           We proceeded with the hearing. Mr. Seery and  
25 Mr. Pugatch testified at length. If you look at Footnote 3,

1 you'll see Mr. Seery testified for almost 70 pages of  
2 testimony. Mr. Pugatch testified for almost 45 pages of  
3 testimony. His testimony was exhaustive. And, again, any of  
4 the objecting parties had the right to ask whatever questions  
5 they want.

6 But I do want to just note a few things that aren't  
7 up on the screen right now. If you go to Appendix 9, Your  
8 Honor, which is the transcript of the hearing, at Page 13, you  
9 will see that the very first thing I discussed in my opening  
10 statement was the economics and how with a valuation of \$22.5  
11 million this deal made sense for the debtor.

12 You will see from Pages 30 to 42 there is extensive  
13 testimony from Mr. Seery about the amount and the value of the  
14 asset. But the most important part of Mr. Seery's testimony is  
15 that he explains how it came to be that HarbourVest agreed to  
16 transfer its interest in HCLOF to an affiliate of the debtor.  
17 And that came about, not because Mr. Seery or the debtor was  
18 initially at all interested in doing this. The whole idea  
19 originated with HarbourVest.

20 They wanted to extract themselves from the Highland  
21 platform. They wanted to give this piece up. So there's no  
22 conspiracy going on here. The unrebutted testimony that all of  
23 the objecting parties had an opportunity to challenge was that  
24 the whole idea originated with Mr. Pugatch and with  
25 HarbourVest. I think that's an important point to take into

1 account.

2           And finally, again, from the hearing, if you look at  
3 at Appendix 9, you'd also find that Mr. Pugatch, again,  
4 testified, as he had in his deposition, as to the value of the  
5 interest being transferred. So we completed the testimony. We  
6 rested our case having had a full and fair opportunity to  
7 contest the motion. The objecting parties rested as well. And  
8 we got to the point where we had to prepare the notice, and we  
9 were discussing that at the hearing, if we can go to the next  
10 slide.

11           And it's very important, because again, this was all  
12 done transparently, and it was all done on the record. And  
13 after the close of evidence, I addressed the order that was  
14 going to be prepared. I specifically said that I wanted to  
15 make clear that we were going to include a provision, "that  
16 specifically authorizes the debtor to engage in, to receive  
17 HarbourVest the asset, you know, the HCLOF interest," right. I  
18 wanted everybody to know that was what was going to happen, and  
19 then I said, "The objection has been withdrawn." I think the  
20 evidence is what it is and we want to make sure that nobody  
21 thinks they're going to go to a different court somehow to  
22 challenge the transfer. But yet, that is exactly what the  
23 complaint seeks to do.

24           Having put everybody on notice as to where we were  
25 going, as to what the evidence showed, the debtor drafted and

1 the Court adopted an order, and the order says, among other  
2 things, that HarbourVest was authorized to transfer its  
3 interest to the debtor. Actually, it says, "to a wholly owned  
4 and controlled subsidiary of the debtor," pursuant to the  
5 transfer agreement, "without the need to obtain the consent of  
6 any party or to offer such interest first to any other investor  
7 in HCLOF." So the Court heard the 9019 motion pursuant to a  
8 Bankruptcy Rule and entered an order that was unambiguous and  
9 that the Plaintiffs did not appeal from.

10 We can go to the next slide.

11 At a very high level, Your Honor, it is just crystal  
12 clear that the complaint is just inextricably intertwined with  
13 the 9019 proceedings and the order itself. I think Mr. Sbaiti  
14 would agree with me that but for the order that approved the  
15 transfer of the asset and the testimony about the value of that  
16 asset, they have no claims.

17 Every single claim is predicated on what happened in  
18 the 9019 hearing. Every single claim is predicated on the  
19 Court's order approving the transfer of the asset and the  
20 testimony and evidence that was adduced in relation to that  
21 asset.

22 There were really only two issues that the Court -- I  
23 mean, if you want to think about it at its most simplistic  
24 level, the Court was being asked to assess, is it fair, is it  
25 reasonable, is it legally permissible for the debtor to give

1 something. In this case, allowed claims and releases, and to  
2 get something in return. In this case, HarbourVest's interest  
3 in HCLOF and releases in return. And that is really the  
4 gravamen of the complaint.

5           The complaint is based whether it's breach of  
6 fiduciary duty or RICO or breach of contract or tortious  
7 interference, whatever the claim is, none of them exist if the  
8 debtor doesn't get this. They just don't exist. And that is  
9 why the complaint and the proceeding are inextricably  
10 intertwined. And if you just take a look at just one paragraph  
11 of the pleading, it says at the core of this lawsuit is the  
12 fact that HCM, that's the then debtor, purchased the  
13 HarbourVest interests in HCLOF for \$22.5 million knowing that  
14 they were worth far more than that. There's not a cause of  
15 action that exists in the complaint that isn't dependent on  
16 Paragraph 36.

17           So if we can go to the next slide with that  
18 background, I'd like to argue why under 12(b), the complaint  
19 should be dismissed because the claim should be barred under  
20 the doctrine of *res judicata*. Luckily, Your Honor, there is at  
21 least one area of agreement between the parties here, and that  
22 is the purpose of the doctrine and the elements that have to be  
23 satisfied in order to meet the burden of proof necessary to  
24 have the claims barred. And in Footnote 1, you can -- I've  
25 tried to just be helpful to the Court to show that we may not

1 cite to the exact same cases, but the parties agree that the  
2 doctrine is intended to foreclose the re-litigation of claims  
3 that were or could have been raised in a prior action and that  
4 there's four elements that have to be satisfied for the  
5 doctrine to apply.

6           The parties have to be either identical or at least  
7 in privity, the judgment in the prior action had to have been  
8 rendered by a court of competent jurisdiction. Number three,  
9 the prior action had to have been concluded by a judgment on  
10 the merits. And the last one is that the same claim or cause  
11 of action was involved in both suits. So I just want to spend  
12 a few minutes now, Your Honor, going through those four  
13 elements to show the Court how easily the reorganized debtor  
14 meets this standard.

15           If we can go to the next slide, I can take care of  
16 the first two elements very quickly.

17           The first element, the debtor asserted that the  
18 Plaintiffs were parties or in privity with parties to the prior  
19 proceeding. That's at Paragraph 17 of the motion to dismiss.  
20 The debtor relies on the deposition testimony of Grant Scott,  
21 who was then the trustee of the DAF.

22           CLO Holdco is a wholly-owned subsidiary of the DAF,  
23 or wholly controlled, in any event, and Mr. Scott's testimony  
24 was that he was the only director and there were no employees  
25 of either entity. So we, in our motion, put forth evidence to

1 establish the first element, and I don't believe, maybe I've  
2 missed it. I don't believe that the Plaintiffs have contested  
3 that element. If they have, I think Mr. Scott's testimony will  
4 carry the day, in any event.

5           The second element as to whether or not a court of  
6 competent jurisdiction is the entity or the court that rendered  
7 the ruling. Of course, that's been met, too. The Plaintiffs,  
8 in their opposition to the motion to dismiss, suggested that  
9 the bankruptcy court would have lacked jurisdiction if their  
10 cross motion to withdraw the reference was granted. They said  
11 if the district court decides that mandatory withdrawal  
12 applies, then it cannot find that the bankruptcy courts already  
13 entered final judgment was rendered on Plaintiffs' causes of  
14 action and had jurisdiction to do so. I think that's just a  
15 clear misstatement of the law.

16           But in any event, Your Honor, at this point, I  
17 believe it's irrelevant because the district court, in fact,  
18 sent the case back to Your Honor and back to this Court. And  
19 so, at the end of the day, Plaintiffs' argument doesn't hold  
20 water because of the district court's ruling, which can be  
21 found -- the order of reference can be found at Docket  
22 Number 64. And so I think that easily takes care of the second  
23 prong.

24           The third prong is whether -- if we can go to the  
25 next slide -- the prior proceeding resulted in a judgment on



1 the merits. And this is really the critical point, Your Honor.  
2 As the Court knows, the whole doctrine of *res judicata* is  
3 designed to prevent, as the parties agree, the re-litigation of  
4 claims. Stated another way, it's to bring finale. It's to  
5 make sure that the Court doesn't hear the same claims and the  
6 same issues that either were brought or that could have been  
7 brought in a prior proceeding. And so, we believe that we  
8 easily meet the standards set forth in the third prong. The  
9 9019 order necessarily determined that the *quid pro quo* that I  
10 described earlier was fair, reasonable, and legally  
11 permissible.

12           Notwithstanding their assertions to the contrary, the  
13 Plaintiffs are most definitely seeking to unwind at least one  
14 half of the Court's order by belatedly claiming that they are  
15 entitled to the benefit of the bargain while leaving Highland  
16 burdened, frankly, with the claims that HarbourVest got as part  
17 of the deal. I will tell you, Your Honor, and this is  
18 argument, the debtor would never have asked for, and I don't  
19 believe that the Court would ever have granted, the 9019 motion  
20 if they thought that there was a risk in the future that  
21 Highland wouldn't get the benefit of the bargain and it was  
22 incumbent upon CLO Holdco and the DAF, and frankly, any party  
23 in interest, to stand up and be counted and tell the Court and  
24 the debtor, why the debtor was not entitled to do this deal and  
25 CLO Holdco did that. They actually did.

1           They stood up and they filed an objection and they  
2 said we have a superior right to this asset in the form of a  
3 right of first refusal. They wound up folding in the face of  
4 persuasive argument, and I respect the lawyer who did that. I  
5 just do. But that was the time to speak up, and that's why it  
6 is on the merits because that is exactly what *res judicata* is  
7 intended to do. It's intended to have everybody put your cards  
8 on the table. You don't put one card on the table and say, I'm  
9 going to challenge this under 6.2 of the members agreement, but  
10 I'm not going to tell you that I also think you owe me a  
11 fiduciary duty under the Advisors Act or as the control party  
12 or under any other theory that they had. They can't do that.  
13 That's exactly what the problem is here.

14           If we can go to the next slide. Is it a judgment on  
15 the merits? The debtor and the Court relied on CLO Holdco's  
16 representation that it was withdrawing its argument, its claim,  
17 its contention, its assertion that it had a superior right to  
18 obtain the HarbourVest interest in HCLOF. Again, they did so  
19 not whimsically, not because Mr. Kane was going to be out of  
20 town and he couldn't make the hearing. He did it after, and I  
21 don't think this matters frankly, but I think it's worth noting  
22 that he did it after an extremely careful analysis. I would  
23 tell you, Your Honor, that -- well, I would argue, Your Honor,  
24 that even if Mr. Kane at CLO Holdco had never filed an  
25 objection, if they'd never filed -- if they'd gotten notice

1 that this was happening and they sat silently, that would have  
2 been enough for *res judicata* because the issue before the Court  
3 was whether it was legally permissible for the debtor to  
4 acquire this asset.

5           And if they had an obligation, if they owed a duty to  
6 another party, it wouldn't have been legally permissible. And  
7 if somebody believed that it wasn't legally permissible because  
8 a duty was owed to them, they had an obligation to speak up.  
9 And so I think it's very important, particularly for the  
10 collateral estoppel argument that I'll make in a moment, that  
11 CLO Holdco did in fact file an objection. It was based on the  
12 breach of contract claim that's in their complaint. It's the  
13 exact same claim. And they withdrew it. I think it's very,  
14 very important. I think it highlights why *res judicata*  
15 applies. I think it is the linchpin of the collateral estoppel  
16 argument.

17           But at the end of the day, I think if they say  
18 nothing, they should be estopped or precluded under *res*  
19 *judicata* from now asserting -- it would be like -- I was  
20 thinking about this earlier, Your Honor. If you'll remember  
21 earlier this year, Mr. Dondero and his entities have kind of a  
22 habit of withdrawing objections at the last minute. We had a  
23 couple of sale hearings earlier this year. And the issue was  
24 valuation, you know, and the process, and could the debtor meet  
25 its burden of proving that the sale outside of the ordinary

1 course of business was in the debtor's best interest. And they  
2 sold that restaurant. And Mr. Dondero objected. And at the  
3 last second, they withdrew the objection. Did they sue  
4 tomorrow? Does Your Honor really think that they could bring a  
5 lawsuit tomorrow and say they just found a document or theory  
6 on which the debtor had an obligation to give them a right of  
7 first refusal, even though we've already closed on the  
8 transaction, even though they were given notice of the  
9 transaction, even though they filed an objection to the  
10 transaction, even though they withdrew the objection? Would  
11 the Court tolerate for one second a new pleading tomorrow from  
12 Mr. Dondero that the debtor actually had a fiduciary duty to  
13 give him a right of first refusal to buy that asset under  
14 whatever theory, just because he pleads it and the Court has to  
15 accept as true the allegations in the complaint? I think not.  
16 And I think it's worth thinking about that to highlight just  
17 how -- just how wrong this is.

18 Continuing on. You know, the Plaintiffs in  
19 opposition say it can't be a trial on the merits because we  
20 weren't parties. Of course they were parties. Again, they  
21 filed an objection. They were the parties to the contested  
22 matter, full stop. They rely on a case called Applewood and  
23 they say, this is the very first point they make in their  
24 brief. Applewood, if it wasn't *res judicata* in Applewood, how  
25 could it possibly be *res judicata* here? But the facts are just

1 so inapposite, right?

2           In Applewood, you had a garden variety plan and  
3 release where the debtor and the officers and directors got a  
4 discharge. No objection to it. And a secured lender later on  
5 sought to sue guarantors who happened to be officers and  
6 directors. And the court, not surprisingly, said that the  
7 confirmation order wouldn't prevent the secured lender from  
8 going after the officers and directors, not in their  
9 capacities, as such, but in their capacity as guarantors, which  
10 were never part of the confirmation order. That just doesn't  
11 apply here because here, we have the debtor making a motion  
12 before the Court in which it sought permission and authority to  
13 acquire a particular asset. Anybody who had a claim to that  
14 asset should have stepped forward and put their cards on the  
15 table.

16           And again, CLO Holdco put their cards on the table  
17 and they lost, and they folded. To use the poker analogy, they  
18 folded. And to hear them come into Court today and say we're  
19 going to sue you because I reshuffled the deck, it's not right  
20 and Applewood has no relevance.

21           Finally, Your Honor, you know, it's not on the  
22 merits, they say, because you know, Mr. Seery and the debtor  
23 hid the true value of the asset, and had we only known the true  
24 value of the asset, we would have made all of these other  
25 claims. The fact of the matter is, you either have a fiduciary

1 duty or you don't. And if you had a fiduciary duty, they  
2 should have spoken up and they did only under 6.2, but they  
3 did.

4 But here's the important part, Your Honor. Take the  
5 allegations as true. You have to take all of the allegations  
6 as true, not just some of them. And if you look at  
7 Paragraph 127 of the complaint, and I would ask Ms. Canty to go  
8 to Appendix 11 and let's just put Paragraph 127 up on the  
9 board.

10 Here's the irony of the whole thing, right. The  
11 whole complaint is based on the fact that somehow Mr. Seery was  
12 engaged in insider trading. They accused him of insider  
13 trading, and they say he didn't disclose the full value of the  
14 asset. Just read Paragraph 127. James Dondero, who was on the  
15 board of MGM, is the tippee. You've got an insider trading  
16 case -- I mean, I don't represent MGM. I'm not with the SEC.  
17 I don't know why Mr. Dondero thought he should be telling  
18 Mr. Seery in December, 2020. It's not clear if it was before  
19 or after the 9019 motion was filed. But Mr. Dondero is the  
20 very source of information -- you can't make this up. He's the  
21 very source of the information that he now complains Mr. Seery  
22 didn't disclose.

23 Of course, Mr. Dondero, the trust, CLO Holdco could  
24 have asked Mr. Seery at any time, how did you come up with your  
25 valuation? Mr. Dondero, knowing that he had supplied to

1 Mr. Seery, according to Paragraph 27, please take it as true  
2 for purposes of this motion only. He's the source of the  
3 inside information. And now he has the audacity to come to  
4 this Court, notwithstanding the Court's approval, all of the  
5 time and money and effort spent in the 9019 process, and say,  
6 Mr. Seery was wrong because he didn't tell CLO Holdco and the  
7 DAF about the information that Mr. Dondero gave to Mr. Seery.  
8 It's not right.

9           It was a judgment on the merits. And if Mr. Dondero  
10 or the DAF or CLO Holdco or the trust wanted to challenge the  
11 valuation, they had every opportunity to do so. And based on  
12 Paragraph 127, if the Court accepts it as true, shame on them.  
13 Shame on them for not pursuing this issue before. The guy gave  
14 Mr. Seery, according to this allegation, and I'm just going to  
15 leave it there, inside information. And he sits there in  
16 silence, right? It says, look at the last sentence: "The news  
17 of the MGM purchase should have caused Seery to revalue HCLOF's  
18 investment." Seriously?

19           The third element is (indiscernible). The fourth  
20 element, if we can go to the next slide.

21           Are they the same claims? Did the claims arise from  
22 the same set of operative facts? I've addressed this pretty  
23 clearly already, so I don't want to belabor the point. But  
24 obviously, both the 9019 motion and the complaint arise solely  
25 from the debtor's settlement with HarbourVest. The debtor's

1 acquisition of HarbourVest's interest in HCLOF and the debtor's  
2 valuation of that interest. Without those three facts, there  
3 is no complaint. It's just not credible to argue that the  
4 fourth element is not met.

5 The case law is clear. It's quoted in the  
6 Plaintiffs' opposition. It's not just the test of whether the  
7 claims are the same. It's whether the claim is the same as  
8 that which was brought or could have been brought.

9 In their opposition, the Plaintiffs contend that the  
10 claims "did not write them until after the settlement was  
11 consummated," and that the first time the plaintiffs heard  
12 about the valuation of HarbourVest's interests was at the  
13 January 14, 2021, hearing. I think I quoted that. If you  
14 look, I don't know if it's Page 10 or Paragraph 10; the way I  
15 wrote it, it's probably Page 10. I think that's a quote right  
16 out of there. But of course, as we saw the debtor disclosed  
17 the valuation in its very initial motion, CLO Holdco's counsel  
18 elicited valuation testimony directly from Mr. Pugatch, so that  
19 was before the hearing.

20 And of course, Mr. Dondero and the trusts both cited  
21 in their objections the valuation. The notion that this was  
22 not right, just -- it's contradicted by their own conduct,  
23 their objections, their questions in deposition, the  
24 information that was contained in the motion that they objected  
25 to.



1 I do want to go off-script for just a minute, if we  
2 could just take that down because I know that this is probably  
3 something that Mr. Sbaiti may argue. And that is, well, gee,  
4 but you have to take the allegation as true that Mr. Seery  
5 wasn't honest, that Mr. Seery lied to the court. I don't  
6 understand why there's not a fraud cause of action in there,  
7 but there's not. But that's their theory.

8 And gee, how does he get to skate away Scott free if  
9 he's allowed to do that with impunity, right? I will tell you,  
10 Your Honor, of course you've seen Mr. Seery many times. You've  
11 made your own assessments of his credibility. I'm not here to  
12 argue the merits, but I will just say that the Defendants, if  
13 ever forced to, will contest the allegation.

14 But here's the thing, and here's the important point  
15 about, you know, whether or not he could lie with impunity and  
16 say, I suspect that's where Mr. Sbaiti is going to want to go.

17 Mr. Seery said what he said. And he had a reason to  
18 speak, and he spoke, and he said what he said and he told  
19 everybody who would listen exactly what he was doing and how he  
20 was doing it. For whatever reason, the objectors put the  
21 valuation front and center. It's right in their objections.  
22 They noted the objections. But for whatever reason, they did  
23 nothing.

24 Whether they were negligent or whether they were  
25 lying in wait is kind of irrelevant. They had a full and fair

1 opportunity to contest this issue. And if they had done so,  
2 and the evidence proved what they're now alleging, they can't  
3 tell you what would have happened. So, you know, HarbourVest  
4 may have taken a different position. The Court may have done  
5 something.

6           We're never going to know now because Mr. Seery and  
7 the debtor are getting away with something, but because they  
8 put in evidence that went unchallenged by Mr. Dondero and the  
9 Plaintiffs. It simply went unchallenged. And they say, oh,  
10 gee, that's because we didn't know. Well first of all, you  
11 didn't ask. And second of all, again, the source of the inside  
12 information, the reason that Mr. Seery should have known the  
13 asset was worth more. The reason that he should have refrained  
14 from trading and not engaged in insider information was  
15 Paragraph 127. It was Mr. Dondero.

16           Here's another thing. If -- if again Mr. Seery had  
17 not been honest with the Court and that was ever brought out,  
18 Maybe HarbourVest -- maybe HarbourVest would have had a right  
19 to complain. There's a lot in the complaint about oh,  
20 HarbourVest was misled. The actual evidence that's in the  
21 record, and this is part of res judicata, Mr. Seery testified  
22 very clearly to the arm's length negotiation that took place.  
23 He told the Court under oath that the negotiations were  
24 contentious.

25           He told the Court under oath that in order to try to

1 resolve the case, he and Mr. Pugatch went off and had their own  
2 private conversation without lawyers. They could have taken  
3 discovery on any of that, right. What did you guys talk about?  
4 It's certainly not privileged. They had every opportunity.  
5 But what we do know is that Mr. Pugatch under oath, in  
6 deposition, and at trial, said the value is \$22.5 million.

7           So I don't think Mr. Pugatch or HarbourVest is ever,  
8 ever, every going to complain about the transaction they did.  
9 Because of what the evidence simply shows. But again, you've  
10 got the Plaintiffs in their complaint saying that somehow the  
11 debtor and Mr. Seery in negotiating this transaction has now  
12 exposed the debtor to liability. It just makes no sense.

13           So there was a time and there was a place to  
14 challenge Mr. Seery. Somebody, you know, maybe HarbourVest  
15 could have done something, maybe they could still do something.  
16 I don't know. If they really think that there's a problem,  
17 maybe we'll hear from HarbourVest someday. But the Plaintiffs  
18 have no right to complain. They just don't. They knew  
19 everything. They were the source of the inside information.  
20 They sat on their hands, and they shouldn't be allowed to do  
21 what they're doing now.

22           If we can go to the next slide. I want to move to  
23 the next theory and try to finish this up. The next theory is  
24 that the Plaintiffs' claims are barred by judicial estoppel.  
25 The judicial estoppel argument is really, really very

1 straight-forward. And it's important because if the Court  
2 thinks about this the way I do, it's that the whole issue of  
3 valuation is completely irrelevant to the Plaintiffs unless  
4 they can show that they were owed some kind of duty, that they  
5 had some superior right to acquire the asset. But that's  
6 exactly the issue that CLO Holdco relied upon and withdrew and  
7 should now be estopped from pursuing. Right.

8           The legal standard, again the parties agree on, that  
9 in order to be estopped, the party must take an inconsistent  
10 position. And the party must have convinced the Court to  
11 accept that position. Again, both prongs are easily met here  
12 in just a few sentences from the January 14 hearing. You have  
13 Mr. Kane saying that he understands and acknowledges and admits  
14 that they have no superior right to the investment. And the  
15 Court relying on that very representation in declining to  
16 conduct a hearing and render a ruling on the merits of the  
17 claim that was withdrawn. The objection that was withdrawn.

18           And for the avoidance of doubt, after Mr. Draper  
19 spoke on behalf of the Trust, the Court, at Page 22 engaged in  
20 the following colloquy. The Court asked Mr. Draper:

21           "THE COURT: Were you saying that the Court still  
22 needs to drill down on the issue of whether the  
23 debtor can acquire HarbourVest's interest in HCLOF.

24           "MR. DRAPER: No.

25           "THE COURT: Okay. I was confused whether you were

1 saying I needed to take an independent look of that.  
2 Now that the objection has been withdrawn of CLO  
3 Holdco, you're not pressing the issue.

4 "MR. DRAPER: No. I am not."

5 Okay. You can call it res judicata, you can call it  
6 judicial estoppel, collateral estoppel, the two prongs are  
7 easily met. They're taking an inconsistent position today and  
8 through all kinds of different theories, including the one that  
9 they withdrew, the Plaintiffs assert that they had a superior  
10 right to acquire the interest from HarbourVest.

11 And they should have asserted those rights at the  
12 hearing. That was the time. And they should be estopped now  
13 from taking a completely inconsistent position from the one  
14 that was before the Court. And I just do want to point out,  
15 the statement from a case called Hall vs. G.E. Plastic. And  
16 it's interesting, Your Honor, because there's only a few cases  
17 that I focused on, because this is really more fact intensive.  
18 And there isn't a dispute as to the, you know, the elements of  
19 these matters.

20 But it is interesting that the Plaintiffs, you know,  
21 generally ignore all of the cases that we cite to. One which  
22 is Hall vs. G.E. Plastic, where the Court said that the focus  
23 on the prior success or judicial acceptance requirements is to  
24 minimize the degree of a party contradicting a Court's  
25 determination, based on a party's prior position. That's the

1 whole point of the exercise. You can't do this. You can't do  
2 this.

3 Just quickly, that leaves the individual arguments as to  
4 each of the five causes of action and I just want to go through  
5 some highlights. There's a negligence claim, Your Honor. And  
6 we did not file a pleading, but the Court can certainly take  
7 judicial notice of the fact that the effective date has  
8 occurred. Under the effective date, the plan is now effective.  
9 That includes the exculpation clause, as Mr. Pomerantz, I think  
10 accurately and without contradiction pointed out earlier, the  
11 exculpation clause applies specifically to the debtor and to  
12 negligence claims. And that's not a matter that's at all  
13 subject to appeal.

14 So I think just to add to the arguments that we have  
15 in our papers, which I adopt and do not abandon for any  
16 purpose, I would add to the argument on negligence, that it's  
17 now precluded, as a result of the plan becoming effective.

18 The fiduciary duty count suffers from numerous defects. I  
19 just want to point out a couple of them. They don't respond to  
20 the argument under Corwin, that under the Advisor's Act, there  
21 is no private right of action to sue for damages arising from a  
22 breach of fiduciary duty. This claim rears its head in  
23 virtually every single complaint. They've never addressed  
24 Corwin. Corwin is binding on this Court, and it is unambiguous  
25 that there is no private right of action to sue for damages for

1 breach of fiduciary duty under the Advisor's Act.

2           They ignore Goldstein. Goldstein is not from the  
3 Fifth Circuit, but it's very persuasive authority that advisors  
4 do not owe fiduciary duties to their individual investors.  
5 Instead, they owe fiduciary duty to their client. Their client  
6 is the entity with whom they're in contractual privity. And so  
7 in this case, there's no fiduciary duty there, either.

8           The breach of contract claim. Again I just -- I  
9 would just say quickly, Your Honor, it's barred under judicial  
10 estoppel. Even if it wasn't, it's clear based on Mr. James'  
11 analysis and admission that the debtor's, or the reorganized  
12 debtor's interpretation of 6.2 is accurate. And you know, I  
13 said this in the beginning. Now let me tie it in a bow because  
14 the breach of contract claim, and the tortuous interference  
15 claim are both tied to the same thing. And that is the  
16 assertion that the Plaintiffs had a right under the membership  
17 agreement, a right of first refusal.

18           And they basically say that the debtor was playing  
19 games. That they shouldn't be able to get through 6.2 by  
20 assigning it to an affiliate. And that's where I go back, Your  
21 Honor, and just remind the Court that the debtor told the whole  
22 world exactly what they were doing in their motion. And their  
23 objections, Mr. Dondero and the Trusts both acknowledge to the  
24 whole world that they understood exactly what was happening.

25           In fact, their concern was not that it was going to

1 the debtor, but that it might be going to an affiliate outside  
2 of the bankruptcy court's jurisdiction. And for them to now  
3 say, having taken all of those positions -- talk about  
4 inconsistent positions. They should be barred from saying  
5 today, that the use of an affiliate to effectuate the  
6 transaction was wrongful, because they actually told the Court  
7 that they needed to -- that the Court needed to make sure that  
8 it had jurisdiction over the very entity they now say somehow  
9 shouldn't have been allowed to get the asset.

10           It's a bit much. So that takes care of the tortuous  
11 interference.

12           The RICO claim, Your Honor, again is a motion.  
13 There's so many different aspects to it. But I don't think the  
14 Court needs to get past the Supreme Court holdings in HJ, Inc.  
15 Again, just simply ignored by the Plaintiffs in their  
16 opposition to the motion to dismiss. In HJ, Inc., the Court --  
17 the Supreme Court did an exhaustive analysis to try to  
18 determine and ultimately did determine, what a pattern of  
19 racketeering activity meant. And the Supreme Court came to the  
20 following formulation. That it had to have two or more  
21 predicate related offenses that amounted to a threat of  
22 continued criminal activities.

23           You know, the notion here is that the debtor and Mr.  
24 Seery engaged in insider trading. We've already -- I've  
25 already mentioned that according to the complaint, which the



1 Court can take as true. Mr. Dondero, himself, was the tippee.  
2 But be that as it may, they don't come close to meeting the  
3 very high standards set forth by the Supreme Court in HJ, Inc.  
4 to show that whatever conduct Mr. Seery and the debtor engaged  
5 in, and if you take the allegations as true, in not telling  
6 what the fair value of the asset was, that that doesn't amount  
7 to a hill of beans for purposes of RICO. That you don't have  
8 any, I think predicate acts. I think here's the Court,  
9 predicate acts extending over a few weeks or months,  
10 threatening no future criminal conduct, do not meet RICO  
11 pleading grounds. Right.

12 Security fraud claims cannot be predicate acts for  
13 purposes of RICO. That is also clear. And that is really, I  
14 mean they say mail, wire and fraud. But what's really at heart  
15 is the 10(b)(5). Okay, it's the 10(b)(5) claim. Again, Mr.  
16 Seery being -- I mean Mr. Dondero being the tippee. But those  
17 are just some of the reasons.

18 None of, you know, that the RICO claim fails. You  
19 know, I'll otherwise rely on the papers, unless the Court has  
20 specific questions as to any of the other pieces of the motion  
21 to dismiss the RICO claim, or any other aspect of the  
22 Defendants' motion. I think this is clear. I think we win, no  
23 matter how you slice it. It's just wrong. It's just wrong.

24 This Court will never, ever have a final order if Mr.  
25 Dondero is able to engineer complaints such as this, which seek

1 to assert claims that absolutely positively could have and  
2 should have been brought at the time the debtor made its  
3 motion.

4 Unless the Court has any questions, I have nothing  
5 further.

6 THE COURT: I do not. All right.

7 Mr. Sbaiti, I'm going to let you have as much time as  
8 Mr. Morris. He took 55 minutes. As I mentioned, I have a hard  
9 stop at 12:00 to do a swearing in ceremony. So if you're not  
10 finished in 40 minutes, then I'm going to have to take a break  
11 and come back and let you finish. All right?

12 MR. SBAITI: Thank you, Your Honor. Although I don't  
13 think I'm going to be much longer than 35-ish minutes.

14 THE COURT: Okay.

15 MR. SBAITI: if not less.

16 THE COURT: Okay.

17 MR. SBAITI: I think you'll be able to be done by --  
18 we'll be able to be done by noon.

19 THE COURT: All right. Thank you.

20 MR. SBAITI: Thank you, Your Honor. Your Honor, may I  
21 share my screen?

22 THE COURT: You may.

23 MR. SBAITI: Thank you, Your Honor. Do you see my  
24 Power Point, Your Honor?

25 THE COURT: I do.

1 MR. SBAITI: Thank you, Your Honor. I don't know  
2 what which one you see. Is it the --

3 THE COURT: I see presentation.

4 MR. SBAITI: With the full page?

5 THE COURT: Yes, uh-huh.

6 MR. SBAITI: Okay, yeah, great. I just want to make  
7 sure we're on the right page. Thank you, Your Honor. So Your  
8 Honor, the defendant debtor is a registered investment advisor.  
9 And it all begins with that. And this where the distinctions  
10 between what happened in the 9019 and I'll get to the elements  
11 of res judicata through argument.

12 But the first thing that has to be identified is that  
13 the Defendant is a registered investment advisor. The  
14 objection filed by Holdco back during the 9019 was an objection  
15 against HarbourVest selling its interest by filing the right of  
16 first refusal. It did not deal with the investment advisor  
17 feature of Highland's relationship. And I'll get to why the  
18 9019 doesn't preclude these arguments today.

19 This is essentially the structure. Highland was the  
20 investment advisor of HCLOF, and Holdco is an investor in  
21 HCLOF. And so Highland would owe a fiduciary duty under the  
22 Advisor's Act against -- to CLO Holdco.

23 Highland also had a direct advisor relationship with  
24 the DAF. And so under the Investment Advisor's Act, it owed  
25 fiduciary duties to both of those entities. The law governing

1 registered investment advisors is that it's a federally  
2 recognized and defined fiduciary duties. The fiduciary duty to  
3 there's a fiduciary duty to affirmatively keep the advisee  
4 informed and the fiduciary duty not to self-deal, i.e., not to  
5 trade ahead of an advisee and opportunity that an advisee would  
6 want or expect and without the advisee's expressed informed  
7 consent.

8           This is a federally recognized and defined fiduciary  
9 duty and it's actionable under state fiduciary duty laws.  
10 While Mr. Morris ended his argument by saying we didn't deal  
11 with their case law saying that there's no private right of  
12 action under the Advisor's Act, the fact of the matter is that  
13 Judge Boyle, about ten years ago, found that a state -- the  
14 breach of fiduciary duty claim can be predicated on breaches of  
15 federally imposed fiduciary duties under the Advisor's Act.  
16 And that's what Douglass v. Beakley held. And that's actually  
17 what we cited in our response. So I'm not sure why he would  
18 argue that we haven't addressed the issue of where does this  
19 private right of action come from.

20           Federal Law supplies the rules of the relationship  
21 and State Law provides the cause of action for those breaches.  
22 Now the scope of that has been expounded upon by many cases.  
23 The Fifth Circuit held in Laird, as a fiduciary, the standard  
24 of care to which an investment advisor must adhere imposes an  
25 affirmative duty of utmost good faith and full and fair

1 disclosure to all material facts, as well as an affirmative  
2 obligation to employ reasonable care to avoid misleading his  
3 clients.

4           The word "affirmative" there is important because it  
5 means the investment advisor is not supposed to wait to be  
6 asked. The investment advisor as an affirmative duty to  
7 proactively provide the information to the client.

8           The next standard comes from the SEC. We call it the  
9 SEC interpretation letter. It's a release that came out in  
10 2019. And to meet it's duty of loyalty, an advisor must make  
11 full and fair disclosure to its clients of all material facts  
12 relating to the advisor relationship. Material facts relating  
13 to the advisor relationship include the capacity at which the  
14 firm is acting with respect to the advice provided.

15           The SEC had another release in 2000 -- or excuse me,  
16 in that same release, the SEC said the duty of loyalty requires  
17 that an advisor not subordinate its clients interests to its  
18 own. In other word, an investment advisor must not place its  
19 own interest ahead of its clients' interests. An advisor has a  
20 duty to act in the client's best interest, not its own.

21           The SEC general instruction three to part 2 of Form  
22 ADV, that every investment advisor has to pull out. And this  
23 is cited in our papers. As a fiduciary, you must also seek to  
24 avoid conflicts of interest with your clients, and at a  
25 minimum, make full disclosure of all material conflicts of

1 interest between you and your clients that could affect the  
2 advisor relationship. This obligation requires that you provide  
3 the client with sufficiently specific facts, so that the client  
4 is able to understand the conflicts of interest you have, and  
5 the business practices in which you engage, and can give  
6 informed consent to such conflicts or practices or reject them.

7 And, finally, the Third Circuit in Belmont said:

8 "Under the best interest test, an advisor may benefit  
9 from a transaction recommended to a client if, and  
10 only if, that benefit, and all related details of the  
11 transaction are fully disclosed."

12 These fiduciary duties are unwaivable by the advisor.  
13 Any condition, stipulation or provision binding any person to  
14 waive compliance with any provision of this subchapter, or with  
15 any rule, regulation or order thereunder shall be void.

16 So the lawsuit does not allege that the HarbourVest  
17 settlement should be undone or unwound. I'd like to move to  
18 that point. Mr. Morris says well, you have to unwind half of  
19 the settlement. Maybe HarbourVest doesn't have to give back  
20 what it got, but Highland would still be saddled with the cost  
21 of the settlement, but not with the benefit of the settlement.

22 Well, actually that's not true. There's two points  
23 that we would make on that. Number one, our suit is a suit for  
24 damages. In other words, the suit would be a suit for money  
25 damages, based on the difference between the value of the asset

1 and what HarbourVest or what the actual value of the asset that  
2 was represented, \$22.5 million. So the second point, though,  
3 is that even under a situation where CLO or Holdco or the DAF,  
4 or even HCLOF were to purchase the HarbourVest suit, the  
5 expectation would obviously be that they'd pay the \$22.5  
6 million that Highland paid for it.

7           So Highland is -- so it's not unwinding, and there's  
8 no saddling Highland with a burden that they didn't otherwise  
9 have, I think that's a misrepresentation. But we're not  
10 seeking to unwind the lawsuit -- or excuse me, unwind the  
11 settlement.

12           Now Mr. Morris is correct, the representation of  
13 value by Mr. Seery is -- is one of the main points here. And  
14 the representation was that the value of the entire asset. Not  
15 just the shares of MGM, but the value of the entire asset was  
16 \$22.5 million. So in other word, nearly half of HCLOF was  
17 represented to be worth \$22.5 million. It was argued by  
18 counsel on Page 14 of the January 14th transcript, and then on  
19 Page 112 of that transcript, Mr. Seery specifically says the  
20 current value is right around \$22.5 million.

21           Now that was also in some of the filing papers and  
22 Mr. Morris put up the evidence to Your Honor that Mr. Pugatch,  
23 on behalf of HarbourVest also parroted that number. But  
24 there's not any evidence today about where that number came  
25 from, or whether he was simply relying on Highland's

1 representation of that value.

2           Now as a general rule, in these 12(B)(6) motions, as  
3 I said before, we don't look at the evidence because the whole  
4 point of discovery is to find out what's behind a lot of the  
5 evidence. That's been quoted. The amount of evidence that  
6 went into the 9019 motion as not necessarily full-blown  
7 discovery.

8           I understand Mr. Morris saying well, they could have  
9 asked the question. But as I just showed you, they shouldn't  
10 have to ask the question. There should be fair and full  
11 disclosure of all the material facts. And if it turns out,  
12 which we believe it is true, that by January, the value of  
13 HCLOF was twice what it was represented, or the HarbourVest  
14 portion of HCLOF was twice as to what it was represented,  
15 that's a material omission that Highland had an affirmative  
16 duty to not misrepresent. Irrespective of the questions being  
17 asked.

18           The DAF found out later on that the representation of  
19 the value wasn't true. Now Mr. Morris talked for a very long  
20 time about all the opportunities that somebody, Mr. Dondero,  
21 somebody other than CLO Holdco. In addition to CLO Holdco,  
22 could have asked the magic question to find out whether or not  
23 they were telling the truth. But that runs right in the face  
24 of the standards set forth by the SEC and by the Courts as to  
25 the affirmative obligation of an advisor to disclose all the



1 material benefits that they're going to get as part of a trade.  
2 The idea being that when you're a registered investment advisor  
3 and you want to engage in a transaction, you make a full  
4 disclosure and say this is the transaction. It's worth 41, but  
5 I'm paying 22-1/2. But here's why I'd like to be able to do  
6 it. And then that's the discussion that happens.

7           That clearly didn't happen here. And when it turned  
8 out that there was this entirely huge upside that they were  
9 gaining the benefit of, and maybe HarbourVest didn't care, that  
10 that was a false statement. Now the reason we don't have a  
11 common law fraud claim, or that we don't necessarily hang our  
12 hat on a fraud claim is we don't have enough evidence as it  
13 stands today, to specifically say that Mr. Seery intentionally  
14 misrepresented that. Although we believe that it was grossly  
15 reckless of him to do so. But we don't really need a fraud  
16 claim with a gross recklessness standard. We have a breach of  
17 fiduciary duty, which basically gets us to the same place.

18           So the timeline we have is September 30th was the  
19 last valuation of HCLOF assets provided by HCMLP. And the  
20 value of HCLOF, at that time, or the HarbourVest of that value,  
21 would have been about 22.5 million. So what it appears to be  
22 is that in January or in late December, the valuation that was  
23 being done -- what was being reported, wasn't the current  
24 valuation. It was the valuation as of the end of the third  
25 quarter of 2020.

1           On December 22nd, the motion to approve the  
2 settlement with HarbourVest was filed. HCMLP should have had  
3 or would have had up-to-date valuations of the HCLOF assets,  
4 but didn't necessarily disclose them as being different than  
5 the 22.5 million. On January the 14th, Your Honor, held the  
6 9019 hearing. And then that same day, Your Honor entered the  
7 approval order.

8           And finally, in March, the DAF learns the true value  
9 of HLOF assets as of January 2021 and starts to look into it.  
10 Now Mr. Morris makes much of the fact that well, Mr. Dondero at  
11 least knew that he had tipped them off, Mr. Seery. And if you  
12 actually read Paragraph 127, you'll see specifically what it's  
13 purported that he said. He said stop trading in the MGM  
14 assets, because MGM might be in play. So you can't trade  
15 because I'm an advisor, Mr. Dondero's an insider, he's the  
16 tipper, not the tippee. Mr. Seery becomes the tippee under  
17 that theory of the case, and he has to, and is required to,  
18 because of their affiliation at the time, he's required to  
19 cease trading. And that was the purpose of saying that.

20           The collateral issue that we point is that he at the  
21 very least knew about that, and that should have caused him to  
22 revalue, if he hadn't done so at the time. Not that, knowing  
23 that alone is sufficient to know what the value of HCLOF  
24 actually was on that date. That's a complete misrepresentation  
25 of the point and purpose of that allegation.

1           And as Your Honor knows, under 12(B)(6)  
2 jurisprudence, the way this is supposed to go is we get the  
3 benefit of every inference based upon the allegations, not the  
4 movant. So the first violation is that the debtor as an IRA  
5 failed to affirmatively disclose the true current valuation of  
6 HCLOF and failed to keep the DAF and CLO Holdco reasonably  
7 informed of the value of the assets.

8           And the debtor as an IRA, failed to obtain CLO  
9 Holdco's with the DAF's informed consent before it traded in  
10 the asset, because it didn't have all of the information. The  
11 typical remedy for breach of fiduciary duty is typically  
12 damages for any loss suffered by the Plaintiff as a result of  
13 the breach. I don't think there's a debate there.

14           So now we get to Mr. Morris' key argument. His key  
15 argument is that we should be talking about res judicata. The  
16 elements of res judicata and I think we agree is you have to  
17 have identical parties in the action; the prior judgment was  
18 rendered by a Court of competent jurisdiction; the final  
19 judgment was final on the merits, and the cases involved the  
20 same causes of action or the same transaction and nexus of  
21 facts.

22           Now I'm going to skip to three, because I think  
23 that's one of the key points that we disagree with them on.  
24 There is no case, Your Honor, that we could find, and no case  
25 that I read them citing that says an order on an 9019 has

1 preclusive effect under res judicata under an objector to the  
2 settlement. We looked. We looked in the Fifth Circuit. We  
3 looked outside of the Fifth Circuit. No District Court, no  
4 Fifth Circuit Court of Appeals' opinion we could find held that  
5 a 9019 order has res judicata effect on an objector's  
6 objection. And I think the reason is pretty simple. Is it  
7 doesn't.

8           Because the Plaintiff's claims, here our claims  
9 hadn't even accrued. We have a four year statute of  
10 limitations, but I think more importantly is that, as the Fifth  
11 Circuit said, the 9019 motion grants the Court discretion.  
12 It's not supposed to be a mini trial. The Court can approve a  
13 settlement over even the valid objection of an objector. It's  
14 not a trial on the merits. It's not supposed to be a trial on  
15 the merits. It's not supposed to be a disposition on the  
16 merits.

17           So the fact that Your Honor could have approved the  
18 9019 settlement with HarbourVest, even if we had a valid  
19 objection, means this isn't a disposition on the merits, as res  
20 judicata would envision. It wasn't a trial on the merits, even  
21 though it was withdrawn.

22           The other elements that we would point out to is that  
23 neither the DAV nor Holdco were parties to the dispute between  
24 HarbourVest and Highland. And this keys off of the issue that  
25 I just raised. The cases that are cited by the debtor to Your

1 Honor all have to do with where one of the settling parties is  
2 trying to undo the settlement for some collateral reason. And  
3 the Courts have held, no, that's res judicata, because you were  
4 a party to the action. HarbourVest brought the claims against  
5 Highland. Highland settled those claims.

6 CLO Holdco was collateral to that settlement, it's  
7 not a -- excuse me, collateral to that dispute. It's not a  
8 party to that dispute. Its claims weren't being resolved by  
9 the settlement. And while you have a notice to all creditors  
10 and those objections can be raised, there was not inherently  
11 any manner for resolving those objections on their own merits.  
12 Only -- it was only resolved in so far as deciding whether or  
13 not the settlement was in the best interest of the debtor,  
14 which Your Honor decided, and we don't challenge that. But we  
15 do argue that it caused damages and the debtor shouldn't get  
16 off for those damages.

17 The fourth element is that the --

18 THE COURT: Just for the record, the standard in a  
19 9019 context is not best interest of the debtor, right?

20 MR. SBAITI: Your Honor, I mean that's what the rule  
21 says and Your Honor's order --

22 THE COURT: That is not what the rule says. The rule  
23 is actually very sparsely worded and then we have Fifth Circuit  
24 case law and U.S. Supreme Court law that talk about what the  
25 standard is.

1 MR. SBAITI: Yes, Your Honor. And there are five --

2 THE COURT: And it's -- is it fair?

3 MR. SBAITI: There are five elements.

4 THE COURT: Is it fair and equitable and in the best  
5 interest of the estate given a long list --

6 MR. SBAITI: Correct, Your Honor. And I didn't mean  
7 to --

8 THE COURT: -- of considerations that the Court is  
9 supposed to consider that "bear on the wisdom of the  
10 settlement." Okay. So it's actually much more involved, is my  
11 point, than is it in the best interest of the estate. Is it in  
12 the best interest of the estate and fair and equitable given  
13 all factors bearing on the wisdom of the compromise? And then  
14 we have a long laundry list of things the Court should consider  
15 as part of that analysis.

16 MR. SBAITI: That's a --

17 THE COURT: I just bring that up because if I'm still  
18 -- my brain is still stuck five minutes ago on your comment  
19 that you can't find any case saying that an order approving a  
20 9019 compromise has res judicata effect on creditors. And it's  
21 -- let me just say it's shocking to me that someone would argue  
22 otherwise. Bankruptcy is a collective proceeding --

23 MR. SBAITI: Your Honor --

24 THE COURT: -- where creditors can weigh in and  
25 object and raise whatever arguments they think the Court should

1 consider that bear on the wisdom of the compromise. And the  
2 Fifth Circuit in Foster Mortgage has said the Court should give  
3 great deference to the views of the creditors, the paramount  
4 interest of creditors.

5           So it's a really sort of shocking proposition that  
6 the order approving a 9019 compromise wouldn't have res  
7 judicata effect on all parties and interests who got notice of  
8 that. So if you have any elaboration on that, I'd like to hear  
9 it.

10           MR. SBAITI: Your Honor, we looked at the Fifth  
11 Circuit cases that they cited, which I believe included that  
12 case. And even in that case, the point that we made in our  
13 papers and the point I was trying to arrive at is that among  
14 the factors, yes, the Court should give great deference to the  
15 creditors. But among the factors is not that the objections  
16 lack merit or are meritless or that they wouldn't be winnable  
17 if they were simply standalone claims.

18           And that was really the only point I was trying to  
19 make is that Your Honor has discretion. Granted it's -- as you  
20 mentioned, it's not unfettered discretion. It's bounded by  
21 standards and there are -- there is, I know, about five  
22 standards Your Honor has to consider or the Court has to  
23 consider. But among those, that laundry list of standards, is  
24 not that the Court finds that any objection lacks merit. And  
25 that was really the only point I was making.

1           And in terms of the case law, we looked at the Fifth  
2 Circuit. We looked, frankly, outside the Fifth Circuit as much  
3 as we could, and because this is actually not an easy one to  
4 research, as it turned out, despite the language. And we also  
5 looked for district court opinions in the Fifth Circuit to see  
6 did any district court or did any court of appeals give this  
7 type of approval to the standard that a 9019 order has res  
8 judicata effect on a claim raised in an objection by a  
9 creditor.

10           And we couldn't find any and I read all the cases  
11 that Mr. Morris cited in his papers, and they didn't cite one  
12 that explicitly said that. They tried to drive at it through  
13 insinuation that, well, if the Court has to give great  
14 deference or if the Court has to take into account the  
15 underlying facts and the fact that there is discovery, surely  
16 that must mean this is akin to the trial on the merits. And I  
17 think that's where we simply disagree in good faith. I'm not  
18 ascribing any bad intention. But we disagree that that's where  
19 the law goes.

20           Res judicata is not -- while it's supposed to stop  
21 the relitigation of issues, it is predicated on there having  
22 been actual litigation of those issues. And when HarbourVest  
23 and Highland settle a case and my clients show up with an  
24 objection, even though they withdraw an objection, that, in our  
25 opinion -- and we're asking the Court to see it our way -- is



1 not trial on the merits. It's not a disposition on the merits  
2 of the objection in and of itself. Some objections we can --

3 THE COURT: But the context matters. In the context  
4 of a 9019 compromise, the hearing is about look at the bonafide  
5 ease of the settlement. And it's either fair and equitable and  
6 in the best interest of the estate or not. And an objector can  
7 say this is a terrible settlement and here's why it's a  
8 terrible settlement and let me cross-examine the movant and let  
9 me put on my own witness that will enlighten the Court as to  
10 why this is a terrible settlement, why I say terrible, why it's  
11 not fair and equitable.

12 That's your chance to convince the Court, don't  
13 approve this settlement because there are, you know, 14  
14 problems with it. And if you convince the Court, then you  
15 convince the Court and it's not approved. If you don't, you  
16 appeal, and we do have an appeal of the settlement order.

17 So, again, I'm not understanding the "res judicata  
18 doesn't apply" argument.

19 MR. SBAITI: Your Honor, if I could riff on two  
20 points based upon what you just said, if I could address those.

21 The first is there are clearly two kinds of  
22 objections that get -- at least two kinds of objections that  
23 get raised in these 9019 approval hearings. The two that you  
24 heard recounted, some were this is bad for the estate. There's  
25 reasons why we don't think the estate will benefit from it and

1 it will be harmed from it.

2           And those types of objections, which I believe mostly  
3 comprise the objections that Mr. Morris was talking about  
4 because they are concerns for the estate. And so creditors who  
5 want to get money from the estate are concerned that the  
6 settlement will not enter (phonetic) to the benefit of the  
7 estate, and therefore, not enter to their benefit as creditors.  
8 That's number one.

9           But those don't adhere in a lawsuit. Those aren't  
10 claims for damages that the settlement is going to create for  
11 the person objection or for the party objecting. There's a  
12 whole separate set of objections similar to the ones HCLCO  
13 Holdco raised where that what inheres in the objection is this  
14 is actually going to cause us some kind of damage.

15           And so, the factors though, don't require the Court  
16 in those second set of instances to say, well, you know what?  
17 Not only do I think you're wrong, but I think that your  
18 lawsuit, the underlying causes of action that give rise to this  
19 objection, have no merit on their own face, that the discovery  
20 is not there to support them, that a jury is not going to find  
21 there. I am now the trier or the Court is now the trier of  
22 fact on the merits of the underlying causes of action that  
23 animate the objection.

24           And that's where I believe we're diverging with the  
25 debtor on the law. It goes too far to say that a 9019 hearing

1 where the Court in the end has discretion to approve it, even  
2 over a meritorious objection by any party, regardless of what  
3 bucket of objections the objection falls into. It goes -- our  
4 argument today, Your Honor, and we're asking the Court to see  
5 it our way, is that that would go too far. That an actual  
6 cause of action shouldn't be eradicated simply because of the  
7 9019 process because, as you pointed out, the Court does have  
8 to go through a litany of factors.

9           And if the Court determines that it's fair and it's  
10 more equitable to overrule the objection, the Court has that  
11 discretion. And we're not here to unwind that discretion.

12           But the settlement process did violate certain  
13 obligations and did cause my client damages. And that's what  
14 we're saying isn't precluded.

15           THE COURT: Okay.

16           MR. SBAITI: The fourth element, Your Honor, which I  
17 guess in many ways maps on to the argument I just made to Your  
18 Honor is that the cases, the underlying cases, do not involve  
19 the same claims. Plaintiffs' claims arise from the settlement  
20 process itself and not from the underlying issues being settled  
21 between HarbourVest and Highland. So that's why we think at  
22 least three of the four elements aren't met here. And we'll  
23 reserve on the papers, you know, whether jurisdiction was  
24 applicable because I think that's probably water under the  
25 bridge at this point in the oral argument.

1           Now, Mr. Morris attacks the case that we cite,  
2 Applewood Chair vs. Three Rivers Planning. And he argues that,  
3 well, this is not applicable. And the argument he made however  
4 was he put it in the context of, well, the parties there, the  
5 issue was you had guarantors who were not parties in their  
6 capacity as guarantors. But that's not actually what the Court  
7 held.

8           The Court didn't say that the release wasn't  
9 applicable to them because they didn't appear as parties in  
10 their guarantee capacities. They -- the Court held that, well,  
11 the specific discharge language doesn't enumerate those  
12 specific guarantees, and so therefore it's not released.

13           And where this dovetails, we believe, as closely as  
14 we can, this isn't a 9019 case. This is a final confirmed  
15 plan. But where it dovetails with what our argument is, is  
16 that the Court there as well was essentially saying the  
17 underlying causes of action weren't really presented to us, so  
18 we're not -- we -- and the confirmation of the plan didn't  
19 involve disposing of them, so we're not going to say that they  
20 are precluded. And we think that that's as close an analogy as  
21 we've found in the Fifth Circuit to the issues here today.

22           So I would say, Your Honor, that we believe that  
23 dispenses with the res judicata argument. The judicial  
24 estoppel argument, they conflate the language. I'll go back to  
25 this for a second. They conflate the language of judicial

1 estoppel on the success of the claim. None of the cases they  
2 cite on judicial estoppel involved where a party took a  
3 position, withdrew their argument, and then the Court moved on.

4           Mr. Morris tries to convert a judicial estoppel claim  
5 into a judicial reliance claim, which is not the purpose of the  
6 doctrine and is not the doctrine at all. The doctrine is that  
7 if you take a successful position in one court, you can't take  
8 the opposite position in another court. CLO Holdco didn't take  
9 a successful position in one court and then change its position  
10 later on. In fact, its positions, as Mr. Morris stated, are  
11 remarkably similar. They're not inconsistent, which is the  
12 problem with their judicial estoppel argument. And we -- I  
13 think we fairly briefed that in our papers and we'll otherwise  
14 rest on the papers.

15           To deal -- to address the actual claims, again, I  
16 come back to the idea of a fiduciary duty claim, which is our  
17 lead claim. And to be clear, it's a state claim predicated on  
18 the violation of federally imposed fiduciary duties.

19           And I'm looking for a clock to make sure I'm not  
20 abusing Your Honor's time, and I don't have one right in front  
21 of me because my screen -- my screen is up.

22           Your Honor, the Douglass v. Beakley case is, like I  
23 said, is Judge Boyle's case. It specifically provides a cause  
24 of action based upon violations of the Advisers Act. We also  
25 cite about four or five other cases in footnote 8 of our

1 response from other circuits, including the Third Circuit, the  
2 Belton case that I referred to earlier, all of which held that,  
3 yes, a state fiduciary duty claim can be predicated on breaches  
4 of a federal Advisers Act violation.

5           The other point that they make on the fiduciary duty  
6 claim is they argue HCMLP doesn't owe fiduciary duties to CLO  
7 Holdco. And the cases they cite, Your Honor, we dealt with in  
8 the papers why they were distinguishable, because in those  
9 cases they were dealing with the fact that there wasn't any  
10 harm or any direct relationship. But what they ignore is the  
11 actual language of the Advisers Act, which is important.

12           Well, first of all, Mr. Seery admitted in his own  
13 testimony during the approval hearing in July of 2019 that he  
14 says, "We owe." He says, "There are third party investors in  
15 the fund -- in these funds who have no relation whatsoever to  
16 Highland, and we owe them a fiduciary duty both to manage their  
17 assets prudently, but also to seek to maximize value." I think  
18 Mr. Seery was absolutely correct when he said that. Highland  
19 owes fiduciary duties to the investors in the funds that  
20 Highland manages. The core of our case is that Highland is  
21 using or abusing the assets of the funds it managed in HCLOF  
22 for its own enrichment, which is a classic breach of fiduciary  
23 duty case under the Advisers Act.

24           Now -- excuse me. The other point that I would say,  
25 Your Honor, is that there is a statutory basis for us to argue

1 a breach of fiduciary duty. Excuse me. I didn't mean to stop  
2 sharing. I apologize.

3 Are you back with me, Your Honor, on my --

4 THE COURT: Yes.

5 MR. SBAITI: -- PowerPoint?

6 THE COURT: Yes.

7 MR. SBAITI: Sorry about that, Your Honor. I just  
8 hit the wrong thing. I'm not very technologically savvy. Here  
9 we go.

10 So Holdco is an investor in HCLOF, which is a pooled  
11 investment vehicle. A pooled investment vehicle under the case  
12 law we cite is simply defined as an investment vehicle that  
13 doesn't publicly solicit investors and has few than 100  
14 investors. Highland advises it. That's the same holding in  
15 TransAmerica Mortgage, by the way, which we also cite.

16 15 U.S. C. Section 80(b)(6) establishes the federal  
17 fiduciary standards to govern the conduct of registered  
18 investment advisers. That's also the TransAmerica case. 15  
19 U.S.C. Section 80(b)(6)(D) delegated to the SEC the power to  
20 decide the scope of those duties that are imposed under the  
21 statute. And so the SEC enacted 17 C.F.R. Section 275.206(4)-  
22 8.

23 And it expressly states, and we cite the statute or  
24 the regular in full in our papers, that the fiduciary duties  
25 are owed to investors in the pooled investment vehicles. It

1 specifically says that. It talks about two different duties  
2 owed and they're owed to the investors in the vehicles, which  
3 means they're owed to Holdco as an investor in HCLOF, which is  
4 the vehicle that Highland manages.

5 It's black and white in the regulation. And we  
6 haven't seen any response. There was no response of that in  
7 the reply that was filed, Your Honor. And so the argument that  
8 there's not a fiduciary duty owed to Holdco because it's merely  
9 an investor in HCLOF simply doesn't comport with the law.

10 And finally, the petition lays out the basis for our  
11 claims including the applicable federal and state law.  
12 Plaintiffs' response lays out why the legal arguments aren't  
13 opposite at the 12(b)(6) stage and Rule 9(b) is met where  
14 necessary under the federal claim. And I'm trying to unshare  
15 so that I can get back to regular argument.

16 I'd like to briefly address Mr. Morris' argument,  
17 Your Honor. Your Honor, I re-raise my argument that I made  
18 before, which is that a 12(b)(6) motion and hearing is not the  
19 appropriate time for all the evidence that was poured in here.  
20 And I understand Mr. Morris' contention, well, it's really hard  
21 to ignore all the history of this case. But a lot of that  
22 history really boils down to things that were actually admitted  
23 in the complaint. The complaint recognized there was a 9019.  
24 But what Mr. Morris wants to do is go beyond that and to go to  
25 what people said and what they must have meant. What Mr.



1 Dondero must have meant in his objection, what Dugaboy must  
2 have meant by their objection, what Mr. Pugatch must have meant  
3 by his testimony.

4 All of that is highly improper at this stage of the  
5 proceeding, Your Honor. It's outside of the 12(b)(6) confines.  
6 It's outside the four corners of the complaint. And we object  
7 to all of that evidence being considered.

8 THE COURT: Let me --

9 MR. SBAITI: The question we --

10 THE COURT: Let me ask you about that procedural  
11 point.

12 MR. SBAITI: Yes, Your Honor.

13 THE COURT: As we know, 12(d) provides that if  
14 matters outside the pleadings are presented to and not excluded  
15 by the Court in a 12(b)(6) motion, the motion must be treated  
16 as one for a summary judgment under Rule 56 and all parties  
17 must be given a reasonable opportunity to present all the  
18 material that is pertinent to the motion.

19 Are you -- what are you arguing? That I should treat  
20 it as a motion for summary judgment and give you more time to  
21 present other materials? I mean, you both presented an  
22 appendix, okay. And I'm telling you we're seeing this more and  
23 more, I've noticed. People are going beyond the four corners  
24 of a motion to dismiss and attaching things. And there's some,  
25 you know, Fifth Circuit authority that says, well, if what is

1 attached is integral to understanding, you know, an allegation  
2 or whatever in the pleading, you know, there is some discretion  
3 to go outside the four corners.

4           So I'm trying to understand the point you're making  
5 with this. Are you saying I should treat it as a motion for  
6 summary judgment or do these attachments really -- you know, do  
7 I have authority under the Fifth Circuit to consider them as  
8 part of the 12(b)(6) motion or not?

9           MR. SBAITI: Typically, in our experience, Your  
10 Honor, is when a summary or when a 12(b)(6) is going to be  
11 treated as summary judgment under 12(d), the Court says that  
12 and then the parties are given an opportunity, as you said, to  
13 go do some discovery in order to put together the evidence and  
14 materials to then come back and respond as a summary judgment.  
15 We responded to a 12(b)(6) and objected to the evidence. If  
16 the Court wants to treat it as a summary judgment, then we  
17 would ask for an opportunity for -- to conduct discovery in  
18 order to be able to respond as a summary judgment motion, but  
19 we didn't -- because we responded to a 12(b)(6) --

20           THE COURT: You did the same thing though. You did  
21 the same thing in your response. You submitted an appendix of  
22 evidence, if you want to call it evidence. As someone pointed  
23 out, it's stuff from the bankruptcy court record. I don't  
24 think it went beyond what was already in the bankruptcy court.

25           MR. MORRIS: And if I -- can I be heard on this, Your

1 Honor?

2 THE COURT: You can. You can.

3 MR. MORRIS: Just to respond. This is really quite  
4 simple. The motion to dismiss is based on res judicata. Res  
5 judicata necessarily requires a review of what happened in  
6 connection with the prior hearing. There's nothing that we  
7 have identified or put forth in the appendix or on our exhibit  
8 list except for the pleadings in the 9019, the transcripts, the  
9 one deposition transcript, the one trial transcript, the  
10 settlement agreement, the transfer agreement. I'd love to know  
11 what the Court couldn't or shouldn't take judicial notice of.  
12 There is no emails. There is no -- there is no -- there is no  
13 extrinsic evidence, if you will. All of this is either on the  
14 docket or was presented as part of the hearing.

15 THE COURT: Yeah. I'm just trying to ferret --

16 MR. MORRIS: And it's necessary. And it's necessary  
17 for the motion.

18 THE COURT: Yeah. I'm just trying to ferret out the  
19 procedural position that's being asserted here. And I don't  
20 have the case cites off the top of my brain, but there is  
21 authority from at least the Northern District judges, if not  
22 the Fifth Circuit, saying in a 12(b)(6) motion I can take  
23 judicial notice of items in the record. And then, you know,  
24 there -- I know there's Fifth Circuit authority saying I can go  
25 beyond the four corners in a 12(b) context if it's just basic,

1 you know, explaining things that are in allegations. You know,  
2 such as --

3 MR. SBAITI: May I address that, Your Honor?

4 THE COURT: -- such as if a contract is in dispute,  
5 okay. Like there's no way you can have a cause of action under  
6 the contract and here's the contract. So I'm just trying to  
7 nail down your procedural position here.

8 MR. SBAITI: Your Honor, the distinction I was trying  
9 to make that I don't think I put as artfully as I might be able  
10 to put now is in a 12(b)(6) if there's a contract, as you said,  
11 if there's a legal document, a contract and order that's  
12 integral to the case, Your Honor can take judicial notice of  
13 that. Generally, a court can take judicial notice of filings  
14 in a bankruptcy, the fact that they were filed.

15 So the transcripts, which Your Honor can't take  
16 judicial notice of, is the truth of those. And that was what I  
17 was objecting to is it's one thing for him to say an objection  
18 was filed and therefore, because an objection was filed, that  
19 should be it. That was your only chance. I'm not saying Mr.  
20 Morris can't make that argument.

21 But when he goes beyond the fact of the filing or the  
22 fact that there was a transcript or the fact that there was a  
23 deposition and starts to read from the depositions or read from  
24 the filings and say this is what those mean, that goes against  
25 the 12(b)(6) parameters because, number one, now it's

1 substantive evidence and not simply a judicial notice of  
2 something that's right there in front of the Court, i.e.,  
3 something on its own docket. Because those statements and the  
4 interpretation of those statements are subject to credibility  
5 findings. They're subject to clarification. They're subject  
6 to rebuttal. That's the purpose of discovery.

7           And so if Your Honor -- and Mr. Morris is right.  
8 Usually, res judicata involves knowing what happened in the  
9 prior proceedings. So if all he wants to do is rest on the  
10 fact that an objection was filed by CLO Holdco and maybe even  
11 other people, and that should be it and he thinks that's enough  
12 for Your Honor to say res judicata applies, then I don't think  
13 we have a problem. It's when he goes beyond that and says,  
14 Your Honor, these people must have known and this is what they  
15 meant by their argument, that's what I'm asking Your Honor not  
16 to consider. And if Mr. Morris wants you to consider that,  
17 that's a summary judgment motion and we should have the  
18 opportunity to do discovery at the very least into the issues  
19 he has now raised as supporting his res judicata defense which  
20 he has the burden of proof on.

21           MR. MORRIS: Your Honor, this is one of the strangest  
22 arguments I have ever heard. I'm allowed to offer the Court  
23 and the Court is allowed to accept the documents, but I'm not  
24 allowed to read them. I'm not allowed to make arguments. I  
25 don't understand what that even means. If it were a contract,

1 I would be allowed to put the contract in front of Your Honor,  
2 but I wouldn't be able to argue why the contract doesn't say  
3 what the Plaintiff says. I don't get it.

4 THE COURT: Okay.

5 MR. MORRIS: That's --

6 THE COURT: Just I've heard enough on this. I don't  
7 think we have moved into Rule 12(e), that realm of me needing  
8 to treat this as a motion for summary judgment. I think the  
9 so-called evidence, the appendix that was attached to the  
10 motion as well as the appendix that was attached to Plaintiffs'  
11 response, it's stuff that I can take judicial notice of that's  
12 in the record of this Court and I can look at it. You know, it  
13 is what it is, the record of this Court.

14 All right. So I have nine people waiting in  
15 chambers. I'm trying to figure out should I take a break now  
16 or are you fairly close to wrapping up. Either answer is fine,  
17 Mr. Sbaiti. I just need to figure out who I make wait here.

18 MR. SBAITI: I have -- oh, I'm sorry. I didn't mean  
19 to interrupt you, Your Honor. I was just going to say I have  
20 five minutes left, but I know Mr. Morris probably wants to come  
21 back. So if you want to break now and we can come back at  
22 whenever the Court wants us to, we can do so.

23 THE COURT: All right. Why don't you make your final  
24 five minutes and then we'll take a break?

25 MR. SBAITI: Okay. Thank you, Your Honor.

1 I just wanted to address some of the arguments that  
2 Mr. Morris raised in his argument. The first thing is -- and I  
3 addressed this in part -- but Mr. Morris makes a big deal about  
4 paragraph 127 of the complaint and essentially suggests that  
5 we're the -- or that Mr. Dondero is the perpetrator of a  
6 nefarious scheme. Whereas, what the pleading actually says,  
7 and I again encourage Your Honor to re-read -- to read it  
8 specifically, is that Mr. Dondero warned Mr. Seery not to trade  
9 in the stock and not to make any transactions because the stock  
10 was going to appreciate in value.

11 That has two implications for us, Your Honor. Number  
12 one, it means Mr. Seery was a tippee of insider information,  
13 and number two, it means that Mr. Seery, if he did trade on  
14 that information or if he did pass that information on to  
15 someone else, that is a problem from the Advisers Act  
16 standpoint, which is really the only purpose of saying that.

17 While paragraph 127 also says that that should have  
18 caused Mr. Seery to revalue the NAV of HCLOF, it does not state  
19 and we did not plead that the entire value of HCLOF is tied to  
20 the MGM stock. So the insinuation that that somehow gave us  
21 inside information about what the true value of HCLOF was and  
22 we should have known or that Mr. Dondero should have known is  
23 simply untrue.

24 The other argument Mr. -- that Mr. Morris likes to  
25 harp on is that CLO Holdco withdrew its argument, but he

1 characterizes Mr. Kane's withdrawal testimony -- as he says,  
2 Mr. Kane admitted that CLO Holdco lacked the superior right to  
3 obtain the HarbourVest. If you read the very language that was  
4 highlighted on Mr. Morris' slide, that's not what Mr. Kane  
5 says. Mr. Kane says, "We've gone back to the drawing board.  
6 We've read your reply. And my client has given me permission  
7 to withdraw the argument or withdraw the objection." That's  
8 all he said. There was not an admission that he was wrong.  
9 There was not an admission that they had made a mistake. There  
10 was simply an admission that they decided to withdraw the  
11 objection for whatever reason.

12           Lastly, on the specific claims --

13           THE COURT: That's not an accurate description of the  
14 record. He said he looked at --

15           MR. SBAITI: Your Honor, I was reading it along with  
16 him.

17           THE COURT: -- Guernsey Law. And I don't know if his  
18 words were deep dive.

19           MR. SBAITI: Yeah.

20           THE COURT: But he had looked at the agreements  
21 extensively. That's just not what he said.

22           MR. SBAITI: And he said he was with -- Your Honor,  
23 he said he was withdrawing. He didn't say we were wrong. He  
24 didn't say we don't have a claim. What he said was, "We're  
25 withdrawing the objection."



1 THE COURT: After doing an extensive look at the  
2 agreements in Guernsey Law, okay, so.

3 MR. SBAITI: Sure. But, Your Honor, he might have --  
4 he could just as easily thought we have a chance, but it's not  
5 a good one. And frankly, we'll be here for 20 days and we're  
6 withdrawing it for that reason because we'll live to fight  
7 another day. Your Honor, there's an innumerable number. To  
8 simply say that he admitted that they didn't have a correct  
9 claim, it's just he didn't say that. That's all. That's the  
10 only point I'm making.

11 Your Honor, I don't disagree with the debtor that the  
12 Court's exculpation clause gets rid of the negligence claim  
13 which was obviously filed before the effective date, so that  
14 claim is gone.

15 And I think the last argument that Mr. Morris makes  
16 on the RICO claim is the federal court, the Supreme Court  
17 standard for pleading a RICO claim, that acts that only  
18 continue for a few weeks are not -- don't set out a RICO claim.  
19 Your Honor, in our response to that, we actually submitted an  
20 amended complaint that shows that the type of acts we're  
21 talking about, the pattern of the debtor using its investor  
22 vehicles assets to liquidate is a long pattern and practice  
23 than simply the HarbourVest suit. And so, we move to amend on  
24 that basis to satisfy that pleading defect, which is the main  
25 one that they focused on.

1 That's all I have, Your Honor.

2 THE COURT: All right. Thank you.

3 We're going to take a 15 minute break and come back.

4 I'll ask Mr. Jordan and Mr. Bessette did they have anything  
5 they wanted to say today. I know they joined in the debtor's  
6 motion. And then we'll let Mr. Morris have rebuttal.

7 All right. So we'll be back in 15 minutes.

8 THE CLERK: All rise.

9 MR. MORRIS: Thank you, Your Honor.

10 (Recess at 12:05 p.m./Reconvened at 12:23 p.m.)

11 THE CLERK: All rise.

12 THE COURT: All right. Please be seated.

13 We're back on the record in Charitable DAF v.  
14 Highland Capital. All right. So I promised I was going to go  
15 back to counsel for Highland CLO Funding, Ltd. So Mr. Jordan,  
16 Mr. Bessette, is there anything you wanted to say for oral  
17 argument?

18 MR. JORDAN: Thank you, Your Honor. John Jordan on  
19 behalf of HCLOF.

20 Our points are two procedural points. The first is  
21 as the Court anticipated, in our motion to dismiss filed back  
22 in August, we joined in the motion to dismiss of Highland. And  
23 so to the extent that the Court after deliberation is inclined  
24 to grant that motion, we would ask that as a joining party,  
25 HCLOF be pulled along with that.

1           The second procedural point is that back in our  
2 motion to dismiss, we pointed out that the complaint does not  
3 actually allege anything against HCLOF. In the story, we're  
4 essentially the football and neither Oklahoma nor UT. And we  
5 pointed that out as an additional argument to what you've heard  
6 today. That motion was never responded to. The deadline by  
7 agreement was extended to October 11th. And the lack of  
8 response was, we believe, not inadvertent but simply an  
9 acknowledgment that HCLOF is not a party that anything is being  
10 claimed against.

11           It particularly makes sense since effectively and in  
12 rough numbers, they're half owned by both sides. So for every  
13 dollar that HCLOF spends hanging around the case, the parties  
14 are paying essentially 100 cents collectively. So for that  
15 reason, we would ask, and subject to Mr. Sbaiti's input,  
16 whether the Court would ask us or direct us to upload an order  
17 granting our motion as unopposed. We just feel like we don't  
18 have any role in this case.

19           THE COURT: All right.

20           Mr. Sbaiti, what about that?

21           MR. SBAITI: Your Honor, they were originally added  
22 as a nominal party. And as a nominal party, because of the  
23 potential need to have a derivative action, I think that based  
24 upon Highland's arguments and the arguments that we had, I  
25 don't think the derivative action is necessary for us to

1 maintain on a go-forward basis. And so we don't oppose them  
2 being dismissed.

3 THE COURT: All right. Then I assume, Mr. Morris,  
4 you don't have any problem with this, correct?

5 MR. MORRIS: No, Your Honor.

6 THE COURT: Okay. So I'll look for the parties to  
7 submit an agreed order of dismissal of HCLOF after the hearing.  
8 All right?

9 MR. JORDAN: Thank you, Your Honor.

10 THE COURT: All right. Mr. Morris, you get the last  
11 word.

12 MR. MORRIS: Thank you, Your Honor. I hope to be  
13 relatively brief. I really just want to focus on the arguments  
14 concerning whether or not the order that was entered by this  
15 Court was an order that was entered on the merits.

16 As the Court is well aware, a 9019 motion filed by a  
17 debtor is done so on notice. It is to give all parties in  
18 interest an opportunity to be heard, not just as to whether or  
19 not the debtor meets its burden of proof under Rule 9019 but  
20 whether or not the Court can find, as it must, that the  
21 proposed settlement is in the best interest of the estate.

22 The purpose of -- I mean that is the purpose of the  
23 giving notice so that everybody has a chance to be heard. The  
24 questions that the Court asked, the questions that every  
25 bankruptcy court asks in a 9019 is can the debtor do this deal,

1 should the debtor do this deal, is it in the best interest of  
2 the estate to do this deal.

3 And, you know, the idea that a 9019 order is somehow  
4 res judicata only to the parties to a settlement is just  
5 something that doesn't make any sense to me because it  
6 abrogates so many rules that exist that allows and encourages  
7 and requires parties who have objections to be heard.

8 Mr. Sbaiti's clients filed an objection. They  
9 initiated a contested matter. They obtained rights. They were  
10 litigants. They are litigants in a contested matter where  
11 they're required to tell the Court what objections they have to  
12 the settlement, and they did that.

13 Mr. Sbaiti, you know, told me that I wasn't allowed  
14 to characterize the words that are used in the documents that  
15 have now been admitted by the Court. And, yet, I heard him say  
16 that maybe Mr. Kane (phonetic) really meant to tell Your Honor  
17 that he was withdrawing the claim because he was going to save  
18 it for another day.

19 I'd just ask the Court to look at the transcript. I  
20 don't have to interpret it at all. And I'd ask the Court to  
21 read the words. I can put them back up on the screen, but  
22 they're pretty short. It's at Pages 7 and 8 of the transcript  
23 of what Mr. Kane told you and what you said in response. It's  
24 on the page, not my interpretation, and what the import of that  
25 was.

1 Mr. Sbaiti believes, I guess, if one is allowed to  
2 engage in such conduct without consequence, that one is allowed  
3 to allow to file objections, cause the Court and the litigants  
4 to participate, to give discovery, to write briefs, to do  
5 analyses, withdraw it on the basis of their own good faith  
6 analysis of Guernsey law of the documents and somehow say it's  
7 irrelevant. Not what the law is, not what res judicata is  
8 intended to do.

9 He should have put all of his cards on the table. In  
10 fact, I think that Mr. Kane believed he was putting all of his  
11 cards on the table because that's what he did. He filed a very  
12 comprehensive objection. He asserted a right to the  
13 opportunity that the debtor was proposing to take in the 9019  
14 motion. That's what he was doing. He was objecting on the  
15 basis that he claimed his client had a superior right to this  
16 asset.

17 And he didn't -- like I said earlier, Your Honor, I  
18 don't think he would be permitted, I don't think these claims  
19 would fly today if no objection was filed. But the fact that  
20 there was renders, I think, indisputable that there was a  
21 finding on the merits, right. And the only reason that the  
22 Court didn't rule on Mr. Kane's motion, the only reason the  
23 Court didn't rule on it is because Mr. Kane withdrew it.

24 Is that really the way this process is supposed to  
25 work, that one can tell the Court that after a review of the

1 documents, I'm going to withdraw the objection and then file a  
2 claim for damages three months later with a different client,  
3 with a different control person, with a different lawyer?

4 That's okay under doctrine of res judicata? I don't think so.

5           They had a full and fair opportunity. The fact that  
6 this was somehow -- you know, they're denigrating the fact that  
7 this was a 9019 motion. There's not supposed to be a mini-  
8 trial. Your Honor had discretion as to what to do. Every  
9 court in every bench trial has discretion as to what to do and  
10 whether or not to overrule objections and whether or not to  
11 sustain [sic] objections. That's what judges to.

12           And there's nothing offensive about the fact that it  
13 happened in the context of a 9019 motion. They don't get to  
14 sit on their hands and wait to fight another day. If they  
15 believed that the debtor was exposing itself to liability, and  
16 that's what they actually say in the opposition, that's what I  
17 actually think they say in the complaint, accept it as true,  
18 they believe that the debtor created liability for itself by  
19 rendering -- by entering into this transaction.

20           Shouldn't they have raised their hand and said you  
21 can't do this deal, right? And the only response to that --  
22 they have to that is they had no idea about value. Paragraph  
23 127, Your Honor, Mr. Dondero, the architect of this complaint,  
24 as was proven on June 8th, knew very well about value. And it  
25 doesn't matter that it was only MGM. Your Honor commented on

1 that at the June 8th hearing in a different context. But  
2 everybody knows, right, it is. He sits on the board of MGM.

3 And I'm sorry if I called him a tippee instead of a  
4 tipper. But if this complaint goes forward, we'll dig into  
5 that real deep. But there's no reason it ought to, Your Honor.  
6 This case ought to be dismissed on res judicata grounds. It  
7 should be dismissed on judicial estoppel grounds. And it  
8 should be dismissed for all the reasons that I said in my  
9 argument in my brief.

10 But I do just want to close with one point, and that  
11 is to read from a case called Goldstein, which I think I  
12 alluded to earlier on this issue of whether there's a fiduciary  
13 duty that's owed by an advisor to an investor and a fund:

14 "At best, it is counterintuitive to characterize the  
15 investors in a hedge fund as the clients of the  
16 advisors. The advisor owes fiduciary duties only to  
17 the fund, not to the fund's investors."

18 There's a lot of discussion about fiduciary duties,  
19 Your Honor. But to the extent that they have any basis to  
20 defeat the motion to dismiss on res judicata or collateral  
21 estoppel grounds, we hope and we trust and we know the Court  
22 will review the case law vigorously to test some of the  
23 assertions to that.

24 I have nothing further, Your Honor.

25 THE COURT: All right. Well, thank you to all of



1 you.

2           As a reminder, I don't think you need it, but as a  
3 reminder, I am essentially acting as a magistrate for Judge  
4 Boyle in this action. And whichever way I go on whichever  
5 theories, I think she would expect a thorough write-up. It  
6 would, of course, be in the form of a report and recommendation  
7 for her to either adopt or not if I dispose of some or all of  
8 the counts in the lawsuit.

9           Even to the extent I deny dismissal, even though the  
10 rule typically does not require a court to make detailed  
11 findings and conclusions in connection with a denial of a  
12 motion to dismiss, again, since I'm sitting as a magistrate, I  
13 think Judge Boyle would expect some thorough explanations and  
14 reasoning from me.

15           So that's my way of saying I'm taking this under  
16 advisement. I am going to drill down on some of the cases that  
17 have been argued. I think some important issues are raised  
18 here that need some thorough reasoning.

19           So I will do the best to get this out without too  
20 much delay. I think there's probably zero chance, zero chance  
21 I'm going to get it done by the end of the year. We're just  
22 too behind with some of our under-advisements. But I will try  
23 earnestly to get it out fairly soon after the first of the  
24 year. All right?

25           Thank you. You all have a good holiday.

1 THE CLERK: All rise.  
2 (Proceedings concluded at 12:37 p.m.)

3 \* \* \* \* \*

4  
5 **C E R T I F I C A T I O N**

6 We, DIPTI PATEL, KAREN WATSON, CRYSTAL THOMAS, AND  
7 PATTIE MITCHELL, court approved transcribers, certify that the  
8 foregoing is a correct transcript from the official electronic  
9 sound recording of the proceedings in the above-entitled  
10 matter, and to the best of my ability.

11  
12 /s/ Dipti Patel

13 DIPTI PATEL, CET-997

14  
15 /s/ Karen Watson

16 KAREN WATSON, CET-1039

17  
18 /s/ Crystal Thomas

19 CRYSTAL THOMAS, CET-

20  
21 /s/ Pattie Mitchell

22 PATTIE MITCHELL

23 LIBERTY TRANSCRIPTS

DATE: November 23, 2021

24



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 30, 2022

*Henry G. C. Gann*  
United States Bankruptcy Judge

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

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT	§	CASE NO. 19-34054-SGJ-11
L.P.,	§	(CHAPTER 11)
REORGANIZED DEBTOR.	§	
	§	
CHARITABLE DAF FUND, L.P.,	§	
	§	
PLAINTIFF	§	
	§	
VS.	§	ADVERSARY NO. 22-03052
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
DEFENDANT	§	

**MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT'S AMENDED  
MOTION TO DISMISS ADVERSARY PROCEEDING**

**[DE ## 19, 20, 21, & 32]<sup>1</sup>**

<sup>1</sup> "DE # \_\_\_" as used herein refers to the Docket Number at which a pleading appears in the docket maintained by the Bankruptcy Clerk in Adv. Proc. No. 22-03052. Here, DE ## 19, 20 & 21 refer to the Amended Motion to Dismiss, the Brief in Support, and the Appendix in Support filed by the Defendant (the "Original Appendix").

## I. INTRODUCTION

The above-referenced action (“Action”) was originally commenced in the United States District Court for the Northern District of Texas (“District Court”) and was thereafter referred to the bankruptcy court (“Bankruptcy Court”).<sup>2</sup>

In the Action, a Plaintiff seeks damages and other relief from a former Chapter 11 debtor, *pertaining to business conduct undertaken by the debtor, during the course of its Chapter 11 bankruptcy case (“Bankruptcy Case”)—conduct that allegedly harmed the Plaintiff*. The Action was filed after confirmation of the Debtor’s plan, but before the effective date of the plan occurred.

The former debtor-in-possession (now a reorganized debtor) moves for dismissal of the Action, arguing primarily that the filing of the Action in District Court *was an improper means for pursuing a post-petition administrative claim against a chapter 11 debtor*. There was a well-defined process for pursuing administrative expense claims in the Bankruptcy Case—of which the Plaintiff received ample notice—and the Plaintiff ignored that process, choosing instead to embark on post-confirmation litigation in the District Court. The former debtor-in-possession also argues

---

Additionally, DE # 32 refers to the Defendant’s Amended Appendix in Support of Amended Motion to Dismiss, that merely added two more exhibits to Defendant’s Original Appendix—new Exhs. 21 & 22. *See also* DE # 30 (the Response of the Plaintiff) and DE # 31 (the Reply of the Defendant). Notably, at the oral argument on the Amended Motion to Dismiss, the court ruled that only Exhs. 1-13, 17, 21, and 22 would be considered by the court. All of these exhibits, *except Exh. 17*, were items on the Bankruptcy Court’s docket of which this court may take judicial notice in the context of a Rule 12(b) motion to dismiss. Although a court generally limits its inquiry on a Rule 12(b) motion to dismiss to a plaintiff’s complaint or any documents attached to the complaint, a court may also take judicial notice of matters that are part of the public record when considering a motion to dismiss. *See, e.g., T.L. Dallas (Special Risks), Ltd. v. Elton Porter Marine Ins.*, No. 4:07-cv-0419, 2008 WL 7627807, at \*2 (S.D. Tex. 2008); *Cade v. Henderson*, No. CIV A 01-943, 2001 WL 1012251, at \*2 (E.D. La. Aug. 31, 2001). *As to Exh. 17*, it was a short Declaration of Defendant’s Chief Executive Officer (“CEO”), James Seery, dealing solely with the Rule 12(b)(1) standing (i.e., lack of subject matter jurisdiction) issue, and there was no objection to Exh. 17 being considered by the court. *See* DE # 41, Transcript of oral argument on the Amended Motion to Dismiss (“8/3/22 Transcript”), at 3:22–5:17.

<sup>2</sup> The referral occurred by virtue of an order entered by Judge David C. Godbey on May 19, 2022, in Civil Action # 3:21-cv-01710-N. *See* DE # 32, Ex. 13, Appx. 477-79.

that—in addition to Plaintiff’s procedural problems—that Plaintiff lacks standing to pursue its claims.

*A. The Parties*

The movant is the Defendant, Highland Capital Management, L.P., now a reorganized debtor (“Highland” or “Reorganized Debtor”). Highland is the sole defendant. The allegedly actionable conduct of Highland occurred in August 2020 (mid-way through its Chapter 11 case). The Bankruptcy Court entered an order confirming Highland’s Chapter 11 plan, on February 22, 2021. Highland’s plan went effective on August 11, 2021. The Action was filed on July 22, 2021, some seven months after entry of the Bankruptcy Court’s confirmation order but just before the effective date.

The respondent, the Plaintiff, is an entity known as Charitable DAF Fund, L.P. (“Plaintiff” or “Plaintiff/DAF”).<sup>3</sup> Plaintiff is a limited partnership hedge fund, organized in the Cayman Islands, that purports to have charitable purposes (i.e., it is designated as a “donor advised fund”), and was originally seeded with funds from Highland.<sup>4</sup> Plaintiff purports to now act through an

---

<sup>3</sup> Notably, this is Plaintiff/DAF’s *second* time to sue Highland, post-confirmation, regarding Highland’s alleged post-petition mismanagement or misconduct during its Chapter 11 case. See Adv. Proc. # 21-3067 styled *Charitable DAF Fund, L.P. et al. v. Highland Capital Management, L.P., et al.*, (Bankr. N.D. Tex.) (hereinafter, the “First DAF Post-Confirmation Lawsuit Against Highland”). The First DAF Post-Confirmation Lawsuit against Highland was also filed in the United States District Court (Judge Jane Boyle) and then was referred by Judge Boyle to the Bankruptcy Court. That lawsuit challenged the legality of Highland’s conduct in entering into a compromise and settlement agreement during the Bankruptcy Case (with Bankruptcy Court approval) with an entity known as HarbourVest. The Bankruptcy Court dismissed the First DAF Post-Confirmation Lawsuit Against Highland on March 11, 2022 (based on estoppel grounds and declining to reach other grounds possibly warranting dismissal). Finally, this court notes that an entity known as Dugaboy Investment Trust—a family trust of which Highland’s former CEO, James Dondero, and/or his family members are beneficiaries—earlier, on June 23, 2021, filed a District Court action based on the very same allegations that are asserted in this present Action but later voluntarily dismissed such action. DE # 32, Exh. 22, Appx. 781. See also 8/3/22 Transcript at 10:13.

<sup>4</sup> See DE # 99 entered in the First DAF Post-Confirmation Lawsuit Against Highland, Adv. Proc. # 21-3067, at p.2. As referenced earlier, although a court generally limits its inquiry on a motion to dismiss to the plaintiff’s complaint or any documents attached to the complaint, a court may also take judicial notice of matters that are part of the public record when considering a motion to dismiss. See authorities mentioned in footnote 1, *supra*.

individual named Mark Patrick<sup>5</sup>—a former Highland employee who now works for entities controlled by or associated with James Dondero, Highland’s founder and former CEO.

*B. The Allegedly Actionable Conduct.*

Plaintiff represents in its Complaint that it was an investor in a non-debtor entity known as “Multi Strat.” Multi Strat was controlled by Highland—in that Highland was Multi Strat’s investment manager and ultimate majority equity owner.<sup>6</sup> In its Complaint, Plaintiff alleges that Highland, during its Bankruptcy Case, breached contractual and extra-contractual duties to Plaintiff, as an alleged investor in “Multi Strat”—supposedly causing Plaintiff harm. The pith of the Complaint deals with Multi Strat’s previous ownership of a pool of “viaticals.” Viaticals are life insurance policies, insuring the lives of various random individuals, that have been purchased, with the purchaser taking over the payment of premiums on such policies, such that when the individual dies, the life insurance proceeds are paid to the purchaser/owner of the policies (in this case, Multistrat). Distilled to its essence, Plaintiff’s argument is that Highland—acting as Multi Strat’s investment manager—caused the sale of Multi Strat’s pool of viaticals, during the Chapter 11 case (in August 2020), pursuant to a flawed process, at a price that Plaintiff believes was too low, and subject to other improprieties. To be clear, the sale was not subject to a Section 363 sale motion or court order, since Multi Strat’s assets (i.e., the viaticals) were not property of the estate.

The Complaint must be dismissed, pursuant to Rules 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure (the “FRCP”), made applicable to this Action by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure (the “FRBP”), for at least two reasons. First, the causes

---

<sup>5</sup> Until at least mid-January 2021, Grant Scott, James Dondero’s life-long friend and college roommate, was the sole director of Plaintiff/DAF. *See* DE # 99, entered in the First DAF Post-Confirmation Lawsuit Against Highland, Adv. Proc. # 21-3067, at p. 3. Mark Patrick was installed as the new control person at some point thereafter in 2021. DE # 32, Exh. 22, Appx. 790.

<sup>6</sup> It is undisputed that Highland was both the investment manager of and majority investor in Multi Strat.

of action asserted in the Complaint—that Highland breached its contractual and extra-contractual duties to Plaintiff *during* the Chapter 11 case—would, if meritorious, have been “administrative expense claims” and, under the terms of the Plan, were required to be filed *with the Bankruptcy Court* and served on Highland no later than September 25, 2021. Despite these Plan requirements—of which Plaintiff received notice—Plaintiff asserted its claims through this Action in the District Court. That decision must be deemed fatal, and Plaintiff’s claims are now time-barred. Second, Plaintiff has now acknowledged in its response to Highland’s Amended Motion to Dismiss that it is not an investor in Multi Strat. Rather, its subsidiary, an entity known as “CLO Holdco” is (“CLO Holdco” is apparently a 4.06% equity owner of Multi Strat). Regardless of Plaintiff’s reasons for filing the Complaint in its own name, rather than in the name of its subsidiary CLO Holdco (and this court can only speculate),<sup>7</sup> the result is the same. Plaintiff itself lacks standing to assert the claims in the Complaint, for the reasons further described herein, and this Court accordingly lacks jurisdiction to adjudicate the claims asserted in the Complaint. Moreover, allowing substitution of CLO Holdco as a plaintiff at this point in time (if a motion pursuant to Rules 15 and 17 of the FRCP were to be made) would be futile, since the real problem here is the failure to follow the Plan and Bankruptcy Code’s required procedures for pursuing an administrative expense claim. Accordingly, the Complaint must be dismissed.

---

<sup>7</sup> The court notes that CLO Holdco was *very active* in the Highland Bankruptcy Case, including objecting to the Plan. See DE ## 1675 and 1797 in the main Highland Bankruptcy Case. Its 100% parent, Plaintiff/DAF, on the contrary, was not nominally—although Plaintiff/DAF, as 100% parent to CLO Holdco, would have necessarily been giving directions to CLO Holdco during the Bankruptcy Case. The court cannot help but speculate that Plaintiff was trying to avert estoppel arguments that might have been made if CLO Holdco had filed this Action—given its active litigation of the Plan. In any event, as described herein, this Action fails for other reasons more fundamental than estoppel.

## II. UNDISPUTED FACTS

### A. *Relevant Dates and Deadlines in the Highland Bankruptcy Case*

On October 16, 2019 (the “Petition Date”), Highland commenced a voluntary petition under chapter 11 of the Bankruptcy Code.

On February 22, 2021, after months of contentiousness and various sessions of mediation with professional mediators—which successfully led to resolution of certain large creditor claims—the Bankruptcy Court entered an Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief (the “Confirmation Order”),<sup>8</sup> which confirmed the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P (as Modified) (the “Plan”).<sup>9</sup>

Notably, the Plan contained customary language incorporating section 1141(d)(1)(A) of the Bankruptcy Code and releasing the Debtor from pre-confirmation liabilities of any kind:

Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities *that arose before the Confirmation Date*, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.<sup>10</sup>

Section 1141(d)(1)(A), in turn, provides that the confirmation of a plan “discharges the debtor from any debt that arose before the date of such confirmation.” 11 U.S.C. § 1141(d)(1)(A). To be clear, this did not leave parties without a remedy to assert possible post-petition, pre-confirmation claims. In that regard, the Plan contained customary definitions and other provisions

---

<sup>8</sup> DE # 32, Exh. 3, Appx. 19-180.

<sup>9</sup> *Id.*, Exh. 4, Appx. 181-247.

<sup>10</sup> *Id.*, Exh. 4, Appx. 235 (emphasis added).



regarding the filing and adjudication of “administrative expense claims.” These provisions, summarized below, are key to the disputes in this Action.

First, as is typical for a Chapter 11 plan, there was a “Defined Term” for “Administrative Expense Claim” as follows:

“Administrative Expense Claim” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor . . . and that have not already been paid by the Debtor during the Chapter 11 Case . . . .<sup>11</sup>

Second, the Plan further provided that:

If an Administrative Expense Claim . . . is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must **File**, on or before the applicable Administrative Expense Claims Bar Date, **and serve on the Debtor or Reorganized Debtor**, as applicable . . . an application for allowance and payment of such Administrative Expense Claim.<sup>12</sup>

There was a defined term for “File” in the Plan as follows:

“File” or “Filed” or “Filing” means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.<sup>13</sup>

Finally, there was a defined term for Administrative Expense Bar Date as follows:

“Administrative Expense Claims Bar Date” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is **forty-five days after the Effective Date**.<sup>14</sup>

---

<sup>11</sup> *Id.*, Appx. 189.

<sup>12</sup> *Id.*, Appx. 204 (emphasis added).

<sup>13</sup> *Id.*, Appx. 196 (note that the reference to the “authorized designee” for the Bankruptcy Court in the Chapter 11 Case would have been a reference to Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent in the above-captioned case, which, among other things, maintained the proof of claim register in the case for **prepetition** claims).

<sup>14</sup> *Id.*, Appx. 189 (emphasis added).

On August 11, 2021, the Plan became effective. On August 11, 2021, Highland filed the Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (the “Notice of Effective Date”),<sup>15</sup> clearly disclosing that the “Effective Date” (as defined in the Plan) had occurred on August 11, 2021.

Consistent with the Plan, the Notice of Effective Date disclosed in bold, capitalized letters, that all “administrative expense claims” were required to be filed no later than 45 days after the Effective Date (i.e., September 25, 2021):

**PLEASE TAKE FURTHER NOTICE** that, except with respect to Administrative Expense Claims that are Professional Fee Claims or as otherwise set forth in the Plan, requests for payment of an Administrative Expense Claim must be Filed with the Bankruptcy Court no later than forty-five (45) days after the Effective Date (the “Administrative Expense Claims Bar Date”). **HOLDERS OF ADMINISTRATIVE EXPENSE CLAIMS THAT ARE REQUIRED TO FILE AND SERVE A REQUEST FOR PAYMENT OF SUCH ADMINISTRATIVE EXPENSE CLAIMS BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE THAT DO NOT FILE AND SERVE SUCH A REQUEST BY THE ADMINISTRATIVE EXPENSE CLAIMS BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH ADMINISTRATIVE EXPENSE CLAIMS AGAINST THE DEBTOR OR THE REORGANIZED DEBTOR.**<sup>16</sup>

Highland served the Notice of Effective Date via at least First-Class Mail on Plaintiff/DAF.<sup>17</sup> It is undisputed that Plaintiff/DAF did not *file* an administrative expense claim with the *Bankruptcy Court*, nor did it *serve* one on the Reorganized Debtor by the bar date.

However, on July 22, 2021, seven months after entry of the Confirmation Order (and prior to the Administrative Expense Claim Bar Date), Plaintiff commenced this Action against Highland

---

<sup>15</sup> *Id.*, Exh. 7, Appx. 269-73.

<sup>16</sup> *Id.*, Appx. 271 (emphasis in original).

<sup>17</sup> *Id.*, Exh. 8, Appx. 310. The court also notes that CLO Holdco’s counsel received electronic Notice of the Effective Date, *id.* at Appx. 278, as well as notice by First-Class Mail, *id.*, at Appx. 282, and CLO Holdco itself received Notice of the Effective Date by First-Class Mail, *id.* at Appx. 312-313 at numerous addresses. The court takes judicial notice that the Plan itself was also served on CLO Holdco and its counsel. *See* DE #1630, in the main Highland Bankruptcy Case, at Exh. S, p.25 of 139, and at Exh. V, p. 1 of 3.

by filing an Original Complaint (the “Complaint”) in the District Court.<sup>18</sup> It is undisputed that Plaintiff/DAF also never served the Complaint on Highland.<sup>19</sup>

The Complaint alleged that Highland, under the direction of its new, independent CEO, James P. Seery, Jr.—appointed pursuant to a corporate governance agreement between Highland and the Official Committee of Unsecured Creditors (and approved by the Bankruptcy Court)—violated the contractual and extra-contractual duties that Highland owed to Plaintiff/DAF as an alleged investor in the entity known as Multi Strat and that Plaintiff/DAF was harmed thereby.<sup>20</sup> As noted in the Introduction herein, Multi Strat was a vehicle that purchased and owned a pool of viaticals—that is, life insurance policies keyed to the lives of various individuals. Multi Strat paid the premiums on the policies, and when an insured person died, the life insurance money would be paid to the owner of the policy—in this case, Multi Strat.

Highland’s alleged misconduct occurred during the spring and summer of 2020, i.e., after the Petition Date while Highland was a debtor-in-possession.<sup>21</sup> The contracts allegedly breached were assumed by Highland pursuant to the Plan.<sup>22</sup>

*B. The Substance of the Complaint; More About “Multi Strat”*

The Complaint sets forth three causes of action premised on conduct in which Highland allegedly engaged post-petition: (a) First Cause of Action—Highland’s alleged violation of the Investment Advisers Act of 1940;<sup>23</sup> (b) Second Cause of Action—Highland’s alleged breach of

---

<sup>18</sup>*Id.*, Exh. 5, Appx. 248-59.

<sup>19</sup> See 8/3/22 Transcript, at 28:2-11.

<sup>20</sup>DE # 32, Exh. 5, Appx. 252-58.

<sup>21</sup>*Id.*, Appx. 251.

<sup>22</sup>*Id.*, Exh. 4, Appx. 224-25; Exh. 6, Appx. 262, 264.

<sup>23</sup> Although no statutory cite is given, the Plaintiff apparently refers to the Investment Advisers Act of 1940, codified at 15 U.S.C. § 80b-1 through 80b-21, which is the primary source of regulation of investment advisers and is administered by the U.S. Securities and Exchange Commission. The court notes that the United States Supreme Court has held in *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 19 (1979) that there is not a private right of action for damages under the Investment Advisers Act. Specifically, an investor may seek to **void an investment adviser contract** (i.e., essentially allowing a suit for rescission or for an injunction against continued

fiduciary duty;<sup>24</sup> and (c) Third Cause of Action—Highland’s alleged breach of contract.<sup>25</sup> The various conduct of Highland is described as: (1) selling the viatical pool of Multi Strat at a distressed price (i.e., \$35 million) when it was not in distress and there was allegedly no need for Multi Strat to sell; (2) concealing the information about the transaction from the Plaintiff; (3) failing to advise the Plaintiff of the opportunity to purchase the viatical pool—especially when it knew the Plaintiff had an interest in the pool and had the means of purchasing it for more cash than \$35 million; (4) allegedly concealing the purpose behind the sale of the viatical pool and conflicts of interest; (5) allegedly causing the viatical pool to be sold in a manner that violated the rights of the Plaintiff as an investor in Multi Strat (e.g., by failing to conduct an auction, obtaining competitive bids and taking the pool to market); and (6) utilizing the sale proceeds for its own ends—namely, to enrich itself.

The entity at the heart of the Complaint—Multi Strat—is what is known in the investment community as a pooled investment fund structured as a “mini master.” It actually consists of Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “Master Fund”), and Highland Multi Strategy Credit Fund, Ltd., a Cayman Island exempted company (the “Feeder Fund”). The Master Fund and the Feeder Fund are collectively referred to as “Multi Strat.” Highland Multi Strategy Credit Fund GP, L.P., itself a Delaware limited partnership, is the general

---

operation of the contract, and for restitution), but not seek actual monetary damages. That being said, it appears that the relief sought by Plaintiff for this cause of action is as follows: “Plaintiff seeks to declare the sale of the viaticals void because they were accomplished in violation of the Advisers Act” and “Plaintiff further seeks to declare the agreement(s) between Highland and Multistrat void because they were continued in violation of the Advisers Act.” Complaint, *id.* at Exh. 5, Appx. 254.

<sup>24</sup> Here, the Plaintiff appears to invoke both the Investment Advisers Act as well as Texas law—clearly seeking monetary damages including punitive damages.

<sup>25</sup> *Id.*, Exh. 5, Appx. 252-58. Here, the Plaintiff invokes the Third Amended and Restated Investment Management Agreement, effective November 1, 2013 (the “IMA”) between Highland and Multi Strat.

partner of Multi Strat, which is wholly owned by Highland Multi Strategy Credit GP, LLC, which is, in turn, wholly owned by Highland.<sup>26</sup>

The equity ownership interests of the limited partners in Multi Strat are somewhat complex but, put simply, on a consolidated basis, Highland owns 58.7% of the limited partnership interests in Multi Strat and the entity known as CLO Holdco, Ltd. (“CLO Holdco”) owns 4.06% of the limited partnership interests. *Notably, CLO Holdco is a subsidiary of Plaintiff/DAF, but, as noted earlier, it is undisputed that Plaintiff/DAF itself is not an investor or equity owner of any sort of Multi Strat.*<sup>27</sup>

Also, notably, the only other owners of Multi Strat are: The Dugaboy Investment Trust (1.71%);<sup>28</sup> Highland Capital Management Services, Inc. (35.10%), and Mark Okada (.43%).<sup>29</sup> The Dugaboy interest is notable for the following reason: Dugaboy filed a proof of claim during the Highland Bankruptcy Case that, while vague, appears to have been based on the very same theories espoused by the Plaintiff/DAF in this Action. Specifically, it stated:

The Dugaboy Investment Trust (“Claimant”), an investor in certain funds managed by the Debtor, including Highland Multi-Strategy Credit Fund, L.P. and Highland Multi-Strategy Credit Fund, Ltd., may have claims against the Debtor relating to the post-petition actions or inactions of the fund investment manager in managing these funds pursuant to Debtor’s Fourth Amended and Restated Limited Partnership Agreement and that certain Third Amended and Restated Investment Management Agreement by and between Highland Multi-Strategy Credit Fund, L.P., Highland Multi-Strategy Credit Fund, Ltd., and the Debtor, as amended from time to time. While the potential claims relate to the post-petition actions or inactions of the fund investment manager, Claimant is filing this claim to preserve

---

<sup>26</sup> *Id.* at Exh. 17, Appx. 592-93. The Master Fund’s governing document is known as the Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P., dated November 1, 2014 (the “LPA”). The Feeder Fund’s governing document is known as the Amended and Restated Memorandum and Articles of Association of Highland Multi Strategy Credit Fund, Ltd., as adopted on November 1, 2014 (the “Articles”). Highland’s obligations as investment manager are set forth in a document known as the Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013 (the “IMA”).

<sup>27</sup> *Id.* at Exh. 17, Appx. 592-93.

<sup>28</sup> It is undisputed that Dugaboy is a family trust of former Highland CEO, James Dondero.

<sup>29</sup> *Id.* at Exh. 17, Appx. 592-93.

all potential rights, claims, and causes of action it may have against the Debtor under these prepetition agreements relating to the investment manager’s actions or inactions in managing these funds.<sup>30</sup>

The Dugaboy proof of claim was signed and submitted by an individual named Grant Scott, the then-Trustee of Dugaboy. Grant Scott was also the then-Trustee of CLO Holdco, the 100% subsidiary of Plaintiff/DAF. This proof of claim was later withdrawn.

Dugaboy also filed a District Court lawsuit against Highland (post-confirmation and pre-Effective Date, on June 23, 2021)<sup>31</sup> raising these very same issues, which it later dismissed.

### III. LEGAL ANALYSIS

#### A. *Jurisdiction and Legal Standards*

Bankruptcy subject matter jurisdiction exists with regard to this Action, pursuant to 28 U.S.C. § 1334(b). The Action presents “arising in” or “arising under” core matters, pursuant to 28 U.S.C. § 157(b)(2)(A) and (B)—as it involves claims that were asserted against a Chapter 11 Debtor (before the effective date of its plan) and the application of sections 503 and 507 of the Bankruptcy Code. Moreover, the Action requires interpretation of the now-effective Plan of the Reorganized Debtor and application of section 1141(d)(1) of the Bankruptcy Code. Therefore, the Bankruptcy Court may enter final orders in this matter. Moreover, the District Court has referred this Action to the Bankruptcy Court.

The Reorganized Debtor’s Amended Motion to Dismiss argues grounds for dismissal, pursuant to FRCP 12(b)(1) (i.e., lack of subject matter jurisdiction—due to lack of standing of the Plaintiff) and FRCP 12(b)(6) (i.e., failure to state a claim upon which relief may be granted).

---

<sup>30</sup> *Id.* at Exh. 1, Appx. 6.

<sup>31</sup> *Id.* at Exh. 2, Appx, 8-18.

With regard to the Rule 12(b)(1) argument, the applicable legal standards are set forth in detail in part III.E. of this Opinion. With regard to Rule 12(b)(6), to survive a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). *See also Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). Dismissal is proper under Rule 12(b)(6) when, taking the facts alleged in the complaint as true, it appears that the plaintiff “cannot prove any set of facts that would entitle it to the relief it seeks.” *C.C. Port, Ltd. v. Davis-Penn Mortg. Co.*, 61 F.3d 288, 289 (5th Cir. 1995). As set forth below, here, more than anything else, Plaintiff/DAF’s problem is that its claims are barred for failure to proceed according to the Plan requirements and because of section 1141(d)(1)(A) of the Bankruptcy Code. As earlier noted, the court may take judicial notice of matters of public record when considering a motion to dismiss for failure to state a claim. *See, e.g., T.L. Dallas (Special Risks), Ltd. v. Elton Porter Marine Ins.*, No. 4:07–cv–0419, 2008 WL 7627807, at \*2 (S.D. Tex. 2008); *Cade v. Henderson*, No. CIV A 01-943, 2001 WL 1012251, at \*2 (E.D. La. Aug. 31, 2001).

*B. Plaintiff’s Claims Asserted in the Action, if Valid, Would Constitute “Administrative Expense Claims”*

Starting with the basics, an “Administrative Expense Claim” is not merely a concept defined in the Debtor’s Plan. It is a significant concept in the Bankruptcy Code. Section 507(a)(2) of the Bankruptcy Code establishes that administrative expenses incurred in bankruptcy are to be given priority in distribution such that they are generally paid in full before other unsecured non-priority claims. *See* 11 U.S.C. § 507(a)(2). These administrative expenses include “the actual, necessary costs and expenses of preserving the estate ....” 11 U.S.C. § 503(b)(1)(A). To qualify as an “actual and necessary cost’ under section 503(b)(1)(A), a claim against the estate must have



arisen post-petition and as a result of actions taken by the trustee [or debtor-in-possession] that benefited the estate.” See *Nabors Offshore Corp. v. Whistler Energy II, L.L.C. (In re Whistler Energy II, L.L.C.)*, 931 F.3d 432, 441 (5th Cir. 2019) (citing *Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001)). Notwithstanding the “benefited the estate” concept that has been articulated in case law, an exception was created by the United States Supreme Court many years ago (in the context of a “Chapter XI arrangement” case under the former Bankruptcy Act of 1898), in a situation in which damages were inflicted on innocent third parties through a receiver's (equivalent of a Chapter 11 trustee or debtor-in-possession today) operation of the debtor's estate. See *Reading Co. v. Brown*, 391 U.S. 471, 478-79 (1968).

In *Reading*, a building that was being operated by the bankruptcy receiver in a reorganization case was destroyed by a fire, and the fire spread to adjoining premises, destroying real and personal property of claimant, Reading. Reading argued that the fire was caused by the negligence of the receiver and one of his workmen, in the course of operating the debtor's estate during a bankruptcy reorganization. See *id.* at 473–74. The Supreme Court—in grappling with what type of a claim Reading might have—held that it would be unfair to force the fire victim to share equally with the existing creditors and, thus, granted administrative priority to that claimant. See *id.* at 478 (framing the question as “whether the fire claimants should be subordinated to, should share equally with, or should collect ahead of those creditors for whose benefit the continued operation of the business ... was allowed”).

The “*Reading* exception,” as it has become known, has withstood the test of time and has been routinely applied after the enactment of the modern Bankruptcy Code. See, e.g., *Jack/Wade Drilling*, 258 F.3d at 388 (“The Reading exception has survived Congressional amendments to the



bankruptcy code and been recognized and applied by nearly every Court of Appeals in the nation.”); *Texas v. Lowe (In re H.L.S. Energy Co.)*, 151 F.3d 434, 437 (5th Cir. 1998) (same); *In re Al Copeland Enters., Inc.*, 991 F.2d 233, 238-39 (5th Cir. 1993) (same). The *Reading* case has been interpreted broadly to include not just torts, but other negligent or intentional acts committed by a debtor-in-possession as giving rise to administrative expense claims. *See Al Copeland*, 991 F.2d at 239 (“[T]hose injured during ... administration of an estate are entitled to an administrative priority [claim] regardless of whether their injury was caused by a tort or other wrongdoing.”); *In re Charlesbank Laundry, Inc.*, 755 F.2d 200, 202 (1st Cir. 1985) (“If fairness dictates that a tort claim based on negligence should be paid ahead of pre-reorganization claims, then, a fortiori, an intentional action which violates the law and damages others should be so treated”), *accord* 4 COLLIERS ON BANKRUPTCY ¶ 503.06[3][c][i] (“Courts have found *Reading* directly applicable to victims of postpetition torts committed by a debtor in possession or trustee. Courts have also applied the doctrine to a variety of other postpetition claims”) (citing cases).

Accordingly, based on the above authority, the claims of Plaintiff, if meritorious, would fall into the category of administrative expense claims. Plaintiff specifically alleges that it was injured by Highland causing the sale of Multi Strat’s assets during the middle of 2020—after the Petition Date, before the Effective Date, and while Highland was a debtor-in-possession—in violation of Highland’s alleged contractual and extra-contractual duties owed to Plaintiff. Plaintiff’s claims, therefore, would constitute “administrative expense claims” against Highland. *Whistler Energy*, 931 F.3d at 443 (discussing circumstances when a party might be entitled to an administrative expense claim, regardless of whether there is an assumed or rejected prepetition contract, and even when “benefit to the estate” may be less than “readily calculable”; noting

sometimes such a claim might simply result as a cost incidental to a debtor’s business operations) (citing *Reading*, 391 U.S. 471).

C. *Requests for Allowance of “Administrative Expense Claims” Were Required to be Filed in the Bankruptcy Court by September 25, 2021*

As set forth earlier herein, Article II of the Plan dictated the procedures for the filing and allowance of “administrative expense claims.” Pursuant to Article II of the Plan, parties seeking “administrative expense claims” were required to (i) file those claims with the bankruptcy court specifically (not the District Court); and (ii) serve those claims on Highland no later than the Administrative Expense Claim Bar Date (i.e., September 25, 2021).<sup>32</sup> The Plan and Notice of Effective Date make clear that any administrative expense claim not filed with the Bankruptcy Court by the Administrative Expense Claim Bar Date would be time-barred. Section 1141(a) provides that the provisions of a confirmed plan bind the debtor and any creditor. *Eubanks v. Fed. Deposit Ins. Corp.*, 977 F.2d 166, 170–71 (5th Cir. 1992).<sup>33</sup>

This court noted in the case of *In re Taco Bueno Rests., Inc.*, 606 B.R. 289, 302-303 (Bankr. N.D. Tex. 2019), in addressing the importance of the concept of “timeliness” with regard to administrative expense claims, that debtors and reorganized debtors have a keen interest in obtaining finality sooner rather than later with regard to administrative expense claims. The reason debtors have an interest in such finality derives from the special treatment afforded to administrative expense claims. An administrative expense claimant is generally entitled to cash in full on the effective date of a plan (or as soon as the claim is allowed thereafter by the bankruptcy

---

<sup>32</sup> See Exh. 4, Appx. 189, 196, 203-04.

<sup>33</sup> See also *Hall Fin. Group, Inc., v. DP Partners, L.P.*, 106 F.3d 667, 672, n.19 (5th Cir. 1997) (bankruptcy judges have, for some time, been accorded discretion in setting administrative-claim bar-dates) (citing 3 Collier on Bankruptcy ¶ 503.1, at 503–4 n. 2c (Lawrence P. King ed., 15th ed. 1994) (noting that the Bankruptcy Reform Act of 1994 sets no time limit for filing administrative claims, and further noting that because nothing in the Bankruptcy Rules or Code sets deadlines for filing administrative claims, bankruptcy judges “may set such deadlines on a case by case basis”).

court). It is a very important event in the bankruptcy case for a reorganized debtor to have a deadline for administrative expense claims because administrative claims can pose significant feasibility issues for plans. The reorganized debtor needs to be able to ascertain an amount such entities must have in cash due to pay administrative expenses.

There is ample case law that stresses the importance of requiring potential administrative expense claimants to follow the mandates of Bankruptcy Code section 503(b) and file a request for allowance with the bankruptcy court. *See Taco Bueno*, 606 B.R. 289 (concluding that utilizing a “Proof of Claim” form—i.e., Official Form 410—to make a request for payment of an administrative expense, is insufficient to satisfy the requirement under Bankruptcy Code section 503(a) to timely file and serve a request for payment of an administrative claim by an administrative claims bar date; requests for administrative claims have different procedures—requiring the filing of an application requesting allowance and payment of an administrative-expense claim on the bankruptcy court's docket).<sup>34</sup> *See also In re Maxus Energy Corp.*, 639 B.R. 51, 64 (Bankr. D. Del. 2022) (claim barred because it was not filed by administrative claim bar date and “a claims bar date ‘operates as a federally created statute of limitations, after which the claimant loses all of [its] rights to bring an action against the debtor’) (citations omitted); *Houbigant, Inc. v. ACB Mercantile (In re Houbigant, Inc.)*, 190 B.R. 185, 188 (Bankr. S.D.N.Y.

---

<sup>34</sup> This court noted in *Taco Bueno* that Congress made the rules and burdens for an administrative expense claim very different from those for a proof of claim. Section 503 governs an administrative expense claim. Under § 503, the burden at the beginning is on the claimant to show reasonableness, necessity, and benefit to the estate. The Bankruptcy Code and the Bankruptcy Rules put a claimant in a completely different posture for an administrative expense claim compared to a proof of claim. Requiring that a § 503 administrative expense claim be asserted in an application, among other things, ensures that the bankruptcy court will have an opportunity to pass judgment on the administrative expense and prevent any unreasonable, unnecessary, and non-beneficial claims from being charged to the estate. Creditors ultimately bear the burden of persuasion and production to establish that their claims are, in fact, an administrative expense. Allowing creditors to satisfy their burden of production by burying an administrative expense in a proof of claim circumvents their statutory burdens and forces the trustee or some other interested party to affirmatively raise this administrative expense as objectionable—directly contradicting § 503(b)'s express requirement that a claimant, in order to have an administrative expense claim allowed, must make a request and give notice to parties in the case and obtain a bankruptcy court hearing. *Taco Bueno*, 606 B.R. at 302.

1995) (stressing the importance of filing claims timely in the bankruptcy court before the bar date, as opposed to in district court litigation).<sup>35</sup>

Here, Plaintiff’s alleged causes of action are administrative expense claims and were required to be filed with this Bankruptcy Court by the Administrative Expense Claim Bar Date. Plaintiff knowingly chose not to file an administrative claim. The filing of the Complaint constituted an *improper means to pursue a post-petition claim against a chapter 11 debtor*. To the extent it may have been a defensible strategy at the time the Action was filed (*see discussion* in Part III.E below for more on this thought), it certainly became wholly indefensible after the Plan went effective. The Plaintiff/DAF received notice and had every reason to know, on or after August 11, 2021, that it had one avenue to pursue the claims asserted in the Action—through the mechanism of filing an Administrative Expense Claim in the Bankruptcy Court on or before September 25, 2021. However, it chose not to go that route. As a result, the Complaint must be dismissed.

Plaintiff/DAF makes a confusing argument that “administrative priority claims” are not subject to the Plan because the Plan uses the term “Administrative Expense Claim.”<sup>36</sup> Plaintiff attempts to create confusion where none exists. As noted earlier, the Plan defines “Administrative Expense Claim,” in relevant part, as a:

Claim for costs and expenses of administration of the Chapter 11 Case ... pursuant to sections 503(b), 507(a)(2), 507(b) ... including, without limitation, (a) the actual and necessary costs and expense incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor  
....<sup>37</sup>

---

<sup>35</sup> See also *NL Indus., Inc. v. GHR Energy Corp.*, 940 F.2d 957, 966 (5<sup>th</sup> Cir. 1991) (case involved a post-petition contract between a chapter 11 debtor and an oil field service vendor that went awry and vendor filed a federal district court lawsuit during the case for breach of contract and torts; while the lawsuit went forward in the Federal District Court, the Fifth Circuit opinion contains discussion stressing the need for the vendor to have filed a request for administrative expense claim in the bankruptcy court and giving that as a reason for not allowing the vendor to amend its pleading to assert damages not provided for in the debtor’s confirmed plan).

<sup>36</sup> See DE # 30 (Plaintiff’s Response), at 3-4.

<sup>37</sup> DE # 21, Exh. 4, Appx. 189.

There is no “distinction” in the Plan between an “administrative priority claim” and an “Administrative Expense Claim.” Both would encompass claims arising from the “actual and necessary costs and expense” of the debtor-in-possession’s post-petition management. Highland’s naming convention did not somehow change the substantive application of the Bankruptcy Code or the nature of an administrative expense/priority claim.

*D. The Unsupportability of Plaintiff/DAF’s Eleventh-Hour Request (Through Their Response to the Motion to Dismiss Their Action) for the Bankruptcy Court to Excuse Their “Technical Non-Compliance” and Deem Complaint to Have Been a Timely Request for Allowance of an Administrative Expense Claim*

Plaintiff/DAF argues that the Bankruptcy Court should excuse its “technical” non-compliance and treat its Complaint as a “request for an order permitting a late claim or treating the filing of this action as a timely Administrative Expense Claim.”<sup>38</sup> While Plaintiff minimizes the significance of its failure to comply with the Plan, Confirmation Order, and standard bankruptcy protocols—by referring to its failure to file a request for allowance of an administrative expense claim in the Bankruptcy Court as “technical” non-compliance—its proposal that the Complaint should be deemed such a “request” is procedurally and legally improper. The relief must be sought by a separate motion and include evidence of “cause” under section 503(a) of the Bankruptcy Code and possibly also “excusable neglect.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 394 (1993).<sup>39</sup> Here, there is no evidence supporting “cause” (or excusable neglect, for that matter), just the following undisputed facts:

---

<sup>38</sup> DE # 30 (Plaintiff’s Response), at p.5.

<sup>39</sup> The *Pioneer* case dealt with late-filed proofs of claim, for prepetition claims, not requests for allowance of post-petition administrative expense claims. Thus, it is not entirely clear that it governs here. Perhaps, only section 503(a) “cause” is the standard.

- The Plan was confirmed on February 22, 2021 and included clear disclosures about the Administrative Expense Claim Bar Date.
- At a hearing on June 25, 2021, shortly before the Complaint was filed—in a hearing on a different matter, in which a different post-petition lawsuit filed in the District Court was being discussed (and the Bankruptcy Court expressed concern about it)—Plaintiff’s counsel indicated to the Bankruptcy Court that he was receiving advice from bankruptcy counsel on whether post-petition administrative expense claims, like those asserted in the Complaint, could be filed in courts other than the Bankruptcy Court.<sup>40</sup>
- On July 22, 2021, Plaintiff’s counsel filed (but did not serve) the Complaint—i.e., seven months after the Confirmation Order and two months before the Administrative Expense Claim Bar Date.
- On or about August 11, 2021, Plaintiff/DAF was served with notice of the Administrative Expense Claim Bar Date.
- Plaintiff/DAF did not file an administrative expense claim with this Court by the Administrative Expense Claim Bar Date (i.e., September 25, 2021).
- On November 23, 2021, the Bankruptcy Court told Plaintiff its arguments regarding the Plan injunction—similar to some of the same arguments it is making now—were mistaken. At the same hearing, Highland told Plaintiff/DAF, on the record, it should have filed an administrative expense claim in this court.<sup>41</sup>

---

<sup>40</sup> DE # 32, Exh. 21, Appx. 751-53.

<sup>41</sup> DE # 32, Exh. 22, Appx. 777 (lines 17) – Appx. 778 (line 18); Appx. 781 (line 10) – 782 (line 17); Appx. 783 (line 5-14); Appx. 786 (line 17-23).

- Between the November 2021 hearing and the filing of the Motion (more than eight months), Plaintiff/DAF never moved this Court to allow its claim as late filed or took any other action to protect its rights.
- Only after the Complaint was referred to this Court and Highland filed its Amended Motion to Dismiss did Plaintiff ask this Court to consider the Complaint as “a late claim” in the Response.
- Plaintiff has not submitted any evidence of “cause” as required by Section 503(a), nor “excusable neglect” under *Pioneer* (to the extent it is applicable).

To be clear, Plaintiff argues that it should be held to have asserted a timely request for administrative expense claim because (a) its Complaint was filed (but not served) before the Administrative Expense Claim Bar Date; (b) Highland (while not formally served) received “prompt” notice and was not prejudiced; (c) enforcing the Administrative Expense Claims Bar Date would raise concerns regarding Constitutional “due process and taking;” and (d) the “best interests of creditors test” in Section 1129 favors Plaintiff.<sup>42</sup> Plaintiff also blames its failure to comply on the Plan itself, arguing that a Plan injunction therein prevented Plaintiff from fulfilling its obligations. Each argument misses the point.

First, it is irrelevant that the Complaint was filed before the Administrative Expense Claim Bar Date. The Bankruptcy Code,<sup>43</sup> the Plan,<sup>44</sup> and applicable case law require the filing of administrative expense claims—like those asserted in the Complaint—on the bankruptcy court’s docket, not on another court’s, for a claim to be deemed timely filed. *See, e.g., Taco Bueno*, 606 B.R. at 302-03; *Houbigant*, 190 B.R. at 188.14.

---

<sup>42</sup> DE # 30 (Plaintiff’s Response), at p. 5.

<sup>43</sup> 11 U.S.C. § 503(a).

<sup>44</sup> DE # 21, Exh. 4, Appx. 125, 203-04.

Moreover, any suggestion that the Complaint is an “informal proof of claim” is rejected. Even assuming this concept might be applicable in the context of requests for allowance of administrative expense claims, an “informal proof of claim” must be filed in the bankruptcy court and the equities must favor the claimant. *In re Opus Mgmt. Grp. Jackson LLC*, 2017 Bankr. LEXIS 555, at \* 29-30 (Bankr. S.D. Miss. Feb. 27, 2017) (“The Court is unaware of any precedent that would allow it to treat the pre-bar date filing in one case as an informal proof of claim in another case.”); *In re Murchison*, 85 B.R. 27, 41 (Bankr. N.D. Tex. 1987) (“Debtor’s knowledge of the claim has never been held sufficient to constitute an informal proof of claim ... These communications cannot constitute a proof of claim because they were not filed with the Court.”).

Additionally, Plaintiff’s argument regarding prejudice is disingenuous. Plaintiff filed the Complaint but decided not to serve it. Plaintiff cannot rely on Highland’s purported diligence in learning of the Complaint to justify its misconduct. The bar date exists to avoid prejudice to Highland, not Plaintiff. Moreover, other creditors in a bankruptcy case are entitled to notice that a party is asserting an administrative expense claim. Allowance of such a claim could greatly impact their ultimate recovery. Creditors (not just the debtor) may want to object and be heard. That’s why section 503(b) of the Bankruptcy Code contemplates “notice and a hearing” in the bankruptcy court when a request is filed.

Additionally, no due process or taking concerns arise if Plaintiff is required to abide by court- and statutorily created deadlines, and Plaintiff cites to nothing to support this position.

Additionally, the “best interests of creditors” test applies to plan confirmation and is irrelevant in this context. Regardless, the test would weigh in Highland’s favor. Creditors want Highland’s assets monetized and proceeds distributed sooner rather than later. Plaintiff’s efforts to



“backdoor” an administrative expense claim by asserting it in another forum delays that process, increases expenses, and directly contradicts the policy behind bar dates.

Finally, Plaintiff’s argument that it was confused by the Plan discharge or injunction language is not credible. The provisions are typical and unambiguous; they prohibited Plaintiff from pursuing claims in the District Court. Numerous other claimants—including some of Mr. Dondero’s other affiliates—complied with the bar date. Plaintiff is not entitled to special treatment because it, and it alone, found the Plan confusing.

*E. The Plaintiff’s Unspoken, But Not-So-Subtle Strategy Play*

Ultimately, the Plaintiff’s filing of the Complaint in the District Court was a strategic move that did not work and now it binds the Plaintiff.

The Plaintiff’s strategy—rather obvious to this Court—was clever, to be sure, but it all hinged on the prospect of the Debtor’s Plan being reversed on appeal, which did not ultimately happen.<sup>45</sup> Specifically, thinking through the Plaintiff’s legal strategy, the court believes the Plaintiff’s legal team likely thought through this as follows. First, there was an automatic stay conundrum. Specifically, filing the Action might have at first seemed risky, because the automatic stay was still in place at the time the Plaintiff filed its Complaint (because it was filed during the post-confirmation but pre-Effective Date time frame).<sup>46</sup> But, the Plaintiff was pursuing *post*-petition claims, so the filing of the Action arguably was not precluded by the automatic stay. 11 U.S.C. § 362(a)(1).<sup>47</sup> However, even with that automatic stay conundrum potentially resolved, the Plan and Confirmation Order became an obvious obstacle. As discussed here *ad nauseum*, the

---

<sup>45</sup> The Fifth Circuit affirmed in substantial part the Plan on September 2, 2022, in Action No. 21-10449.

<sup>46</sup> See also DE # 21, Exh. 4, Appx. 167 (Art. IX.G.).

<sup>47</sup> The inapplicability of the automatic stay was not a “given.” The relief sought in the Plaintiff/DAF’s Complaint asked for, among other things, disgorgement of all of Highland’s allegedly ill-gotten gains, and also voiding of certain agreements of Highland. This sounds potentially like exercising or an attempt to exercise control over property of the estate. 11 U.S.C. § 362(a)(3).

Plan required a post-petition claim like this to be filed as a Request for Allowance of Administrative Expense Claim with the Bankruptcy Court and, moreover, the Plan discharge and injunction language precluded an action such as the Plaintiff's from being filed in another court. Plaintiff was no doubt thinking that it had found the perfect "workaround"—file the Action in the District Court *before* the Plan went effective, seek a stay of the Action for a bit,<sup>48</sup> and hope that, during the stay of the Action, the Plan got reversed on appeal (which would moot the Administrative Claim Bar Date and Plan Injunction). In the event of a reversal, the Plaintiff would seek to un-stay the Action and go forward in the District Court hopefully—unless the District Court decided to refer the Action at that point to the Bankruptcy Court (on the basis that it was at least related to the Bankruptcy Case; maybe Plaintiff could successfully fight this).

Here, as the Plaintiff's legal strategy started to unravel, on July 5, 2022, in its Response to the Motion to Dismiss, the Plaintiff asked the Bankruptcy Court for the first time to treat its Complaint as a timely request for allowance of an administrative expense claim (a year after it was filed, and 10 months after the deadline for filing it in the Bankruptcy Court). This is not "cause" as contemplated by Section 503(a). This is nothing more than a belated and unjustified "Plan B" after the Plaintiff's clever workaround did not pan out as hoped. *Houbigant*, 190 B.R. at 187 ("[Claimant] concedes that it failed to [file its claim] to avoid the claims allowance process ... [Claimant] cannot have it both ways. Equity mandates that it be bound by its tactical decisions.").

*F. The Standing Problem.*

Highland has also argued that the Action must be dismissed because Plaintiff lacks both prudential and constitutional standing to assert the claims that it has asserted in the Action.

---

<sup>48</sup> DE # 32, Exh. 9, Appx. 451.

As has been extensively set forth herein, the Complaint alleges that Plaintiff/DAF was injured because Highland mismanaged the sale of certain of Multi Strat’s assets and, in doing so, breached its contractual and extra-contractual duties to Plaintiff/DAF as an investor in Multi Strat. But Plaintiff/DAF is not a limited partner or investor in Multi Strat (Plaintiff/DAF agrees it is not). Rather, Plaintiff/DAF’s 100% subsidiary CLO Holdco is. Therefore, Highland argues Plaintiff/DAF lacks standing to assert the claims in the Complaint. While Plaintiff/DAF arguably could have constitutional standing as the parent of CLO Holdco (a Multi Strat investor), Plaintiff/DAF would have had to plead its relationship to CLO Holdco, that CLO Holdco was injured, and that the injury to CLO Holdco caused injury to Plaintiff/DAF. *See BCC Merch. Solutions, Inc. v. Jet Pay, LLC*, 129 F.Supp.3d 440, 449-50 (N.D. Tex. 2015) (finding plaintiff parent company had constitutional standing when it pled injury it suffered arising from breach of contract to which its subsidiary was a counterparty). Plaintiff/DAF, however, has not done this.

Highland also argues that Plaintiff/DAF lacks prudential standing because it is not the “real party in interest” as required by Rule 17(a) of the FRCP, made applicable by Rule 7017 of the FRBP. Prudential standing is a “fundamental restriction on [federal judicial] authority” and requires ‘a litigant [to] assert his or her own legal rights... and [ ]not rest a claim to relief on the legal rights or interests of third parties.’” *Id.* at 450 (citations omitted). Prudential standing is a separate requirement from constitutional standing, and, if a plaintiff lacks prudential standing, the action must be dismissed regardless of whether the plaintiff has constitutional standing. *Id.* This prudential standing requirement is embodied in Rule 17(a) of the FRCP, which mandates that a claim be brought by the “real party in interest,” i.e., the party “with the right to sue under ... the controlling state or federal substantive laws.” *Id.* at 450, 453. Here, Plaintiff/DAF is not an investor

in Multi Strat and has no right to assert the actual investors' contractual or other rights under applicable substantive law.<sup>49</sup>

That Plaintiff/DAF is the parent of CLO Holdco, a Multi Strat investor, changes nothing. A parent cannot assert the contractual rights of its subsidiaries or pierce its own corporate veil to do so. *BCC Merch.*, 129 F. Supp. 3d at 460 (“[W]hile BCC may have Article III standing, the Court finds that it lacks prudential standing and is not the real party in interest entitled to enforce the ISO Agreement, which BCC’s subsidiary, BankCard, undisputedly entered into alone.”). For the foregoing reasons, Plaintiff/DAF is not a “real party in interest” as required by Rule 17(a) and lacks prudential standing to assert the claims in the Complaint.

Plaintiff/DAF argues that it should be given leave to amend its Complaint to clarify that it is suing derivatively on behalf of CLO Holdco and/or to substitute in CLO Holdco as party in interest. The Plaintiff/DAF submits that Rule 7017 of the FRBP requires an opportunity to join a

---

<sup>49</sup> See *Carroll v. JPMorgan Chase Bank*, 575 Fed. Appx. 260, 260-61 (5th Cir. 2014) (finding plaintiff lacked standing and was not the “real party in interest” when it had no right to sue under contract); *Farrell Constr. Co. v. Jefferson Parish*, 896 F.2d 136, 140 (5th Cir. 1990) (finding plaintiff was not a “real party in interest” when it was neither a party to the contract nor a third party beneficiary); *BCC Merch.*, 129 F.Supp.3d at 460 (holding plaintiff was not a “real party in interest” and lacked prudential standing when it sought to assert the contract rights of its wholly-owned subsidiary); see also *Hillside Metro Assocs., LLC v. JPMorgan Chase Bank*, 747 F.3d 44, 48-49 (2d Cir. 2014), *cert denied* 2015 U.S. LEXIS 1370 (U.S. Feb. 23, 2015) (applying federal common law and holding: (“We conclude that Hillside does not have prudential standing in this case because it cannot enforce the terms of the [contract], as to which it is neither a party nor a third-party beneficiary, but the enforcement of which is a necessary component of its claim”); *Williams v. Bd. of Educ. of Chicago*, 506 Fed. Appx. 517, 520 (7th Cir. 2013) (“Neither situation describes the federal lawsuit filed by Williams, whose indefinite, inchoate claims arise entirely from a dispute between two business entities whose contracts granted him no direct or incidental benefit and thus leave him without standing to bring these claims); *Pelletier v. Rodriguez*, 2021 U.S. Dist. LEXIS 131898, at \*13 (D. Nev. July 15, 2021) (“[B]ecause there is no given reason that Clover Valley Ranch LLC could not pursue a breach of contract claim in its own name, the Court declines to confer prudential standing on Plaintiff to bring this claim on behalf of a third-party.”); *Cumming v. Felder*, 2018 U.S. Dist. LEXIS 82081, at \*5 (D. Conn. May 16, 2018) (“[A]n individual who is neither a party to an agreement nor an intended beneficiary of the agreement lacks prudential standing to sue under the agreement”) (citing cases); *Alexander v. DLJ Mortg. Cap., Inc.*, 2016 U.S. Dist. LEXIS 198193, at \* 8-14 (S.D. Miss. Jul. 5, 2016) (finding non-party to a contract lacked standing under FRCP 17(a) to bring breach of contract claims); *Henderson v. Benchmark Strategy, LLC*, 2011 U.S. Dist. LEXIS 90988, at \*10-11 (D. Colo. Aug. 15, 2011) (“Mr. Henderson is not a party to the Consulting Agreement and is not the real party in interest to assert the rights (if any) of Henderson LLP.”); *Browne v. Robb*, 583 A.2d 949, 954-55 (Del. 1990) (applying Delaware law and finding plaintiff lacked standing to assert breach of a contract to which it was neither a party nor an intended third-party beneficiary).

real party in interest in such circumstances as these. Specifically, Rule 7017 incorporates FRCP 17(a)(3), which provides:

The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

However, because the administrative expense claims asserted in the Compliant are time-barred, granting Plaintiff/DAF leave to amend its Complaint and substitute in CLO Holdco would be futile. *See, e.g., Stripling v. Jordan Prod. Co.*, 234 F.3d 863, (5th Cir. 2000) (finding amendment “futile” when the “amendment complaint would fail to state a claim upon which relief could be granted.”). CLO Holdco would have the same problems that Plaintiff/DAF has—it didn’t comply with the Plan and Confirmation Order and timely file an administrative expense claim in the Bankruptcy Court and serve it on the Debtor by September 25, 2021.

#### IV. CONCLUSION

As this court explained in its *Taco Bueno*<sup>50</sup> decision, the requirement of filing a request for allowance of an administrative expense claim in the bankruptcy court, and the act of seeking/setting a bar date in connection therewith, are, collectively, a big deal. The concept of setting an administrative expense claim bar date is not just about protecting a debtor. It is about protecting general unsecured creditors, too—because a large administrative expense claim can greatly impact the general unsecured creditors’ share of the bankruptcy pie. That’s why a request for allowance of an administrative expense claim must be filed on the bankruptcy court’s docket and determined by the bankruptcy court after notice and a hearing. And that’s why any party-in-interest can object to the claim. But, to be clear, the Bankruptcy Code and Rules do not specifically

---

<sup>50</sup> *Taco Bueno*, 606 B.R. 289.

set the deadline. *See* 11 U.S.C. § 503. Rather, a debtor typically asks for one to be set or provides for one in its plan. That’s what Highland did here. The deadline can be extended for cause under section 503(a). The Plaintiff/DAF never filed any motion seeking an extension here arguing “cause.” It only asks for an extension now—almost a year after the noticed deadline—and now that it’s clear that its District Court Action was improper. The Plaintiff/DAF’s “work-around” legal strategy here cannot be condoned.

Accordingly, it is

**ORDERED** that the Motion to Dismiss is **GRANTED** as to all causes of action asserted and the Complaint is dismissed in its entirety with prejudice.

**###END OF MEMORANDUM OPINION AND ORDER###**

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

In Re:	)	<b>Case No. 19-34054-sgj-11</b>
	)	Chapter 11
	)	
HIGHLAND CAPITAL	)	Dallas, Texas
MANAGEMENT, L.P.,	)	August 3, 2022
	)	2:30 p.m. Docket
Reorganized Debtor.	)	
<hr/>		
	)	
CHARITABLE DAF FUND, L.P.,	)	<b>Adversary Proceeding 22-3052-sgj</b>
	)	
Plaintiff,	)	
	)	
v.	)	MOTION TO DISMISS ADVERSARY
	)	PROCEEDING FILED BY DEFENDANT
	)	HIGHLAND CAPITAL MANAGEMENT,
HIGHLAND CAPITAL	)	LP [19]
MANAGEMENT, L.P.,	)	
	)	
Defendant.	)	
<hr/>		

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Plaintiff:	Jonathan E. Bridges SBAITI & COMPANY, PLLC JP Morgan Chase Tower 2200 Ross Avenue, Suite 4900 W Dallas, TX 75201 (214) 432-2899
For the Defendant:	Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Defendant:	Zachery Z. Annable HAYWARD, PLLC 10501 N. Central Expressway, Suite 106 Dallas, TX 75231 (972) 755-7108

1 Recorded by: Michael F. Edmond, Sr.  
2 UNITED STATES BANKRUPTCY COURT  
3 1100 Commerce Street, 12th Floor  
4 Dallas, TX 75242  
5 (214) 753-2062

6 Transcribed by: Kathy Rehling  
7 311 Paradise Cove  
8 Shady Shores, TX 76208  
9 (972) 786-3063  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

25 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.



1                   DALLAS, TEXAS - AUGUST 3, 2022 - 2:37 P.M.

2                   THE COURT: 22-3052. This is a motion to dismiss  
3 adversary proceeding. For the Movant Highland, who do we have  
4 appearing?

5                   MR. DEMO: Your Honor, Greg Demo; Pachulski Stang  
6 Ziehl & Jones; on behalf of Highland. Zachery Annable from  
7 the Hayward firm is here as well. And we have Jim Seery.

8                   THE COURT: Okay. Thank you.

9                   All right. For Plaintiff/Respondent Charitable DAF, who  
10 do we have appearing?

11                  MR. BRIDGES: Jonathan Bridges here, Your Honor.

12                  THE COURT: All right. Well, I've got the pleadings  
13 here in front of me, and I saw an exhibit list of Movant/  
14 Debtor, but I think the exhibits were just all of the  
15 attachments to the amended motion to dismiss. Is that  
16 correct?

17                  MR. DEMO: That's --

18                  THE COURT: Or the appendix, I should say?

19                  MR. DEMO: That is absolutely correct.

20                  THE COURT: Okay. All right. Well, I'll hear  
21 Highland's argument.

22                  MR. DEMO: And for the exhibits, we did have a  
23 discussion with opposing counsel, counsel for the DAF.  
24 Exhibit 17 is Mr. Seery's declaration. We filed the motion to  
25 dismiss under both 12(b) (1) and 12(b) (6), and so Mr. Seery's

1 declaration we would like to formally enter into evidence  
2 because that goes to what we believe is Plaintiff's lack of  
3 standing and thus this Court's lack of jurisdiction. And we  
4 do believe that extrinsic evidence is appropriate for that.

5 With respect to Exhibits 1 through 13 and then Exhibits 21  
6 and 22, those are all documents that were filed on this  
7 Court's docket and they consist of really three buckets:  
8 either complaints or orders, the plan, and then transcripts.  
9 All of those are on this Court's docket. And we would ask  
10 your Court to take judicial notice of those. And I know that  
11 Mr. Bridges may have some issues with that, but we do believe  
12 that's appropriate for a 12(b)(6) motion.

13 THE COURT: All right. So you mentioned 17, the  
14 Seery Declaration. 1 through 13, --

15 MR. DEMO: Yes, Your Honor.

16 THE COURT: 1 through 13, and 21 and 22. Or did I  
17 mishear?

18 MR. DEMO: Yes. No, that's exactly right, Your  
19 Honor.

20 THE COURT: So that's the universe of what you're  
21 asking the Court to consider? You're not asking the Court to  
22 consider 14, 15, and 18 through 20? I don't have them in  
23 front of me to --

24 MR. DEMO: 14 -- we are not asking Your Honor to  
25 consider 14, 15, 16, 18, 19, and 20.

1 THE COURT: Okay. All right. Mr. Bridges, what say  
2 you about this?

3 MR. BRIDGES: Thank you, Your Honor. Counsel is  
4 correct. We have no objection to Exhibit 17.

5 We do object to the remainder. And the remainder, our  
6 objection is because they're not referenced in the pleading  
7 and because they aren't actually evidence. What was filed,  
8 especially what was filed in a different adversarial matter,  
9 isn't evidence in this case. And that's the basis for our  
10 objection.

11 MR. DEMO: Your Honor, if I may?

12 THE COURT: You may.

13 MR. DEMO: I guess the first thing is that they were  
14 all referenced in the pleadings, Your Honor.

15 The second thing is that Your Honor can take judicial  
16 notice of things on her docket, and all of these things are on  
17 Your Honor's docket for purposes of the 12(b)(6) motion.

18 And I'm honestly a little surprised by Mr. Bridges'  
19 arguments and by Plaintiff's arguments because they ask you to  
20 do the exact same thing in their pleading. They ask you to  
21 take judicial notice of two time entries that were filed in  
22 the main docket here as evidence that we, Highland, had  
23 knowledge of Plaintiff filing the complaint in the District  
24 Court. And, you know, we're not going to quibble with that  
25 because they are on your Court's dockets and we do believe

1 that you can take judicial notice of those.

2 And I can cite you Fifth Circuit case law, if you'd like,  
3 but I think it's a fairly standard issue.

4 THE COURT: All right. I'll over --

5 MR. BRIDGES: Your Honor, one more thing?

6 THE COURT: Go ahead. Uh-huh.

7 MR. BRIDGES: I might be confused, Your Honor. My  
8 objection was the failure to reference these documents in the  
9 original complaint, the pending complaint in this adversary  
10 proceeding, not to -- failure to have referenced them in the  
11 briefing of this motion.

12 MR. DEMO: Your Honor, I don't think that changes it.  
13 I mean, Your Honor is entitled to take judicial notice of  
14 exhibits -- I mean, I'm sorry, of matters on her docket -- for  
15 the purposes of our motion to dismiss. And all of these  
16 pleadings and all of these exhibits and appendices -- the  
17 witness and exhibit list were referenced in our motion to  
18 dismiss. I don't think that changes anything.

19 THE COURT: All right. I overrule the objection. I  
20 can take judicial notice of these items, and I will.

21 MR. DEMO: Thank you, Your Honor.

22 THE COURT: All right. You may proceed.

23 MR. DEMO: Thank you. Again, Your Honor, for  
24 purposes of the record, Greg Demo; Pachulski Stang Ziehl &  
25 Jones; on behalf of Highland Capital Management.

1 We were here today on -- originally on two motions to  
2 dismiss. And our two motions to dismiss were generally  
3 identical. The first motion to dismiss, which is going  
4 forward today, is the motion -- I'm sorry, the motion to  
5 dismiss the complaint filed by the Charitable DAF Fund, which  
6 alleges that Highland breached its fiduciary obligations to  
7 the DAF as an investor in Multi-Strat during the course of the  
8 bankruptcy.

9 The second thing we were supposed to be here today on,  
10 Your Honor, was a complaint -- a motion to dismiss the  
11 complaint filed by PCMG Trading Partners XXIII. PCMG is  
12 majority-owned by Jim Dondero and wholly controlled by Jim  
13 Dondero. We did have PCMG contact us last week and offer to  
14 withdraw that motion. We were happy to accept that offer  
15 because we do think that it should have been dismissed.

16 That said, Your Honor, we were equally frustrated with  
17 that offer, because the complaint was filed over a year ago.  
18 Highland had to expend substantial resources briefing and  
19 responding to motions. And then, on the eve of trial, when we  
20 have a dispositive motion on file, they withdrew it. And that  
21 is frustrating, Your Honor.

22 And it's doubly frustrating because Mr. Dondero has come  
23 to this Court and tried to make an issue of the burn rate for  
24 legal fees in this Court. And we think that -- that the  
25 filing of the complaint and then the last-minute withdrawal of

1 the complaint is emblematic of what Mr. Dondero is doing here,  
2 Your Honor.

3 That said, we are here only on one motion to dismiss. And  
4 as I mentioned, it's our motion to dismiss Plaintiff's  
5 complaint which alleges that Highland Capital Management  
6 breached its fiduciary obligations to Plaintiff and those  
7 fiduciary obligations arose under the Investment Advisors Act,  
8 common law, and contract. And those breaches allegedly  
9 occurred in mid-2020. And that was after the petition date,  
10 after Your Honor appointed independent directors to manage the  
11 bankruptcy, but before confirmation of the plan and before the  
12 plan's effective date. And each of those causes of action  
13 primarily revolve around the Plaintiff's contention that  
14 Highland sold assets that it wasn't supposed to sell. In  
15 other words, Highland sold assets that Mr. Dondero did not  
16 want it to sell.

17 And I realize I mentioned the complaint was originally  
18 filed in the District Court for the Northern District of  
19 Texas. The District Court referred the complaint to Your  
20 Honor in May of this year, and Highland filed its amended  
21 motion to dismiss on May 22nd -- I'm sorry, May 27th, 2022.

22 And our motion to dismiss is simple, Your Honor, and it  
23 amounts to one simple question: Are the causes -- should the  
24 Court dismiss the complaint because the causes of action in  
25 the complaint are administrative expense claims that should

1 have been filed in this Court and served on the Debtor prior  
2 to the administrative expense claim bar date, which occurred  
3 in September of 2021?

4 We believe the answer to that question is yes, Your Honor.  
5 We believe it's unequivocally yes under black letter  
6 bankruptcy law.

7 But as a separate and alternative basis for dismissal, we  
8 believe that Plaintiff lacks both constitutional and  
9 prudential standing, because (1) Plaintiff, the Charitable DAF  
10 Fund, is not an investor in Multi-Strat, and that's what Mr.  
11 Seery's declaration says; and (2) the Plaintiff did not allege  
12 in the complaint how it was harmed by Highland's actions with  
13 respect to Multi-Strat when it was not an investor in Multi-  
14 Strat.

15 That's it, Your Honor. And we believe it is and should be  
16 a simple matter.

17 Plaintiff, however, has made a belated and what we believe  
18 is a procedurally-improper request to have the complaint  
19 treated as a late-filed administrative claim by this Court.  
20 We believe Your Honor should deny that request.

21 But before addressing the law, I think it's important,  
22 Your Honor, to go through the facts and to go through the  
23 timeline of this complaint, because what the facts and what  
24 the timeline will show is that there was no inadvertent error,  
25 Your Honor. There was a tactical and strategic decision to

1 file the complaint outside of this Court in the hopes that  
2 this Court would not know about it and that it could be  
3 adjudicated around Your Honor.

4 And Ms. Canty, can you please put up Slide 1?

5 And as you'll see, Your Honor, this is the timeline that  
6 we would like to discuss. So, first, February 22nd, 2021.  
7 Your Honor confirmed Highland's plan of reorganization.  
8 Highland's plan, like all plans, included clear procedures for  
9 dealing with administrative expense claims and stated --  
10 again, we believe clearly -- that all administrative expense  
11 claims are required to be filed within 45 days of the plan  
12 effective date.

13 The next date we would bring Your Honor's attention to is  
14 June 23rd, 2021. On June 23rd, the Dugaboy Investment Trust  
15 filed a complaint in the Northern District of Texas, alleging  
16 that Highland breached its fiduciary duties with respect to  
17 Multi-Strat. We did not receive notice of that hearing -- of  
18 that motion, of that complaint. But on June 25th, which is  
19 the next day here, we had a hearing in front of Your Honor on  
20 the Plaintiff the Charitable DAF's motion to reconsider the  
21 order appointing Mr. Seery as Highland's chief restructuring  
22 officer. During that hearing, we discovered that the Dugaboy  
23 Investment Trust, Mr. Dondero's family trust, had filed its  
24 complaint, and we brought that to Your Honor's attention.  
25 Plaintiff's counsel at that June 25th hearing is the same



1 counsel in front of Your Honor today.

2 During that hearing, Your Honor rightly asked Plaintiff,  
3 Plaintiff's counsel, about why it believed it could file  
4 claims rightly before Your Honor in different courts. And  
5 Your Honor rightly told Plaintiff to, and I'm quoting here,  
6 "Go back and hit the books and be prepared to defend" filing  
7 claims outside of this Court. After that hearing, Dugaboy  
8 withdrew the Dugaboy complaint.

9 The next date I would call Your Honor's attention to is  
10 July 22nd, 2021, approximately one month after that June  
11 hearing. That's the date the complaint at issue today was  
12 filed, Your Honor. The complaint -- and the complaint at  
13 issue today was never served. Plaintiff filed a motion to  
14 stay that complaint in the Northern District of Texas and  
15 never served that motion to stay.

16 Moving forward, Your Honor, November 23rd, 2021. We are  
17 here again in front of Your Honor on Plaintiff's complaint  
18 with respect to the HarbourVest settlement. And Highland had  
19 moved to dismiss that complaint. And again Plaintiff's  
20 counsel at that hearing in front of Your Honor was the counsel  
21 here today.

22 During that hearing, we also heard Plaintiff's motion to  
23 stay the HarbourVest complaint pending resolution and pending  
24 the appeal of Highland's plan of reorganization to the Fifth  
25 Circuit.

1 Plaintiff's arguments concerning the plan injunction at  
2 that hearing were essentially the exact same as the arguments  
3 they make in the response to our motion to dismiss, that the  
4 plan injunction prohibited them from doing anything. It  
5 prohibited them from prosecuting the causes of action in the  
6 complaint outside of this Court, which we agree with, but they  
7 also argued it prohibited them from prosecuting the causes of  
8 action in the complaint inside of this Court.

9 At that hearing, Your Honor -- and I'll backtrack just a  
10 second after that -- at that hearing, Your Honor, Highland's  
11 counsel was very clear on the record that they agreed that the  
12 plan injunction prohibited litigation filed prior to the  
13 effective date from occurring outside of this Court.  
14 Highland, however, was also clear that Plaintiff did have a  
15 remedy, and that remedy was to file the causes of action in  
16 the complaint as a motion for allowance of an administrative  
17 expense claim in this Court and prosecute them here.

18 At that hearing in November of 2021, Your Honor also told  
19 Plaintiff's counsel that their arguments concerning the plan  
20 injunction, and I'm quoting here, Your Honor, "reflect,  
21 frankly, a misunderstanding of how the injunction language  
22 applies."

23 Now, I'm going to backtrack, Your Honor, because I did  
24 forget a very important date, and that's the August 11th, 2021  
25 effective date of the plan. It is undisputed, Your Honor,

1 that Plaintiff received notice of that effective date, and  
2 Plaintiff's counsel was separately noticed with that effective  
3 date of the plan.

4 Those certificates of service are in Bankruptcy Docket No.  
5 2747, and are included in our witness and exhibit list as  
6 Exhibit 8. Again, it is undisputed that both Plaintiff's  
7 counsel and Plaintiff had notice of the effective date of the  
8 plan.

9 And it is also undisputed, Your Honor, that that notice  
10 disclosed that all administrative expense claims had to be  
11 filed with this Court and served on the Debtor within 45 days  
12 of the effective date of the plan, which was September 25,  
13 2021.

14 It is important to note that at no point in this timeline  
15 to date did Plaintiff's counsel -- I'm sorry, did Plaintiff do  
16 anything. Plaintiff did not file an administrative expense  
17 claim. Plaintiff did not file a motion to have their  
18 complaint allowed as timely filed. Plaintiff did nothing.

19 It was not until May of 2022 when the District Court  
20 referred this action to Your Honor and after Highland filed  
21 its amended motion to dismiss for Plaintiff's failure to  
22 comply with the administrative expense claim bar date that  
23 Plaintiff came into this Court asking leniency.

24 Plaintiff came into this Court in their response to the  
25 motion to dismiss asking Your Honor to treat their claim as a

1 timely-filed administrative expense claim. But what this  
2 timeline shows, Your Honor, and what the facts show, Your  
3 Honor, is, again, that this was not an inadvertent mistake.  
4 Plaintiff chose to file the complaint outside of this Court.  
5 Plaintiff, with notice of the effective date and notice of the  
6 administrative expense claim bar date, chose not to file an  
7 administrative expense claim in this Court.

8 Plaintiff, with Your Honor's -- Your Honor's direct (audio  
9 gap) in November of 2021 that they misunderstood the plan  
10 injunction, still did nothing, Your Honor. It was not until  
11 we moved to dismiss this action that Plaintiff requested, in a  
12 procedurally-improper way, to have their claim treated as a  
13 late-filed claim.

14 What we believe that shows, Your Honor, is that this was  
15 tactical. That what Plaintiff actually wanted was to file  
16 their claim in the District Court, which they did, and which  
17 they did not give us notice of; to stay that action in the  
18 District Court, which they did, and which they did not give us  
19 notice of; and to have that complaint sit there in the  
20 District Court until the Fifth Circuit overturned the plan,  
21 and then and only then would they litigate that action, again,  
22 away from Your Honor.

23 We believe that's highly improper, Your Honor.

24 That said, the legal question here is, again, very simple.  
25 Does the complaint include administrative expense claims that

1 are now time-barred because they were not filed in this Court  
2 by the September 2021 administrative expense claim bar date?  
3 Again, we believe the answer to that question is a simple yes.  
4 These are administrative expense claims.

5 Again, Plaintiff's complaint alleges that Highland  
6 violated its fiduciary obligations to Plaintiff in mid-2020,  
7 after the petition date, after appointment of independent  
8 directors, before confirmation, and before the effective date,  
9 at all times while Highland was the debtor-in-possession.

10 And as Your Honor knows, administrative expense claims,  
11 generally speaking, are claims that arise under Section 503(b)  
12 of the Code for the actual and necessary costs of preserving  
13 the estate and that arise from the debtor-in-possession or  
14 trustee's postpetition, pre-effective-date, ordinary-course  
15 operation of the estate.

16 And the claims in the complaint are administrative expense  
17 claims under 503(b) under the *Reading* exception which was  
18 created by the Supreme Court in 1968 in *Reading Co. v. Brown*.  
19 And as set forth in our brief, Your Honor, *Reading* is still  
20 good law. It's routinely applied in the Fifth Circuit and  
21 it's routinely applied in all circuits.

22 And *Reading*, Your Honor, (garbled) it includes not just  
23 torts, but other claims arising from intentional or other  
24 wrongful or -- wrongful acts as well. And the claims asserted  
25 in the complaint are clearly administrative expense claims

1 under *Reading*. They are claims for intentional and/or  
2 negligent violations of Highland's alleged fiduciary duty to  
3 Plaintiff during the course of the bankruptcy.

4 And Ms. Canty, if you could please put up Slide 2.

5 Now, Plaintiff tries to dodge this by saying that the  
6 definition of, quote, administrative expense claims and the  
7 plan does not include the types of claims that they allege  
8 here. But that's not the case, Your Honor. And the defined  
9 term "Administrative Expense Claim" is in the middle box of  
10 your screen. And as you'll see, it says it's any claim  
11 allowed pursuant to Sections 503(b), 507(a)(2), 507(b), or  
12 1114(2) of the Bankruptcy Code. Those include administrative  
13 expense claims under the *Reading* exception, and they include  
14 the administrative expense claims asserted in the complaint.

15 Those claims were required under the plan -- and the  
16 provisions are all right here -- again to be filed in this  
17 Court by September 2021. They were not.

18 And as I mentioned above, it is undisputed that Plaintiff  
19 had notice of the plan, that Plaintiff had notice of the  
20 administrative expense claim bar date. And it's also  
21 undisputed that Plaintiff, represented by counsel, did not  
22 file with this Court an administrative expense claim by  
23 September 25th, 2021. Plaintiff's claims are now time-barred.

24 And we believe Your Honor's *Taco Bueno* opinion is on all  
25 fours. In *Taco Bueno*, the claimant at least tried to file an

1 administrative expense claim with this Court by filing a proof  
2 of claim on the claims register. Your Honor held that wasn't  
3 good enough and it did not count as an administrative expense  
4 claim, and Your Honor barred claimant's claim in *Taco Bueno* as  
5 time-barred.

6 Here, similarly, Plaintiff, who's been represented at all  
7 times by counsel, indisputably had notice and chose to file  
8 the complaint in the District Court rather than complying with  
9 the provisions of the plan and with the provisions of the  
10 Bankruptcy Code. Under *Taco Bueno* and various cases, Your  
11 Honor, this claim is time-barred.

12 And that should end the discussion, Your Honor, but it  
13 doesn't, because Plaintiff, in its response to our motion to  
14 dismiss, finally asked this Court for leniency and finally  
15 asked this Court to treat the claim as, quote, a request for  
16 an order permitting a late claim or otherwise to have it  
17 treated as a timely administrative expense claim under Federal  
18 Rule of Civil Procedure 15.

19 But that's not how it works, Your Honor. Section 502 of  
20 the Code allows late-filed administrative expense claims only  
21 for cause. But that requires a separate motion, and it  
22 requires evidence, Your Honor. None of that happened here.  
23 Instead, Plaintiff filed a one-line request to have it treated  
24 as a late-filed claim, and it filed that request 16 months  
25 after confirmation, 10 months after the bar date, and 8 months

1 after Your Honor rejected their argument on the plan  
2 injunction.

3 There is no cause here. Plaintiff has provided no  
4 evidence of it. It just asked for leniency based on a series  
5 of what we believe are irrelevant arguments.

6 And that's where the facts again become important. As  
7 Your Honor has said, facts matter. And the facts here, the  
8 indisputed facts (garbled) Plaintiff and bely a finding of  
9 cause or excusable neglect under *Pioneer*. Again, two  
10 standards that Plaintiff has not even tried to argue.

11 And, again, Your Honor, what we believe the facts show is  
12 that there was no inadvertent technical error here. There was  
13 a considered and strategic plan to file these claims outside  
14 of this Court in the hopes of avoiding Your Honor.

15 As in *Houbigant*, which we briefed in our paper, Plaintiff  
16 is bound by those tactical decisions. And the complaint, Your  
17 Honor, we would ask be dismissed with prejudice for failure to  
18 state a -- I'm sorry, for failure to comply with the  
19 administrative expense claim bar date.

20 And lastly, Your Honor, standing. In our motion to  
21 dismiss, we sought an order dismissing this action under  
22 12(b)(1) for lack of constitutional standing and also under  
23 12(b)(6) for lack of prudential standing. And as stated in  
24 our papers and in Mr. Seery's declaration -- which, again, is  
25 Exhibit 17 on our witness and exhibit list -- the DAF, the



1 Plaintiff here, is not an investor in Multi-Strat. And all of  
2 the allegations in the complaint, all of the causes of action  
3 in the complaint, revolve around the DAF being an investor in  
4 Multi-Strat, and Plaintiff did not plead how it could possibly  
5 have standing as a non-investor.

6 Consequently, Your Honor, Plaintiff failed to plead  
7 constitutional standing, failed to plead an injury, and failed  
8 to plead prudential standing because it failed to plead how it  
9 was the real party in interest under Section 17.

10 Now, Plaintiff makes various arguments in its response  
11 about how it could have direct and/or derivative standing.  
12 But, again, Your Honor, one, we believe those arguments are  
13 meritless, and we believe that they're irrelevant, because  
14 notwithstanding the liberal amendments standard in Federal  
15 Rule of Civil Procedure 15 and the language in Federal Rule of  
16 Civil Procedure 17, we believe amendment here would be futile.  
17 For all the reasons we discussed, the claims are time-barred.  
18 And even if Plaintiff were able to amend its complaint to fix  
19 the standing issues, Plaintiff in no world can unwind and turn  
20 back the clock to be able to file the complaint in this Court  
21 as an administrative expense claim by the administrative  
22 expense claim bar date, which, again, was on September 25th,  
23 2021.

24 For the foregoing reasons, Your Honor, we ask that you  
25 dismiss the complaint with prejudice. And I'm happy to answer

1 any questions.

2 THE COURT: Okay. No questions right now.

3 MR. DEMO: Thank you.

4 THE COURT: Mr. Bridges?

5 MR. BRIDGES: Thank you, Your Honor. The last time I  
6 appeared in this Court was at the June 25th, 2021 hearing that  
7 counsel referenced. It's particularly memorable to me because  
8 of being postponed due to symptoms from a cranky gallbladder.  
9 The time before that I remember even better. That was the  
10 only other time I was before you, Your Honor. The  
11 particularly painful order that was the result of that  
12 previous time is also very memorable to me.

13 My gallbladder is no longer with us, and that order, that  
14 painful order, has been expunged at considerable costs. I was  
15 hoping that meant today would be a fresh start. Apparently, I  
16 need to go backwards just a little bit, perhaps.

17 At the June 25th hearing that counsel described, I did  
18 argue. At the end, you did ask about a recently-filed lawsuit  
19 that I didn't know anything about and told you so. You asked  
20 if Mr. Sbaiti was available, and I believe we had to go get  
21 him, and he answered your questions, and your exchange was  
22 with him.

23 I'm afraid that, again, I am unprepared and largely not in  
24 the know about the other matters that counsel has referenced.  
25 I came to argue the motion that's at issue today in the

1 adversary proceeding that we're here for.

2       The *Federal Reporters*, Your Honor, I know that you know  
3 this, they're full of opinions admonishing courts to favor  
4 resolving cases on the merits. Ever since the code pleading  
5 system was abolished, federal courts have expressed their bias  
6 in favor of addressing the merits of cases, and I would be  
7 remiss in failing to mention that here on Highland's motion to  
8 dismiss this case on timeliness and standing grounds.

9       Rule 15 and Rule 17 of the Federal Rules of Civil  
10 Procedure are among those aimed at getting cases to the  
11 merits, and we relied on both of those in our brief.

12       The first issue raised in the briefs is the classification  
13 of our allegations as an administrative expense claim. That  
14 three-word term is capitalized in the plan, indicating that it  
15 is a defined term. I read in the reply brief and heard  
16 counsel argue just moments ago that Highland views this as  
17 merely a naming convention and not as a limiting provision,  
18 the defined term. And I see that as a reasonable view of  
19 what's in the plan. But it does quite -- quite plainly appear  
20 as a defined term, with a lengthy definition.

21       Although this is not a hill we would choose to die on, and  
22 much of our response brief is devoted to alternative  
23 arguments, we don't view the allegations in the complaint as  
24 administrative in nature, nor as an expense, nor, perhaps most  
25 importantly, as the result of an action that benefits the

1 estate, as both the plan definition and Section 503(b)  
2 require.

3 Section 503(b) concerns only, quote, the costs and  
4 expenses of preserving the estate. What the complaint alleges  
5 in this matter is that the acts complained of were against the  
6 interests of the estate and depleted the estate's assets.

7 For example, Paragraph 22, which sums up the factual  
8 allegations in the complaint, reads as follows. Quote, "In  
9 short, HCMLP caused Multi-Strat to sell the viatical pool at a  
10 substantially discounted amount to curry favor with the  
11 brokers and buyers in the marketplace, for no apparent benefit  
12 to Multi-Strat's investors or the Debtor's estate."

13 This allegation does not on its face appear to be based on  
14 the result of an action that benefits the estate.

15 The second issue concerns the consequences if we're wrong  
16 about the first issue.

17 THE COURT: Let me --

18 MR. BRIDGES: The consequences --

19 THE COURT: Let me back up. Let me back up if you're  
20 moving off that point. What about the Supreme Court --

21 MR. BRIDGES: Yes, Your Honor.

22 THE COURT: What about the Supreme Court's *Reading*  
23 case or *Reading* case? If my memory -- it's been years since  
24 I've read it, but I remember it pretty well. I believe that  
25 involved a fire, right, a fire in a building that a trustee

1 was operating. Certainly, a fire and great damage caused to a  
2 third party wouldn't seem on its face to benefit the estate,  
3 as that phrasing is used in 503(b). But the U.S. Supreme  
4 Court said something to the effect of, you know, he's doing  
5 business and it's a cost of doing business that, you know,  
6 you're going to sometimes have things like this happen. And  
7 isn't that exactly the same sort of situation we have here if  
8 your allegations are true?

9 MR. BRIDGES: I don't think so, Your Honor, although  
10 I would -- would like to emphasize again this is not a hill  
11 that we would choose to die on. But I think --

12 THE COURT: Am I correct --

13 MR. BRIDGES: -- two reasons distinguish --

14 THE COURT: -- in remembering the facts of that  
15 famous U.S. Supreme Court case, that it involved a fire and  
16 that the trustee who was operating the business, it was a  
17 consequence of him operating the business? Am I correct in  
18 remembering those facts?

19 MR. BRIDGES: That sounds correct to me, Your Honor,  
20 but I don't pretend to remember it well enough to disagree  
21 with you. I would like --

22 THE COURT: Mr. Demo, --

23 MR. BRIDGES: -- to distinguish it.

24 THE COURT: -- can you confirm or tell me if I'm  
25 wrong?

1 MR. DEMO: Yeah. You're absolutely correct, Your  
2 Honor. The trustee in that case accidentally burned down the  
3 neighboring building, and the Supreme Court found that it was  
4 still an administrative expense claim under the "*Reading*" or  
5 "*Reading*" exception. And that exception provides that even  
6 though burning down somebody else's house does not benefit the  
7 estate, that it still counts as an administrative expense  
8 claim under 503(b). And we have other case that comes --  
9 other case law that comes after that that even broadens that,  
10 Your Honor.

11 THE COURT: Yes. And I know the Fifth Circuit case  
12 has cited that case in different opinions.

13 Okay. So, going back to that, Mr. Bridges, I mean, you  
14 just argued 503(b) doesn't contemplate this type of claim that  
15 -- or claims you're alleging in the action, but hasn't the  
16 Supreme Court in fact said that it does apply to this kind of  
17 thing?

18 MR. BRIDGES: Your Honor, no, I don't think so. And  
19 the reasons are twofold. One is because the fire in that case  
20 is not, I don't believe, the actions being complained of by  
21 the plaintiff. Rather, actions that are to the benefit of the  
22 estate result in negligently, accidentally, causing a fire.  
23 And that is a significant difference from here, where the  
24 actions allegedly being -- that we're alleging, that are  
25 complained of, are actually actions against the interests of

1 the estate, selling out the estate on the cheap. Your Honor,  
2 that is one distinction.

3 The other is that we're relying on the defined term, which  
4 has different language from the actual Code, which was not at  
5 issue in the other case.

6 Those are the two distinctions that I draw, Your Honor.

7 THE COURT: Well, if this is not --

8 MR. BRIDGES: The second issue --

9 THE COURT: -- a 503-type claim, then what kind of  
10 claim would it be? It has to fit into some sort of category  
11 here.

12 MR. BRIDGES: Your Honor, honestly, our position is  
13 that the order itself creates -- the final plan creates a gap  
14 by not identifying this as -- as that kind of -- as an  
15 administrative priority claim.

16 THE COURT: Okay.

17 MR. BRIDGES: The second issue, Your Honor, concerns  
18 the consequences if we're wrong about the first issue and that  
19 the consequences need not be forfeiture.

20 Counsel raises concerns about the purpose of the  
21 administrative claim bar date and the ability to distribute  
22 funds. Those concerns certainly seen valid. But importantly,  
23 they go to priority, not validity.

24 Not one of their policy arguments supports outright  
25 dismissal of the complaint, which would amount to a default

1 and would have the effect of protecting the interests of  
2 equity in this matter over the interests of a creditor.

3 Rule 15 allows for relation back of allegations from a  
4 previous filing, and we believe it governs here. Highland  
5 doesn't deny that it had notice of the complaint, so they  
6 don't have prejudice from the timing of it. And there is  
7 authority under the Code for allowing timely filing or  
8 treating as timely the filing of one type of claim that was  
9 submitted as another type of claim.

10 And on this, I'd point the Court to the Delaware  
11 *Bluestream [sic] Brands* case, 2021 Bankr. LEXIS 1980, which  
12 cites to the First Circuit and other cases allowing a timely  
13 proof of claim to be treated as an administrative expense  
14 claim.

15 THE COURT: Doesn't that --

16 MR. BRIDGES: I'm truly --

17 THE COURT: Doesn't that run contrary to my *Taco*  
18 *Bueno* opinion?

19 MR. BRIDGES: Perhaps, Your Honor. It does cite your  
20 opinion in a "*But see.*" And I again would defer to your  
21 knowledge of the proceedings in that case. But I saw in the  
22 opinion no argument whatsoever concerning the ability of the  
23 creditor to seek relief on its proof of claim regarding the  
24 same transaction. I read it not to exclude that.

25 Although the Court relied -- also, the Court relied on



1 prejudice to the creditors in that case if the administrative  
2 claim had been allowed. Importantly, in this case, where  
3 creditors can expect to be paid in full, no such prejudice  
4 exists, or at least at this stage of the claim -- of the case  
5 there is no evidence that any such prejudice to the creditors  
6 exists.

7 I'm truly unsure how to respond to the accusation that the  
8 decision to file this action in District Court was a strategic  
9 one, a strategic decision. In some regards, certainly, all of  
10 our decisions are strategic. But the implication that this  
11 was somehow a nefarious decision that should inflame the Court  
12 is simply untrue.

13 I think the timeline supports us in this, that at the time  
14 of the filing of this lawsuit the plan was not yet effective,  
15 so the route to bring an administrative claim, if that's what  
16 this is, did not appear to be available to us without the plan  
17 having gone effective.

18 Also, it appeared that it might not go effective for a  
19 year or more while the appeal to the Fifth Circuit was  
20 pending.

21 A few weeks later, I think it was less than three,  
22 approximately 20 days later, when Highland elected to make the  
23 plan effective, the injunction as we understand it precludes  
24 us from serving them from that point forward, as doing so  
25 would have been continuing with this case. The plan

1 injunction prevented us from doing so.

2 And so the accusation that we intentionally filed the  
3 lawsuit and didn't serve them with process is really about a  
4 three-week period that before we got them served we were  
5 enjoined, as we understand the injunction, from doing so.

6 I have not heard from them that we're wrong on that  
7 interpretation of the injunction. I know from their other  
8 pleadings in this matter that they view the injunction as  
9 applying to this matter. The only question I have is whether  
10 they agree with our take that serving process would have been  
11 continuing with the action.

12 THE COURT: Let me -- let me --

13 MR. BRIDGES: The notion that we --

14 THE COURT: -- double-check that I understand  
15 something you said. I think what I heard you say was, because  
16 the plan had not gone effective yet, therefore triggering  
17 the 45-day deadline for filing administrative expense claims,  
18 you had no other avenue here to pursue your claims except to  
19 file the District Court lawsuit. Is that what I heard you  
20 say, or am I misunderstanding?

21 MR. BRIDGES: Well, that's certainly more strongly  
22 than I intended to say it. I don't think so, Your Honor. But  
23 a similar vein, that the idea of filing a claim as required by  
24 the final plan was not -- was not something that had gone into  
25 effect yet. So thinking that that --

1 THE COURT: What do you mean? You can file a request  
2 for allowance of administrative claim, heck, in the first 30  
3 days of a bankruptcy case. You don't have to wait for the  
4 Court to set a deadline.

5 MR. BRIDGES: Your Honor, --

6 THE COURT: You can file one at any time.

7 MR. BRIDGES: -- we did not have an effective  
8 deadline. We did not know when that effective deadline would  
9 go effective. That process, that procedure, did not appear to  
10 be the one that was, what, most available to us.

11 THE COURT: Why not? Why not? Why not? There is  
12 nothing that would have precluded you from filing a request  
13 for allowance of administrative expense claim. People file  
14 them throughout Chapter 11 cases frequently, --

15 MR. BRIDGES: The --

16 THE COURT: -- before there's ever a deadline set.

17 MR. BRIDGES: Your Honor, the answer to that question  
18 is that reading the definition of what it was did not cause us  
19 to believe that's what we had here. That is Issue #1 over  
20 again.

21 One question -- again, one question is whether we are  
22 right or wrong on Issue 1. And I'm hearing you loudly and  
23 clearly that you don't agree with us on that.

24 But in connection with that, I don't, Your Honor, I don't  
25 think a fair conclusion is that we knew better or should have

1 known better than to read the defined term and think that it  
2 does not apply to the case that we brought.

3 Certainly, the final order -- I'm sorry, the plan was not  
4 in effect yet, so we weren't governed by it at that time. And  
5 I believe and urge the Court to consider that a plain reading  
6 of that plan does not sound like on its face that our claim --  
7 our complaint is within its four corners.

8 THE COURT: Did you worry about the automatic stay?

9 MR. BRIDGES: Yes, Your Honor.

10 THE COURT: Okay. What is your analysis there?

11 MR. BRIDGES: Your Honor, it was well more than a  
12 year ago. I don't think I can remember that. It wasn't in  
13 the briefing for today, and it's not fresh on my mind.

14 THE COURT: You're right. You're right, it wasn't in  
15 the briefing. But, again, I'm just trying to put myself in  
16 your brains and, you know, I don't -- I will say it's a gray  
17 issue, because these are not prepetition claims, and usually  
18 362 stays collection or actions aimed at pursuing prepetition  
19 claims.

20 On the other hand, the relief sought in the DAF's  
21 complaint asked for, among other things, disgorgement of all  
22 ill-gotten gains, and also voiding of certain agreements of  
23 Highland. This sounds potentially like exercising or an  
24 attempt to exercise control over property of the estate. So,  
25 again, it's something that weighs on me a little bit.

1 But, again, it's not the subject of the hearing today, but  
2 I kind of am still interested in what your thought process  
3 was. You know, it's a very risky thing to file a lawsuit  
4 against a Chapter 11 debtor as opposed to filing a proof of  
5 claim or a request for allowance of administrative claim. So  
6 I just -- it would be helpful to hear what your analysis was  
7 on that.

8 MR. BRIDGES: Perhaps this would be helpful as well,  
9 Your Honor. At least as -- at least in my view and  
10 experience, you do not have to be a bankruptcy lawyer to know  
11 what the automatic stay is. An administrative expense claim  
12 isn't the same kind of recognized concept, I believe.  
13 Certainly, not to me.

14 And so the notion that what we were doing is sitting on  
15 our hands rather than serving the complaint because of some  
16 ulterior motive is just wrong. That's untrue. And generally  
17 speaking, in this day and age, cases aren't dismissed without  
18 reaching the merits simply because they weren't filed in the  
19 right place or with the right forum.

20 Your Honor, that brings us to the third issue, which is  
21 standing. Again, courts in this day and age do not dismiss  
22 cases without reaching the merits simply because they were not  
23 brought by the real party in interest. That's what Rule 17  
24 says quite clearly. An opportunity for the real party in  
25 interest to join must be provided. If -- if that's -- let me

1 back up. If -- because Highland admits that Plaintiff's  
2 subsidiary, CLO Holdco, is an investor who would have  
3 standing, that should end the matter there.

4 Moreover, the Plaintiff, the DAF, has alleged in  
5 Paragraphs 7 and 11 of the complaint that it is an investor.  
6 And frankly, Your Honor, I don't think that's incorrect when  
7 you view that someone can invest indirectly. That is not a  
8 peculiar concept, and I don't think it's a stretch to say that  
9 that pleading that we are indirectly an investor is an invalid  
10 one. And in Paragraph 54, it states quite clearly that, if  
11 necessary, we are seeking to plead our claim derivatively.

12 That's all I have today, Your Honor. If there's more I  
13 can answer, I will do my best.

14 THE COURT: Okay. So, am I hearing that the DAF  
15 acknowledges that CLO Holdco, its one-hundred-percent  
16 subsidiary, last I knew, that it is actually the investor in  
17 Multi-Strat, not DAF? Am I hearing that?

18 MR. BRIDGES: Mostly yes, Your Honor. I'd like to  
19 quibble around the edges. I believe it is not a one-hundred-  
20 percent-owned subsidiary.

21 THE COURT: Okay.

22 MR. BRIDGES: My recollection is that it's --

23 THE COURT: Well, forget that hundred percent. But  
24 the point is I'm hearing DAF acknowledge that it's CLO Holdco  
25 that it is at least partly an owner of, if not mostly an owner

1 of, CLO Holdco is the one that invested in Multi-Strat.

2 MR. BRIDGES: I believe Highland is correct on that,  
3 Your Honor. Yes.

4 THE COURT: Okay. So your argument is that the DAF  
5 still would have standing because it should be considered an  
6 indirect owner of interest in Multi-Strat?

7 MR. BRIDGES: Slightly different from that, Your  
8 Honor. Not only is it an indirect investor, it also is  
9 receiving investment device -- advice from Highland for the  
10 purposes of directing its subsidiaries or counsel to these  
11 subsidiaries or aiding them in making investment decisions.  
12 So that investment advice and the contract claims are still  
13 relevant, whether the investment by the DAF is direct or  
14 indirect. The relationship is, in all important aspects, the  
15 same, regardless of whether the investment in the ultimate  
16 asset is a direct one or an indirect one.

17 And Your Honor, I don't believe there's anything unusual  
18 about that relationship between a subsidiary and its -- and  
19 its parent.

20 THE COURT: You don't think there's anything unusual  
21 about what?

22 MR. BRIDGES: About the relationship --

23 THE COURT: About only naming the parent as a party,  
24 not the subsidiary that actually owns the investment?

25 MR. BRIDGES: No, Your Honor. That's not what I was

1 referring to.

2 The relationship between a parent entity that uses  
3 subsidiaries to make its investment is a not-unusual corporate  
4 arrangement.

5 THE COURT: Oh, well, certainly. I wouldn't think it  
6 would be. But I'm more focused on the parent being the  
7 Plaintiff in the lawsuit and not the subsidiary.

8 MR. BRIDGES: Your Honor, I think that's what  
9 derivative case law and the statutes that govern it are all  
10 about. This is not a novel thing.

11 THE COURT: I think you've got it flip-flopped, don't  
12 you? I mean, usually, derivative -- I mean, I guess I -- I  
13 see what you're saying. The entity has a cause of action and  
14 it won't bring it for whatever reason, so the shareholders --  
15 here, I guess you're saying the DAF -- would ask for standing.  
16 It doesn't seem like the same thing we usually -- the same  
17 context we usually see derivative litigation brought in.  
18 Would you acknowledge that?

19 MR. BRIDGES: I think in the federal courts what  
20 you're referring to is shareholder derivative actions that  
21 indeed tend to fit the paradigm you're talking about.

22 It is not unusual at all, however, for a majority owner of  
23 an LLC to bring an action that is derivative on behalf of the  
24 LLC, or a minority but a significant minority member of an LLC  
25 or another type of company to bring such action. Shareholder



1 derivatives are not the only kind of derivative action.

2 THE COURT: Okay. I think that's all the questions I  
3 have. Anything else?

4 (No response.)

5 THE COURT: Anything else? Okay. I guess -- that  
6 was directed to you, Mr. Bridges. Anything else?

7 MR. BRIDGES: I'm sorry. Not from me, Your Honor.

8 THE COURT: All right. Mr. Demo, you have the last  
9 word.

10 MR. DEMO: Thank you, Your Honor. And I'll be fairly  
11 brief.

12 Mr. Bridges I think is still -- I'm sorry, not --  
13 Plaintiff I think is still confused about what an  
14 administrative claim, expense claim is and how the *Reading*  
15 exception applies. In *Reading*, there was no benefit to  
16 burning down somebody's house. In *A.I. [sic] Copeland*, which  
17 is a Fifth Circuit case, a debtor improperly failed to turn  
18 over tax claims -- I'm sorry, tax distributions, tax payments,  
19 to the State of Texas, in violation of Texas statutes. That  
20 was an administrative expense claim.

21 All of the claims here arise from Highland's alleged  
22 intentional or negligent breach of its fiduciary duties to the  
23 DAF -- again, not an investor in Multi-Strat, but that's what  
24 was pled. All of those fall under the *Reading* exception.

25 And to Plaintiff's point about, you know, there not being

1 a benefit to the estate here, I would read you the last line  
2 of Paragraph 49, which says that one of the breaches includes  
3 utilizing the sale proceeds for its own names, namely -- I'm  
4 sorry. Utilizing -- let me start over, Your Honor. It says,  
5 "utilizing the sale proceeds for its own end, namely, to  
6 enrich itself." That's Mr. Bridges, that's Plaintiff's  
7 complaint. They are alleging that we took these actions to  
8 benefit Highland during the course of the bankruptcy.

9 Either way you slice it, Your Honor, this is an  
10 administrative expense claim. We think *Reading* is directly on  
11 point, that they have pled a substantial benefit to the  
12 estate. They basically pled that we took these assets and  
13 absconded with them.

14 Either way you slice it, under *Reading*, it applies. Under  
15 benefit to the estate, under their complaint, it applies.  
16 This is an administrative expense claim and had to be filed by  
17 the administrative expense claim bar date.

18 And, again, with respect to the plan injunction, Your  
19 Honor, even if Mr. Bridges was right -- I'm sorry. Even if  
20 Plaintiff were right, and they're not, and I do think a point  
21 needs to be made here, is that Plaintiff is the only party,  
22 Plaintiff and PCBM, are the only parties who did not  
23 understand the plan. Even Mr. Dondero's other affiliates --  
24 NexPoint, NexPoint Advisors, Highland Capital Management Fund  
25 Advisors, and CPCM -- all were able to file administrative

1 expense claims in this Court on or substantially before the  
2 administrative expense claims bar date. Plaintiff's  
3 interpretation and confusion with the plan injunction applies  
4 only to Plaintiff. They are on an island here.

5 And yes, it's also wrong. And even if Plaintiff were  
6 confused about that when they filed their complaint in the  
7 Northern District of Texas, they cannot say they were confused  
8 about that after the November 2021 hearing, where Your Honor  
9 told them bluntly and blatantly that they misunderstood the  
10 plan injunction and where Highland told them that they were  
11 not without a remedy, that their remedy was to file an  
12 administrative expense claim in this Court.

13 So, even giving Plaintiff the benefit of the doubt that  
14 they did innocently misunderstand the plan injunction, that  
15 misunderstanding ended in November of 2021, eight months ago.  
16 During that eight-month period, Plaintiff again did nothing.  
17 Plaintiff only made a request, and a procedurally-improper  
18 request, to have the claim treated as late-filed when it  
19 responded to our motion to dismiss.

20 With respect to the policy here, Your Honor, I think Your  
21 Honor nailed it in *Taco Bueno*. Bar dates are important.  
22 Administrative expense bar dates are extremely important. And  
23 so now I understand under Federal Rule of Civil Procedure 15  
24 and all the other Federal Rules you do want to get to the  
25 merits, but 503 applies here, Your Honor. There are separate

1 procedures dealing with administrative expense claims, and  
2 those procedures are important to protect not just the Debtor  
3 but all creditors in this matter.

4 This is not a two-party dispute. Bankruptcy is not a two-  
5 party game. There are other creditors here who have been  
6 waiting ten, ten years, a decade to be paid. And Plaintiff is  
7 coming in and saying, you know what, we should get an  
8 administrative expense claim. We should be able to take  
9 a-hundred-cent dollars off the top. And they're doing that,  
10 Your Honor, without any evidence whatsoever. No evidence of  
11 cause under 503(a). No evidence under *Pioneer*. And not even  
12 an attempt to plead them.

13 The policy here does not favor them. It favors the  
14 estate. It favors all other creditors in this action who are  
15 relying on the confirmed plan that has been confirmed for well  
16 over a year now, Your Honor.

17 And the last thing I'll say on standing, I do think  
18 Plaintiff's arguments on direct and derivative are just way  
19 off. But I don't think they matter, Your Honor, because,  
20 again, regardless of the liberal amendment standards in 15,  
21 and regardless of the language in 17, amendment here is  
22 futile. That is our point. It doesn't matter if they fix the  
23 standing issues. Their complaint is still going to be time-  
24 barred. And they still, like today, they still will have no  
25 evidence of cause or excusable neglect to justify that

1 complaint.

2 Again, happy to answer any questions, Your Honor, but we  
3 do think this is a straightforward matter. And with that,  
4 I'll cede my time.

5 THE COURT: Okay. Thank you.

6 The Court is going to grant the motion to dismiss. And  
7 I'm obviously going to write this up. But there's no question  
8 whatsoever that the purported claims against Highland that  
9 have been asserted in this action by the DAF concerning the  
10 Multi-Strat sales of assets, they arise from postpetition  
11 transactions, and to the extent the claims are valid, they  
12 would have given rise to postpetition administrative expense  
13 claims. There's just no -- there's no legitimate argument to  
14 the contrary on that.

15 And so that means this is a Section 503(b) issue, not a  
16 Rule 15 or a Rule 17 issue.

17 Not only did the plan provide a specific procedure for  
18 filing administrative expense claims, but 503 of the  
19 Bankruptcy Code also contemplates such a procedure.

20 And as this Court held in a lengthy opinion in the *Taco*  
21 *Bueno* case, these procedures have to be strictly complied  
22 with. It's very clear from the language of the Code, and the  
23 legislative history, if the language of the Code weren't  
24 clear, that proofs of claim are very different things than  
25 postpetition claims that arise. You file a proof of claim, a

1 simple form, for a prepetition claim. It's deemed allowed if  
2 no one objects. You don't even have to get an order. But,  
3 again, as I explained in *Taco Bueno*, a 503 administrative  
4 expense claim is a very different animal. Okay? You have to  
5 put the world on notice.

6 As Mr. Demo said, it's not a two-party dispute. It's a  
7 type of claim that potentially every unsecured creditor in the  
8 case would care about and want to weigh in on. You're held to  
9 strict proof.

10 And, again, as I noted from the Supreme Court *Reading*  
11 case, the Supreme Court has said technically there doesn't  
12 have to be a benefit to the estate. There are some things  
13 that are just a cost of doing business. A fire to a  
14 neighbor's building didn't benefit the estate, but still the  
15 victim of that fire was entitled to an administrative expense  
16 claim. But this is not even the stretch that a fire would be.  
17 So there's just zero room for argument, I think, here that the  
18 claims asserted in this action are of the nature of  
19 administrative expense claims, postpetition claims, and a  
20 request had to be filed by September 25th.

21 And to the extent a sentence or two in this response filed  
22 July 5th, 2022 is a request to file a late-filed  
23 administrative expense claim, I mean, it's procedurally  
24 improper in every way. And so I'm not going to grant any  
25 relief based on that.

1 Last, the standing issue. While I have the view that CLO  
2 Holdco would have been the party aggrieved here if these  
3 claims are valid, and there does appear to be a problem with  
4 the standing of the Charitable DAF, I think this is a moot  
5 point or an irrelevant point. While under 17 I could, in  
6 different circumstances, allow the proper party to substitute  
7 in, it would be an exercise in futility here because, again,  
8 we're ten months past the deadline for a timely filing of an  
9 administrative expense claim.

10 So, I will draft up an opinion and order in this regard.

11 Let me just throw this out here so no one is surprised or  
12 on a different page. I don't think I have to do a report and  
13 recommendation on this. And anyone who wants to weigh in can  
14 weigh in, but as you know, --

15 MR. DEMO: Your Honor?

16 THE COURT: Oh.

17 MR. DEMO: I'm sorry. I was just agreeing with Your  
18 Honor. This is the claims allowance process. This is a pure  
19 core proceeding at this point.

20 THE COURT: Okay. And so certainly I'll also hear  
21 from Mr. Bridges if he has a comment.

22 But the way I look at this is, okay, we start with the  
23 point of Judge Godbey, I think it was, had this one. He *sua*  
24 *sponte* referred this to the Bankruptcy Court. There wasn't a  
25 report and recommendation where I said, I think you should

1 either not withdraw or withdraw but let the Bankruptcy Court  
2 do pretrial matters. He just *sua sponte* did that. Okay?

3 But then a couple of additional points. Rule 7012(b)  
4 says that a responsive pleading to a 12(b)(6) or a 12(b)(1),  
5 any -- shall include a statement that the party does or does  
6 not consent to the entry of final orders of judgment by the  
7 Court. So I guess we could argue, does that apply to the  
8 Movant or does it apply to the Respondent? But I think it  
9 probably applies to the Respondent here, and so there was  
10 just nothing in the response as to whether Respondent did or  
11 did not consent to entry of a final order, so I would view  
12 that as a waiver.

13 But most importantly of all, I guess, my third point on  
14 this is I think this is an arising-in core matter, not merely  
15 related to, where consent is necessary. Because certainly  
16 the idea of do you need an administrative expense claim or  
17 not and were the proper procedures followed, I think that's  
18 core arising in.

19 So, for all of these reasons, I'm letting you know I'm  
20 not doing this in a report and recommendation. I'm just  
21 doing this in an opinion and order.

22 Mr. Bridges, anything you want to say about that?

23 MR. BRIDGES: Yes, Your Honor. If I could back up  
24 and correct myself first. I think I was mistaken about CLO  
25 Holdco. They are indeed, I am told, the hundred-percent



1 subsidiary of the Plaintiff, the Charitable DAF.

2 Secondly, yes, Your Honor, this is a Rule 12 motion in an  
3 adversary proceeding. We would object to a final order and  
4 ask you to issue a report and recommendation.

5 THE COURT: Well, you didn't put that in your  
6 response. What is your comment about that?

7 MR. BRIDGES: Your Honor, my comment on that is I  
8 feel -- I feel like my hands are tied by the injunction. We  
9 haven't been able to file any motion for leave on fear of --  
10 on pain of getting a ruling from this Court against us as to  
11 the injunction, but we don't have clarity as to what we're  
12 enjoined from and what we are not. And I guess that would be  
13 my basis.

14 THE COURT: Okay. Well, I don't know what that has  
15 to do it with putting a sentence in a response that's required  
16 by 7012(b) saying whether you consent or don't consent. I  
17 don't know what an injunction has to do with that.

18 But anyway, I do view this as an arising-in matter where  
19 consent is probably irrelevant, but I'm just dotting all our  
20 I's here.

21 All right. I will -- I've got one law clerk working on  
22 one under-advisement of Highland that I think is pretty close.  
23 I've got another law clerk working on another under-advisement  
24 in Highland that is getting there. So I think I'll probably  
25 just jot out a pretty fast opinion and order on this one,

1 because the facts on it are pretty simple, and I think  
2 probably in a few days you'll have it.

3 All right. We're adjourned.

4 THE CLERK: All rise.

5 MR. DEMO: Thank you.

6 (Proceedings concluded at 3:44 p.m.)

7 --oOo--

8

9

10

11

12

13

14

15

16

17

18

19

20

CERTIFICATE

21

22

I certify that the foregoing is a correct transcript from  
the electronic sound recording of the proceedings in the  
above-entitled matter.

23

**/s/ Kathy Rehling**

**08/04/2022**

24

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

25

004722

INDEX

1		
2	PROCEEDINGS	3
3	WITNESSES	
4	-none-	
5	EXHIBITS	
6	Judicial Notice to be Taken	6
7	RULINGS	39
8	END OF PROCEEDINGS	44
9	INDEX	45
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		